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MECHANISMS TO SHARE FORFEITED ASSETS AMONG COUNTRIES
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**UNIDAD DE ADMINISTRACIÓN
DE BIENES**

INSTITUTO COSTARRICENSE SOBRE DROGAS



Argentina

Article 1 of Law 24,767 states that Argentina will provide all States that so request with "all possible assistance" in the investigation, prosecution and punishment of offenses under the jurisdiction of another State. 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.

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



Brasil

In Brazil the way to share the goods is determined according to law 9613 (Money Laundering Act). In Chapter VI concerns international cooperation mechanisms for the administration of seized and forfeited during the delayed recovery and / or status of share

Currently, in Brazil support four types of international legal cooperation: letters of request, the approval of foreign judgments, direct protection and extradition.

These instruments are contained in Resolution No. 9, of the Superior Court of Justice, based on the modification of Article 105 of the Federal Constitution, backed by Constitutional Amendment 45/2004.



Colombia

The assets sharing mechanism is in Chapter VII on Administrative and destination of goods by the Forfeiture Act, Act 793 of 2002. Article 42 provides in subsection f, how to share assets with other States which have cooperated for forfeiture. In all cases, the decision on the destination of the goods shall be taken by a college of higher authority.

Approval with extinction law to run the division of property.

Article 21. Cooperation. Conventions and treaties on judicial cooperation undersigned, duly approved and ratified by Colombia, are fully applicable for obtaining cooperation in allocation of goods, if the content is compatible with the forfeiture action.



Costa Rica

If the assets are requested by a country must be considered the Law 8204 "Law on Narcotics, Psychotropic Substances, Drug unauthorized uses, money laundering, related activities and terrorist financing, along with its new Regulation", No. 36948.

The decree takes us back to Article 101:

Article 101.-International assistances. - International authorities requesting mutual legal assistance for asset recovery, should cover the costs of administration, maintenance, custodial, maintenance, insurance and provision incurred by the ICD, while the same is found their favor in judicial deposit condition.

ICD's Assets Management Unit, will also provide technical assistance for the management of assets that have been seized or confiscated in the process that is carried in the requesting country.



Article 84 (URA). - If it ordered the seizure, the ICD URA assume in judicial deposit, exclusively, of assets with an economic interest. To do this, the judicial authority shall deliver the assets to the URA in the place determined by them.

The ICD will allocate these assets exclusively, to fulfill the purposes described in this Act.

Article 84 bis (URA). 'When the movable and immovable property which are in judicial deposit are respectively affected by pledge or mortgage, the money obtained as a result of the sale, be paid the balance of the debt that justifies the charge.

In case the amount has been paid to the cancellation of the lien and ordering the return of the good, the Institute will provide the owner, the balance in the open.



United States

It can identify an interesting view which seeks to share the goods through bilateral treaties, executive agreements and request letters; same that have been ratified with mutual legal assistance (MLAT). Section 981

Assets must have been finally seized without legal options of appeal after a process undertaken by the Department of Justice or the Seized Assets Fund of the Treasury Department.

The recipient country must have participated - directly or indirectly - in the seizure or forfeiture of specific property to be shared.

The distribution must be approved by the Attorney General (for distributions DOJ) or the Secretary of the Treasury (for Treasury Department distributions) through delegated authorities.



The decision of distribution must be agreed by the Secretary of State through delegated authorities.

The distribution must be authorized by an international agreement between the United States and the recipient country.

If applicable, the country must be certified

Must be under the Foreign Assistance Act.

Essential Support: (50-80%) usually includes assistance related assets located in the country of destination.

Important Assistance: (40-50%) usually involves assistance on assets located in the country of destination and additionally provides other assistance.

Facilitation Assistance (Up to 40%) usually involves operational research assistance on assets located in the United States or a third country, usually indirectly helping forfeiture.



Guatemala

By Act 55-2210, the Congress of Guatemala has determined the assistance and cooperation regarding sharing mechanisms assets, this according to Article 8, which states:

Article 8. International assistance and cooperation. The international conventions and treaties of cooperation and legal assistance or mutual judicial cooperation on location, identification, recovery, repatriation and termination of ownership of assets, signed, approved and ratified in accordance with the Constitution of Guatemala, are fully applicable to cases under this Act, through the procedures established in the Mutual Legal Assistance Agreements.



Honduras

The Act of Final Deprivation of Domain of illicit origin assets, was created by Decree 26-2010 of 16 June 2010.

Article 79. The competent courts, the Public Ministry, the Central Bank of Honduras, the National Banking and Insurance and the other competent authorities, using mechanisms MOU, conventions, treaties and international agreements can apply fully applicable and provide cooperation and mutual legal assistance to other countries in relation to the matter that the law has

Article 78 makes it possible for a percentage corresponds to a state by working with confiscation of property.

There is a 55% that would be shared between the police and state agencies involved, including any unit or foreign institution who have participated.



Mexico

When there is a treaty or international agreement on mutual legal assistance in criminal matters, a foreign authority may submit a request for legal assistance to the central authority in Mexico, the Attorney General's Office, through the Directorate General of Legal Aid and Extraditions . When there is no international treaty or convention, a foreign authority may submit a request for request letters through diplomatic channels.

Mexico we refer to Article 6 of the Federal Law of Property Disposal Management and Public Sector Management Service and Property Disposal (SAE, by it acronym in Spanish) which is responsible for assuming management of all assets seized / confiscated pending the conclusion of the criminal proceedings.

The SAE may contract management responsibilities to companies or outside agencies. The SAE, or the designated contractor may sell or dispose of all goods that are subject to rapid deterioration or devaluation of the seized assets are not in official use.



Peru

Executive Decree No. 1104.

Peru has the In Rem Forfeiture Law have included the cooperation provisions on Article 19.

International conventions and cooperation or judicial legal assistance and any other international agreement that regulates international cooperation in confiscation and location, identification, recovery, repatriation and loss or termination of ownership of assets are applicable to cases under this Decree. In this regard, the State may enter into bilateral or multilateral cooperation to facilitate the delivery of assets.



The Dominican Republic

Law 50-88.

It refers to Article 110 and 111 of the aforementioned law. The courts are responsible for such negotiation takes place.

As a review of the above, the articles of the law are:

Article 110 - The court shall cooperate with the competent court of another State, to assist each other in cases of illicit trafficking related offenses within the limits of their respective legal systems and international law.

Art.111. The competent court may receive a request from a court or competent authority of another State to identify, detect, seize or confiscate goods, products or instruments related to an offense of smuggling or related offenses and may take the necessary measures, including those identified in this Act, provided that such solicitation is accompanied by a court order or judgment issued by the authority and in accordance with the laws of the Dominican Republic and international law.



Boliviarian Republic of Venezuela

Organic Law Against Organized Crime and Financing of Terrorism, published in the Official Gazette No. 39912 of April 30, 2012.

Article 89. Disposition.

1. Provide all or a significant portion of the product value and property, or funds derived from the sale thereof, to intergovernmental bodies specializing in the fight against illicit trafficking and abuse of narcotic drugs and psychotropic substances or other transnational organized crime and terrorist financing.
2. Sharing with other parties under a regular or in each case, the product, goods or funds derived from the sale thereof, under the provisions of its domestic law, administrative procedures or bilateral or multilateral entered into for this purpose.



Lic. Engels Jiménez Padilla
Delegación de Costa Rica
Sub-Grupo de trabajo de Decomiso
ejimenez@icd.go.cr



REPORT ON MECHANISMS TO SHARE FORFEITED ASSETS AMONG COUNTRIES

Since early 2008, the Group of Experts of the Inter-American Drug Abuse Control Commission of the Organization of American States, specifically the Sub-working Group of Forfeiture, focused within the most relevant issues to go to search for what are the different mechanisms used by Member States to share the goods that have been seized from criminal organizations linked to drug trafficking, money laundering, and terrorist financing, which are deteriorating day by day our society.

This has led us to determine that there are different areas within the domestic law of each country that give the possibility to share assets, as far as they are legally enabled to harmonize with its counterpart the implementation of such sharing.

As an example, we can note the In-Rem Forfeiture Model, law that has been implemented in recent years in countries like Honduras and Guatemala, and whose application is of great relevance to their legislations.

However, as a reference to identify the mechanisms for sharing assets between governments, we will mention some of them, which will then be nourished with the comments that will be generated in the discussion of the Sub-working Group of Forfeiture.

In **Colombia**, the form that determines how to use the sharing of assets is embodied in **Chapter VII**, of the administration and allocation of assets of the In-Rem forfeiture Law, Law 793 of 2002, which clearly states in Article 42 paragraph f, how to share assets with other States that have cooperated to In-Rem forfeiture and that in all cases, the decision on the destination of the assets shall be taken by a collegiate body of higher authority.

In this sense, the Colombian legislation is clear when establishing the standardization with the In-Rem Forfeiture law to run the division of assets

This is established in the Article 21 of the Law of "Marras", which says:

Article 21. Cooperation. Conventions and treaties on judicial cooperation signed, approved and duly ratified by Colombia, are fully applicable to obtain collaboration on affectation of assets if the content is compatible with the In-Rem forfeiture action.

In turn, **Costa Rica** has also been implemented gradually an idea of how to treat these goods that are demanded by another country, so this is being established in the new regulations of the Law 8204, Law on Narcotics, Psychotropic Substances, Drugs of unauthorized uses, Money Laundering, related activities and financing of Terrorism, along with its new regulation No. 36948.

The decree takes us back to Article 101, which says:

Article 101.-International assistances. - International authorities requesting mutual legal assistance for asset recovery, should cover the costs of administration, maintenance, custody, conservation, insurance and disposal incurred by the ICD, while the same were found in its favor in legal deposit status.

The technical assistance for the administration of the assets that have been seized or forfeited in the process that was ventilated in the requesting country is also facilitated through the Assets Management Unit of the Costa Rican Drug Institute.

In the case of the **United States of America**, an interesting overview can be identified, which seeks the sharing of assets through bilateral treaties, executive agreements and letters of request, which have been ratified with mutual legal assistance (MLAT).

The United States has such treaties with several countries of our working group, being some of them Argentina, Canada, Colombia, Grenada, Dominica, Panama, Dominican Republic, among others, which have been signed with thirty-nine jurisdictions of other continents. (Section 981).

Guatemala has been implemented in recent years the most appropriate mechanisms to share assets, on the basis of the In-Rem Forfeiture Law, as is reflected in the documents studied for this draft.

By Law 55-2210, the Congress of Guatemala has determined international assistance and cooperation regarding mechanisms to share assets, as is clear from Article 8, which says:

Article 8. International assistance and cooperation. The international conventions and treaties of cooperation and legal or judicial assistance for mutual cooperation in matters of location, identification, recovery, repatriation and In-Rem forfeiture signed, approved and ratified in accordance with the Constitution of the Republic of Guatemala, are fully applicable to cases under this law, through the procedures established by the Conventions on Mutual Legal Assistance.

Honduras, in its Law on Final In-Rem forfeiture of assets of illicit origin, created by Decree 26-2010 of June 16, 2010, gives us an orientation about which norm should be used in this type of situations, when we have the opportunity to share assets with other countries.

With the new legislation, can be created mechanisms to share assets.

Article 79. Competent courts, the Public Ministry, the Central Bank of Honduras, the National Commission of Banks and Insurance and the other competent authorities, using the mechanisms of memorandum of understanding, conventions, treaties and international agreements fully applicable, can request and provide cooperation or mutual legal assistance to other countries in relation to the matter disposed by the Law.

Peru has its legal structure to share assets by the Executive Decree No. 1104. This related to the In-Rem Forfeiture Legislation that seeks the international cooperation in Article 19, that says:

The international agreements on cooperation and legal or judicial assistance and any other international agreement governing international cooperation in confiscation and location, identification, recovery, repatriation and loss or In-Rem forfeiture of assets are applicable to cases under this Legislative Decree. In this regard, the State may celebrate bilateral or multilateral cooperation arrangements to facilitate the management of assets.

Regarding **Dominican Republic**, can be observed how the National Congress determines the viability of sharing and how negotiate this with other countries. This based in the Law 50-88

From this country is taking as a reference Articles 110 and 111 of the Law previously referred and we see how the courts are called to perform such negotiation.

As a review of the above, we quote what is mentioned in the preceding articles:

Article 110. The empowered court shall cooperate with the competent court of another State, to provide mutual assistance in cases of illicit trafficking related offenses within the limits of their legal systems and norms of international law.

Article 111. The competent court may receive a request from a court or competent authority of another State to identify, detect, seize or confiscate assets, products or instruments related to a crime of illicit trafficking or related offenses and may provide the necessary measures, including those identified in this Law, if the request is accompanied by a court order or judgment issued by the authority and in accordance with the laws of the Dominican Republic and the International Law.

Regarding the **Bolivarian Republic of Venezuela**, with its new approval of the Organic Law Against Organized Crime and Terrorist financing, as evidenced by the Official Gazette No. 39912 of April 30, 2012, is clearly established how to share assets in its penal law, which from the Article 74 shows us how to request and present the Mutual Legal Assistance regarding international cooperation.

Article 89. Provision.

1. Provide all or a substantial part of the value of the product and of the assets, or funds from the sale thereof, to intergovernmental bodies specializing in the fight against illicit trafficking and abuse of narcotic drugs and psychotropic substances or other offenses of organized crime and terrorist financing.
2. Sharing with other parties in accordance with a preset or defined criterion for each case, such product, assets or funds from the sale thereof, in accordance with the provisions of its domestic law, administrative procedures or bilateral or multilateral agreements concerted for this purpose.
3. If proceeds have been transformed or converted into other property, they may be subject to the measures applicable to the product mentioned in this chapter.
4. If proceeds have been intermingled with property acquired from legitimate sources, without prejudice to any powers relating to seizure or freezing, may seize or confiscate such property to the assessed value of the mixing.
5. These measures also apply to income or other benefits:
 - a. Of the product
 - b. Of the property in which proceeds have been transformed or converted, or,
 - c. Of property for which the product is mixed in the same manner and to the same extent as this.

Being this a draft that shows some of the laws that have the possibility to share assets with other states, also fails to identify that there are large voids or gaps in this field. Reason why it is of great importance to urge honorable members of this group of experts to provide their most recent laws in this area of mechanisms to share forfeited assets.

Doing some consultations to different country delegates, I have determined that in recent years have evolved in their legislation and for this reason we call for us to make them come and so prepare a document that is useful for us all.

Engels Jiménez Padilla