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United States of America

**INTER-AMERICAN DRUG ABUSE  
CONTROL COMMISSION**

**CICAD**

**Organization of American States**

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**SUPPLEMENTARY STUDY ON THE RELATIVE PROCEDURES AND/OR CRITERIA FOR  
INTERNATIONAL COOPERATION IN THE SHARING OF SEIZED PROPERTY  
XXXIX GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING  
MONTEVIDEO, URUGUAY**



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**XXXIX GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING  
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**SUPPLEMENTARY STUDY ON THE RELATIVE PROCEDURES AND/OR CRITERIA FOR  
INTERNATIONAL COOPERATION IN THE SHARING OF SEIZED PROPERTY**

## 1. Introduction

*In accordance with the deliberations of the XXXVI Meeting of the Expert Group for the Control of Money Laundering (GELAVEX), held in Brasilia, Brazil the 17<sup>th</sup> and 18<sup>th</sup> of September 2013, the subgroup of the Seizure and International Cooperation began work on a **“Supplementary Study on the procedures and/or criteria for international cooperation for sharing assets”**, as part of a work plan for the 2013-2014 period.*

Also in that meeting the document “Study on the Mechanics for International Cooperation (formal and informal) that allow an adequate and efficient exchange of information for the prevention and repression of money laundering, financing of terrorism and the recovery of criminal assets” was approved.

For the study of Mechanisms of International Cooperation it was proposed that the Executive Secretariat, supported by GELAVEX, would develop a Technical Assistance Program on International Cooperation in the Area of the Control of Money Laundering. The progress of this work were presented in the XXXVIII Meeting of the Group of Experts for the Control of Money Laundering, held on the 22<sup>nd</sup> and 23<sup>rd</sup> of May 2014 in Washington, D.C.

That program would include, as one of its objectives, the promotion of the adoption of mechanisms for the sharing of seized assets between States, using mutual evaluations and creating framework recommendations, procedures and / or criteria for international cooperation to share assets.

In the same meeting of the GELAVEX, in Washington, D.C., the Task Force Forfeiture and International Cooperation proposed the methodology for the development of the complementary study. This methodology aimed to contribute to the efforts of the Executive Secretariat (SE / CICAD) in developing the Technical Assistance Program, updating country information through a questionnaire drawn up by the SE / CICAD and the sub-group.

The questionnaire was circulated to delegations and the received information was an update of the paper on “Mechanisms for the sharing of forfeited assets between Countries”, which was written by GELAVEX and approved in the fiftieth regular session of CICAD in San José, Costa Rica, in 2012. This document is also considered another key input to the Secretariat in the development of the related program .

Considering the above, the document “Mechanism for sharing seized goods between countries” was completed and updated.

The original document offered an important summary on the changes related to international cooperation for the sharing of forfeited assets with other States that Argentina, Brazil, Columbia, Costa Rica, United States, Guatemala, Honduras, Mexico, Peru, Dominican Republic, El Salvador and Venezuela have incorporated into their legal systems.

It is shown that with the exception of Brazil and the United States, in most cases States do not have specific rules governing the treatment of the confiscated property that is linked to a case that is processed in another State.

It observes in the case of Columbia and the Dominican Republic that regulations exist that make reference to the authority that defines the ways in which goods can be shared between States in the cases where it is required. However, in general, the majority of the cited countries have provisions to provide all international cooperation and mutual legal assistance in asset recovery if required established in their legal systems , but, with the exception of Brazil and the United States, no specifically defined procedures, percentages and / or prerequisites for the sharing of assets between States are indicated, .

This means that, on the date of completion of this study, there were no internal systems in the member States in connection to regulations on the sharing of assets with other countries. Even if some have legislation, there are significant gaps on the subject, which highlights the importance of defining criteria and / or procedures in this area.

For this reason, and in accordance with the GELAVEX XXXVIII Meeting, a questionnaire was circulated among the countries to informing the group if there had been reforms in the legislation. This also provided those countries for which no information was available to provide it.

The questions in the questionnaire were the following:

1. Does your country have standards within its domestic law to establish procedures for sharing confiscated assets with other States? If so please describe.
2. If you answered yes to first question: what specific standards in the internal system of your country define percentages and prerequisites or circumstances in which confiscated property must or may be shared?
3. Do your national standards take into account the interest and revaluations of the proceeds of crime or confiscated assets that occurred and deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the confiscation of proceeds of crime or assets?
4. What are the prerequisites for applications for the sharing the proceeds of crime or confiscated property?
5. Are there national provisions that include rules respecting the rights of the victims when entering into agreements or arrangements to share assets between States?
6. Is it possible to legally enter into agreements or arrangements to resolve specific cases on sharing assets between States?
7. Which national authority(ies) has the legal capacity to enter into agreements or arrangements to share property between States?

## **2. Mechanisms for Sharing Seized Assets between Countries**

### **ARGENTINA**

In Argentina Act 24.767 establishes in article 1 that the Republic of Argentina will offer each State who so requests the "best assistance possible" in the investigation, prosecution and punishment of crimes under the jurisdiction of another State. Also, in this section "any intervening authority will deliberate quickly to ensure that the procedure is completed expeditiously and not hinder the intervention." The law regulates all the related affairs with countries with which the Republic of Argentina does not have a mutual legal assistance treaty, guaranteeing assistance on the basis of reciprocity or offer (article 3). When this type of treaty exists its provisions must determine the procedures, and the provisions of Act 24.767 should be used to interpret the text of treaties and determine the aspects that are not covered by them (Article 2). In terms of international assistance, the Judicial Power applies the same methods for obtaining evidences as in internal procedures.

Act 24.767 allows a wide range of mechanisms for mutual legal assistance in identification, search and seizure of evidence in investigations and prosecutions of crimes of money laundering and terrorist financing adopted in the general terms set out in Articles 67-81 of the Act.

Under this law the Republic of Argentina can also identify, freeze, seize, and confiscate laundered money or money that was attempted to be laundered, the proceeds of money laundering and goods used for or that were intended to be used for the financing of terrorism, as well the instruments of such offenses. The Republic of Argentina has standards within their domestic legal systems that establish procedures for sharing confiscated assets with other States. Indeed, Act No. 24.767 on

international cooperation in criminal matters, in "Part IV" on Execution of Sentences, Articles 96 and 110 states:

*Art. 96: The Ministry of Foreign Affairs, International Trade and Culture may agree with the requesting State, on the basis of reciprocity, that some of the money or property obtained as a result of the implementation process remain under the authority of Argentina.*

*Art 110: (...) The Ministry of Foreign Affairs, International Trade and Culture may agree with the foreign country on the basis of reciprocity that part of the money or property obtained as a result of the process of execution of the sentence of fine or forfeiture, may stay in that country.*

However, domestic law does not provide rules defining percentages, prerequisites and circumstances in which the seized goods should be or can be shared.

Furthermore, and in relation with the possibility of taking into account the interest and revaluations of the proceeds of crime or confiscated property and deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the confiscation of proceeds of crime or assets, the Argentinan national standards, are decided in accordance with art. 23 of the Penal Code, which states that in cases with repeated conviction for offenses under the Penal Code or special penal laws, it will order the forfeiture of the things that have served to commit the act and the things or gains that are the proceeds or the benefit of the crime, in favor of the national State, provinces or municipalities, except the right to restitution or compensation of the victim and others.

In relation to the requirements for applications to share the proceeds of crime or property confiscated, Act 24.767 Article 97 states that the application must be submitted through diplomatic channels and that the administrative procedure will be similar to that for requests for assistance in the investigation and prosecution of crimes.

As for the inclusion in national standards of provisions respecting the rights of the victims at the time of entering into agreements or arrangements to share property between States, Article 23 of the Criminal Code of the Republic of Argentina, contains the provision on respect of the rights of victims.

In Argentina, the legal ability to enter into agreements or arrangements to resolve specific cases regarding property sharing between States exists. In this regard, the Protocol on Mutual Legal Assistance in Criminal Matters and Agreement on Mutual Legal Assistance in Criminal Matters between the MERCOSUR, the Republic of Bolivia and the Republic of Chile (San Luis, 2001) states that the State which has in its custody instruments, the object or the products of the crime, will dispose of the same in accordance with the provisions of its internal law. To the extent permitted by its laws and in the manner deemed appropriate, the State may transfer to another the confiscated property or the proceeds of sale. The Protocol of the MERCOSUR (Argentina-Brazil-Paraguay-Uruguay) provisions relating to the issue, indicates that the State which has custody instruments, the object or the products of the crime, disposes of them according to its domestic law, and to the extent permitted by its laws and in the manner deemed appropriate, that other State may transfer the seized property or the sales of their products (Article 24).

Finally, notwithstanding the above-mentioned response, the legal capacity to enter into agreements or arrangements of Argentina lies in the executive and legislative powers of the nation. Internationally, the executive branch negotiates and ratifies treaties (Article 99, para 11:.. PEN "arranges and signs treaties, contracts and other agreements required for the maintenance of good relations with international organizations and foreign nations ... "). Domestically, treaties must be approved by the National Congress (Article 75, para 22:.. "Approve or reject treaties established with other nations and international organizations, and concordats with the Holy See").

#### **BRAZIL**

Brazil has standards that establish procedures for sharing seized assets with other States, which are described by the following:

“In absence of a treaty or convention, the goods, rights or private equity subject to security measures by request from a competent foreign authority or the product of the proceeds of its sale will be shared by the requesting state and Brazil in half portions, with the exception of victim’s rights or bona fide third parties. (art. 8º. § 2º of law n. 9.613/1998) “Anti-Money Laundering.”

When acting on a request presented by another state according to article 13 of the present convention, the State, to the extent that internal law permits and the extent they are required to, will give priority consideration to the return of the proceeds of crime and the frozen assets to the requesting State so that it can give compensation to victims of crime or return such proceeds of crime or property to their legitimate owners. When acting on a request by another State under articles 12 and 13 of the present convention, the States will be able to consider in particular the possibility of holding treaties or agreements in the spirit of (...)Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.” (art. 12, 2 and 3 b of the Convention of the United Nations against Transnational Organized Crime).

“Proceeds or property confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its domestic law and administrative procedures. b) When acting on the request of another Party in accordance with this article, a Party may give special consideration to concluding agreements (...) Sharing with other Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.” (Article 5.5 of the United Nations Convention against Illegal Trafficking of Narcotics and Psychotropic Substances).

“A State Party that enforces its own or another State Party’s forfeiture judgment against property or proceeds described in paragraph 1 of this article shall dispose of the property or proceeds in accordance with its laws. To the extent permitted by a State Party’s laws and upon such terms as it deems appropriate, it may transfer all or part of such property or proceeds to another State Party that assisted in the underlying investigation or proceedings.” (art. 15.2 of the Inter-American Convention against Corruption).

“The State Party that has custody instruments, the object or products of the crime, will dispose of them in accordance with their established internal law. This State Party will be able to transfer the seized assets or their proceeds of their sale in the manner permitted by their law and the terms that they consider adequate.” (art. 24 of Mutual Legal Assistance Protocol in Criminal Matters).

In this sense, Brazil has defined the percentages and the prerequisites in which the seized assets should be or can be shared. The treaties on international legal cooperation in criminal matters in force in Brazil also establish rules that define circumstances for the restitution or sharing of seized assets.

Also in Brazil, the terms of many international legal cooperation agreements in criminal matters in force in Brazil talk of deducting reasonable expenses incurred during investigations, processing, or legal proceedings that have been carried out during the seizure of the proceeds of crime or assets. This corresponds to “operational costs.”

The requests sent to Brazil to share the proceeds of crime or seized assets should contain information on: (i)the need for confidentiality; (ii) the identity of the requesting authority; (iii) reference to the case, (iv) the facts, (v) the transcription of the legal provisions that form the order, (vi) the description of the requested assistance, (vii) the copy of the decision that decrees the forfeiture and (viii) the affidavit of the requesting authority on the legal situation of the legal proceedings, above all the confirmation that there was a final judgment in the legal proceedings.

For requests that were sent abroad from Brazil, there is a document that instructs the Brazilian authorities on how to construct a request for international legal cooperation, including cases of asset sharing.

The international legal cooperation accords in criminal matters between Brazil and other countries normally have specific regulations with respect to not only the victim's rights, but also those of bona fide third parties.

In Brazil it is legally possible to sign agreements or bilateral agreements to resolve specific cases on the matter of sharing assets. Anyway, the general rule is that the conditions for sharing assets in specific cases are decided by correspondence between the Brazilian central authority and the foreign central authority. If there is a bilateral international legal cooperation accord, the negotiation will be conducted along the terms of the agreement.

Finally the Department of Asset recovery and International Legal Cooperation is the national authority with the legal capacity to sign agreements of bilateral treaties for sharing assets between States. This power was established by Decree n. 6.061/2007:

*"Art 11. The Department of Asset recovery and Legal Cooperation is responsible for:*

*I-coordinating, integrating, and proposing government actions on matters of fighting money laundering, transnational organized crime, the recovery of assets and international legal cooperation; (...)*

*III-negotiating agreements and coordinating international legal cooperation;*

*IV – acting as a central authority for the transmission of requests for international legal cooperation;*

*V- Coordinating the conduct of the Brazilian state in international forums on the preventions and the fight against international money laundering and transnational organized crime, on the recuperation of assets, and international legal cooperation;*

*VI- instructing, reviewing and coordinating international legal cooperation both active and passive, including rogatory requests."*

#### **COLUMBIA**

Columbia does not have regulations within its internal legal system that establish procedures for the sharing of seized goods with other States. In addition they have not established percentages and prerequisites or circumstances in which seized goods should be or can be shared.

As to the possibility of taking into account interest and revaluations of the product of a crime or seized goods and deducting reasonable expenses incurred in the investigation, prosecution, and legal proceedings that have taken place for the seizure of the proceeds of crime or the assets, to date Columbia does not have legislation on the subject.

However, article 91 of Act 1708 of 2014, regulates the resource distribution of the Fund for Rehabilitation, Social Change, and the Fight against Organized Crime- FRISCO. The fund has the power to dispose of the goods that are connected to and pending judicial judgment in the process of forfeiture actions, as well as those for which judgment has been issued declaring outright termination of his ownership in favor of the Nation.

In compliance with the regulations of article 91 of Act 1708 of 2014, the resources of FRISCO will be allocated in the following priority order:

*1) The indicated sum in FRISCO's budget presented by their administrator (Society for Special Activities –SAE) and approved by the National Council of Narcotics will be destined to:*

*1.1 the debts of FRISCO*

*1.2. Administrative funds of FRISCO assets*

*1.3. Administrative funds of FRISCO's administrator (SAE)*

*2) Legal disposals pre-act 1708 2014. Within which are found*

*2.1 Victim Reparation: 5% of Sales*

*2.2 Restitution of Land: Rural Properties*

*2.3 FONTUR: Properties with a Tourist Vocation*

3) *In the case of an remaining resources once the above concepts have been satisfied, the total thereof is distributed in the following forms and percentages:*

3.1 25% for the General Budget of the Nation

3.2 25% for the judicial branch

3.3 50% for National Government Programs

It is clear that this fund is a special case with judicial personnel and whose resources have a specific disposal which is currently controlled by the National Narcotics Directorate. Currently it is in liquidation and will be administered by the Society of Special Activities (S.A.S.) starting from July 21, 2014, confirming with the precepts of article 90 of Act 1708 2014.

Regarding the legal possibility of signing bilateral accords or treaties to resolve specific cases on the matter of sharing goods between States, in Columbia, in some cases the exchange of capital involved in crime has taken place, by means of agreements signed directly by the National Government and the foreign State, without implying the existence of an international convention. In the legal field no agreements have been developed , or competence defined for this purpose.

The national authority that has the legal capacity to sign agreements or bilateral treaties for the sharing of assets between States is the National Government, led by the President of the Republic, or the minister of International Relations or a representative of the state with full powers, subsequently submitting their position to the Congress of the Republic. However no agreements have been developed in this sense.

#### **COSTA RICA**

The judicial order of Costa Rica has not established specific proceedings for sharing seized assets; however, the law on narcotics, psychotropic substances, the use of non-authorized drugs, related activities, the legitimation of capital and the financing of terrorism, Act no. 8204, establishes the position of the State on cooperating with foreign authorities, in particular and in the interest of article 8, this law establishes *“In order to facilitate the investigations and police actions or judicial references to the offenses typified the in the present law, the national authorizes will be able to lend cooperation to foreign authorizes and receive them for the following... g)identifying or detecting, with evidentiary purposes, the product, the assets, the instruments or other elements. ... i) Perform other actions included in the Vienna Convention and whichever other international instrument approved by Costa Rica.”*

In the same vein there are not specific regulations in the internal order that define percentages and prerequisites or circumstances in which seized assets should be or can be shared in Costa Rica.

Regarding the interest and revaluations of the proceeds of crime, Act No. 8204 defines specific purposes for the seized and forfeited money, its interest and the investments that can be made with this money, so that the sole purpose is to benefit the national institutions dedicated to the prevention and repression of the crimes that typify that same law, in addition to the amounts that are destined for the assurance and maintenance of assets.

Regarding the possibility of deducting reasonable expenses, the general regulation on legislation in drug trafficking, connected activities, legitimation of capital, financing of terrorism and organized crime; Executive Order N° 36948-MP-SP-JP-H-S, establishes in the Sixth Section: National and International Cooperation, *“Article 101.-International Assistance.-The international authorities that request mutual legal assistance for the recovery of assets, should cover the administration costs, maintenance, custody, conservation, security and regulation in which they incurred the ICD, while they are in the condition of judicial custody.”*

In Costa Rica the requirements for applications to share the proceeds of crime or property confiscated are not defined.

The national legislation of Costa Rica establishes that when the victim has been identified and it has been determined that they are the member of a bona fide third party, Act 8204 and Act 8754 establishes that all the steps and related sanctions for the seizing and forfeiture of related assets due to

an infraction of these laws, will be applied without prejudice to the rights of these third parties. They are given the possibility of appearing in person to assert their rights; however, the laws do not define the possibility of an agreement or arrangement to share assets between States.

The internal regulations also regulate the possibility of signing bilateral treaties or agreements to resolve specific cases in the matter of sharing assets between States, the basis for which can be found in article 8 of Act No. 8204 cited before and the article 100 paragraph k) of the same law; which indicates: “...for the compliance of the above competency, the institute will exercise, among others, the following functions: ... k) sign agreements and promote cooperation agreements and the exchange of information in the area of their expertise with institutions and national organisms and related international institutions.”

Finally, the national authorities that have the legal capacity to sign bilateral agreements or arrangements for sharing assets between States are the ICD in the area of drug trafficking and the legitimization of capital and the OATRI of the Public Ministry in the matter of organized crime.

### **United States**

The United States of America have concrete regulations for the sharing of assets through bilateral treaties, executive agreements and rogatory letters.

In 1988, after a dramatic expansion of the laws on confiscation of properties in the United States during the previous 10 years, the United States Congress laid the foundation for the international exchange of seized assets in recognizing the assistance with the forfeiture to the United States from abroad. It authorized the Attorney General to transfer personal property, or the product of the sale of real or personal property, either criminal or civil seized, to any foreign country that had participated directly or indirectly in the seizure or confiscation of this property. See 18 U.S.C. § 981(i)(1) y 21 U.S.C. § 881(e)(1)(E). It requires among other things that the transfers should be (1) agreed upon by the Secretary of State, and (2) authorized by an international agreement between the United States and the benefitting country. Congress authorized a comparable international exchange for the Secretary of the Treasury for the seized of property controlled by the Treasury Department components. See 18 U.S.C. § 981(i)(1), 19 U.S.C § 1616a (c)(2)(B) y 31 U.S.C. § 9703.1(h)(2). A memorandum of inter-institutional understanding adopted by the three departments in 1992 requires, among other things, that the Justice and Treasury Departments revise the decisions of each one of the international exchanges.

This State has been sharing assets with other countries of the world since 1989 and has received an excellent distribution with the 54 countries with which it has created different legal instruments for this activity.

The United States has two funds to determine how to distribute the seized money with the countries that have collaborated directly or indirectly in the process. One of these is the Department of Justice and the other is administrated by the Department of the Treasury.

A subsequent memorandum of inter-institutional understanding adopted by the three departments in 1995 establishes the guidelines that are proposed, by way of illustration, a structure of three levels that drafts the specific types of forfeiture assistance that a foreign country can requests from the United States, and suggests percentages to be shared, as a result of this assistance. The guidelines are not intended to deprive or limit the exercise of the discretion of the departmental decision makers of the quantity to be shared in specific cases. Rather, it is intended “to promote general consistency, in a manner in which foreign a country that presents the same type and grade of assistance to the different agencies of the United States do not have reason to believe... that they are being treated unfairly.” The guidelines provide among other things that “in the making of decisions of sharing, the Departments of Justice and Treasury take into account the opinions of all the agencies and federal offices that participated in the underlying case in which the forfeiture revenues are sought to be transferred to a foreign government.”

The distribution of money and properties is regulated by various scenarios and then broken down:

1. The assets should have been definitively forfeited, without options for legal appeal as a consequence of a speedy trial by the Department of Justice or by the Fund of Seized Good by the Department of the Treasury.

2. The destination country should have participated – directly or indirectly – in the seizure or forfeiture of the specific assets that are being shared.

3. The sharing should be approved by the Attorney General (for sharing of the Department of Justice) or by the Secretary of Finance (for sharing by the Department of the Treasury) through the relevant delegates.

4. The decision of sharing should be agreed upon by the Secretary of State through the delegated authorities.

5. The distribution should be authorized by an international agreement between the United States and the destination country.

6. If it is applicable the country should be certified

7. It should be under the law of Foreign Assistance  
<http://www.un.org/en/ecosoc/docs/2005/resolution%202005-14.pdf>

Regarding the criteria that control international sharing in the United States, these are established in the memorandum of inter-institutional understanding in 1995 between the Departments of Justice and Treasury and related; described as follows:

Essential Assistance: (50-80%) Generally includes related assistance with properties located in the recipient country.

Important Assistance: (40-50%) Normally implies assistance for assets located in the recipient country and additionally other another type of assistance.

Facilitation Assistance: (Up to 40%) Normally implies investigative and operational assistance relative to assets situated in the United States or a third country; generally helping with the forfeiture in an indirect way.

The largest contributors the United States has had in recent years have been Switzerland, Colombia, Luxembourg, the United Kingdom, and the most recent are Belgium, Bermuda (Mutual Legal Assistance) and Uruguay.

On the other hand and in relation to the regulations that include the possibility of taking into account interest and revaluations of the proceeds of crime or forfeited assets, in the United States the accrued interest of the deposit institutions or similar sources that are derived from the proceeds of a crime and are forfeited or are of another legal manner returned under some international petitions, are returned net of direct costs of the seizure, forfeiture, maintenance and disposal of the assets. These costs are generally of a nominal quantity and always exclude the costs of federal agents, lawyers, and personnel. The sharing of assets of the United States is calculated based on the forfeiture plus net interest of these expenses.

The U.S. is obligated to deposit forfeited funds in a special government account before their distribution. This account generally earns a legal rate lower than the current market approaches expenses in the management of the funds. For this reason, while the international exchange includes the accrued interest for the commercial deposits before confiscation, international exchange does not include the interest of the United States Treasury.

As to the requirements of the requests to share the proceeds of crime or the forfeited assets, the United States has considered that foreign governments are not obligated to follow a specific process for the presentation of a request for sharing to the United States. A sharing request may be administered with a treaty of agreement or sharing, or, in a less formal manner, through other channels of application of law or diplomacy. These request should be presented in writing, in the English

language, and establish the pertaining circumstances of cooperation and sufficient details to identify the case of the United States, the forfeited assets, and the entities involved.

It should also be said that a request for sharing from a foreign government is not often even necessary, because the lawyers of the United States and the forces of order often begin recommendations for sharing the assets each time that they receive foreign assistance that allows for the confiscation of an asset in the case of the United States, particularly the assets are situated in, or recovered from the United States.

When the United States loses assets in a judicial confiscation case with the assistance of a foreign State and the forfeiture agency is a component or participant of the Department of Justice in the Department of Justice and Asset Forfeiture Fund (AFF), the federal lawyer assigned to the case is responsible for sending a recommendation request of formal sharing to the Section of Asset Forfeiture and Money Laundering. For the administrative confiscated assets, the seizing agency is responsible for sending the recommendation. In cases which involve the Treasury Fund of Forfeiture (TFF), the seizing agency (for example, Internal Revenue Service, the Secret Service, or Immigration and Customs Enforcement) is responsible for the presentation for a recommendation for sharing to the Executive Office of the Treasury of Asset Forfeiture.

However, with respect to victims and third parties, consistent with article 14, paragraph 2, of the United Nations Convention against Transnational Organized Crime, the United States now includes in their bilateral exchange agreements and the permanent forfeiture of assets a reciprocal obligation that the signatory parties return all the fraud and theft revenues to the requesting country for the purposes of compensation to the victims. This disposition appears in the 20 most recent bilateral permanent cooperation agreements on the confiscation and distribution of assets that the United States has signed with other governments since 1990. The majority of these permanent agreements exist as supplements to the more general bilateral mutual legal assistance treaties.

Despite the absence of a mutual legal assistance treaty and/or permanent assets sharing agreement with a country that provides for the exchange of assets, it's possible (and very common) for the United States to enter in a "specific case agreement" ad hoc with a country that provides for the exchange of assets in a specific case.

The State Department has conceded the authority to negotiate and conclude permanent exchange of assets agreements with other countries in the name of the United States to the Department of Justice/ The State Department has conceded that both the Department of Justice and the Department of the Treasury delegate the authority to negotiate and conclude agreements for sharing assets in specific cases with other countries.

#### **GUATEMALA**

For their part the Congress of the Republic of Guatemala through Act 55-2010, *extinción de domino*, has incorporated a regulation in relation to international assistance and cooperation in relation to the assets connected to the causes that are in the Act, specifically in article 8 which says:

*Article 8. International Assistance and Cooperation. The international conventions and treaties of cooperation and legal or judicial assistance for the reciprocal collaboration on the matter of localization, identification, recovery, repatriation, and deprivation of the control of assets, signed, approved and ratified in accordance with the Political Constitution of the Republic of Guatemala are thoroughly applicable to the provided cases in the present Act, through the established procedures in the Mutual Legal Assistance Convention. However in the earlier paragraph, the Attorney General, or through designated fiscal agents, will be able to request and obtain in a direct form, information of the authorities of the state, territory or jurisdiction where the assets have been located or are suspected to be located through "extinción de domino", or even, will be able to move to the place abroad in order to carry out corresponding investigations. The obtained information or documents will be able to be*

*presented before a judge or jury that knows the case in Guatemala and will have supporting documentation.*

However, currently no regulations exist that allow for the sharing of assets between States when they are the objects of forfeiture. Thus regulations do not exist that define percentages and prerequisites or circumstances in which the forfeited assets should be or could be shared.

In Guatemala, interest is not included because at the moment of carrying out the forfeiture of money this interest is shared between the States that conform to the National Property management extinction de domino. Also specific requirements for the requests for sharing products of crime or forfeited assets do not exist although the *extinción de domino* law establishes clearly the percentages that should be shared between the institutions of the cited council; the only thing is that there are manuals for the correct use of the property.

The internal regulations of Guatemala do not include relevant dispositions with respect to victims' rights at the moment of signing the agreements or arrangements for sharing assets between States. It does not regulate the possibility of signing this type of agreements, nor the national authority with the legal capacity to sign them.

#### **HONDURAS**

Honduras in their Act on Definitive Deprivation of Ownership of Assets of an Illicit Origin, created through Decree 26-2010 on June 16, 2010, incorporates international cooperation in its internal order on the material. Article 79 of the Bill says,

*Article 79. The competent jurisdictional organs, the Public Ministry, the Central Bank of Honduras, the National Commission of Banks and Insurance and other competent authorities, making use of the fully applicable mechanisms of memorandum of understanding, international conventions, treaties and agreement can request and provide cooperation or judicial reciprocal assistance from other countries in relation to the matter that the Bill has.*

However, the procedures or prerequisites for sharing assets between States are not regulated in a specific manner nor are percentages that should be shared or allocated to reparations. The legislation of Honduras does not take regulations that protect victims' rights into account. Nor does it establish requirements for requests of sharing the proceeds of crime or of seized assets.

#### **MEXICO**

In the internal judicial legislation of Mexico specific regulations do not exist related to procedures for the sharing of forfeited assets with other States, however, in accordance with the principals of international cooperation and reciprocity and on the basis of good practices, they can sign bilateral agreements on specific cases for a suitable distribution of assets.

It is noteworthy to mention the **Federal *extinción de domino* Act** in Title V, Chapter One named "*Of International Cooperation*", which makes reference in its article 63 to the cases in which the goods in which an *extinción de domino* sentence are given in Mexico in which the property is found abroad; signaling that the precautionary measures and the execution of the sentence that dictate on occasion of the proceeding of the *extinción de domino* will be conducted through the international legal assistance in terms of treaties or international instruments to which Mexico is part of or, failing that, on the basis of international reciprocity.

However, it is noteworthy that in the Act, in Title II, Chapter V named "*On sentencing*", in articles 53 and 54 the final disposal of the objects, products or instruments of crime is established:

**"Article 53.** *After the execution of the sentence that decides the deprivation of the assets, the judge will order the implementation of transfer of the assets to the State, in the terms of the dispute in this Act and in the Federal Act for the Administration and Transfer of Title of Assets to the Public Sector.*

*The assets for which *extinción de domino* will be declared or the product of the transfer of title of the same will be controlled by the federal government and made available for their final disposal through the Administration Service and Transfer of Title of Assets to the Public Sector...*"

**Article 54:** *The value of the property and its products, whose ownership has been declared extinct, through final sentencing, to the extent of in accordance with the following preference, to the payment of:*

*I. Reparations of the pain caused to the victim of the crime, when any action by the offended brought to the actions of extinction de domino, determined by the final judgment of the corresponding trial; or in the cases to which the fourth paragraph of this article refers, in which the interested party presents a favorable resolution of the respective incident, and*

*II. The claims from secured loans*

*For the effects of this Act, it will be understood that the victim or offended person is the recipient of the legal injury or dangerous act caused by the wrongful action that led to the exercise of the forfeiture action or the person who has suffered direct damage as a result of the crimes mentioned in Article 7 of this Act.*

*The process to which fraction I of this article refers is that of civil or criminal order through which the victim or offended obtained the reparations of harm, as long as the judgment has been made.*

*When the records are held by the preliminary investigation or criminal prosecution, the extinction of criminal liability under the death of the accused or by prescription, the prosecutor or the judicial authority will warn, respectively, of its own motion that may recognize quality victim or offended, provided that there is sufficient evidence for the sole purpose that they have access to the resources of funds under this Act.*

*The target value of the development of the assets and their products, to which this article references, will be subject to the rules of transparency and will be controlled by the Superior Audit Office of the Federation”.*

On the other hand, article 66 of the cited law, regulates the supposition in which a competent authority of a foreign state presents a legal assistance request, in accordance with the international legal instruments to which Mexico is a part of by virtue of international reciprocity, whose end will be the **recovery of assets** for the effects of this law, located in national territory or subjected to the jurisdiction of the Mexican state; indicating in its division I to III, how it should proceed, following the following order:

*“I. The request of international legal assistance will be treated by the Prosecutor General of the Republic or by the central authority that establishes the international instruments concerned and, failing that, by the Secretary of International Relations;*

*II. Based on the request for international legal assistance, the Public Ministry will exercise before the judge the action of extinción de domino and will follow precautionary measures referred to in this act, and*

*III. The procedure will be settled according to the terms established by the present order”.*

As well, regarding the sharing of assets article 69 of the Act makes reference to the case in which a judgment is handed down that declares *extinción de domino* of the assets concerned, once it becomes executory the proceeds of sale shall be ordered, through the Public Ministry and the Ministry of Foreign Affairs, by the competent foreign authority unless there is an agreement on sharing of assets, in which case the share will be delivered in addition, in its last paragraph, States that the above will be subject to deduction of expenses of its own administration and payment of taxes and levies that shall be subject.

It is noted that the assets for which the *extinción de domino* is requested, a relationships or links must be found with the crimes of organized crime, crimes against health, safety, grand theft auto and treatment of persons, that are those that are noted in article 22 of the Political Constitution of the United States of Mexico, also, that in the following prerequisites:

*“I. Those which are instruments, objects or products of crime;*

*II. Those which have been used or designated to hide or blend proceeds of crime.*

*Hide will be understood by the action of hiding, concealing or transforming assets that the products of crime and mixing the assets, adding the sums of two or more assets;*

*III. Those which are being used for committing crimes for a third party, if its owner has knowledge of it and did not notify the authority of by whatever means or did nothing to stop it either. It will be the responsibility of the Public Ministry to accredit it, which may not be based solely on the confession of the accused of the crime;*

*IV. Those that are titled to the name of a third party and it is established that the assets are a product of the commission of crime to which section II of article 22 of the Constitution and the accused for these crimes it holds or behaves as order."*

However as can be seen above the crime of operations with illegal proceeds commonly called "money laundering", is not contemplated, and since, as initially mentioned, there are no specific rules related to procedures for sharing confiscated assets with other States, the same goes for money laundering, unless, it is related to organized crime or any of the other illicit means.

Specific regulations that define percentages and prerequisites or circumstances in which forfeited assets should be or can be shared are not defined, as mentioned earlier. They would have to be in accordance with the principals of international cooperation and reciprocity and based on good practices, as they can sign bilateral agreements on specific cases on specific cases for a specific agreement and a just division of assets.

The above, without having to inadvertently pass the Federal *extinción de domino* Act, in its article 69 signaling the following:

***"Artículo 69.*** *En caso de que se dicte sentencia que declare la extinción de dominio de los bienes de que se trate, una vez que cause ejecutoria, se ordenará la entrega de éstos o el producto de su venta, por conducto del Ministerio Público y de la Secretaría de Relaciones Exteriores, a la autoridad extranjera competente, salvo que exista acuerdo sobre compartición de activos, caso en el cual se entregará la parte correspondiente.*

*La entrega de los bienes se hará previa deducción de los gastos propios de su administración y el pago de contribuciones y gravámenes a que estuvieren sujetos."*

***"Article 69.*** *In case of sentencing that declares the extinción de domino of the assets concerned, once it becomes executory, the transfer of these assets or the product of their sale will be ordered, conducted by the Public Ministry and the Secretary of International Relations to the competent foreign authority, unless an agreement exists on asset sharing, in which case they will be delivered to the corresponding authority.*

*The delivery of the assets will be made after the deduction of the proper expenses of the administration and payment of contributions and charges to which they are subject."*

However, it is emphasized that in the Federal Act the *extinción de domino* does not consider the crime of "money laundering", a reason that for sharing seized assets with other States with reason to this law, should be crimes that are related to organized crime or another one of the illicit acts referred to in article 22 of our Constitution.

With respect to the possibility of including interest and revaluations that have been produced in the proceeds of crime or the seized assets and deducting reasonable expenses incurred in the investigation, trial or legal proceedings that have been brought for the forfeiture of the product or assets of crime, in the assumption that an agreement on the sharing of assets exists, regarding illicit forth in article 22 of the Political Constitution of the United Mexican States and in the Federal *extinción de domino* Act, apply the provisions of the last paragraph of the above mentioned Article 69 of the aforementioned law, to which further reference is cited below:

***"Artículo 69...***

*La entrega de los bienes se hará previa deducción de los gastos propios de su administración y el pago de contribuciones y gravámenes a que estuvieren sujetos."*

***“Article 69...***

*The delivery of the assets will be made prior to a deduction of expenses of administration and the payment of contributions and charges to which it is subject.”*

As was already mentioned specific regulations or procedures do not exist for sharing seized assets with other States so that, assuming that an agreement on the sharing of assets may be established therein resulting requirements are made, however, if it is done based on the prerequisites referred to in the Federal *extinción de domino* Act, article 66 of this law makes reference to the procedure that must be followed, noting the following:

***“Article 66:*** *When the competent authority of a foreign government presents a request for legal assistance in accordance with the provisions of international legal instruments to which the United States of Mexico is part or by virtue of international reciprocity, whose end is the recovery of assets for the effects of this law, located in a national territory or subject to the jurisdiction of the Mexican state will proceed as follows:*

***I.*** *The request for international legal assistance will be treated by the Attorney General of the Republic or by the central authority that establishes the international instrument concerned, or failing that, by the Secretary of International Relations*

***II.*** *Based on the request for international legal assistance, the Public Ministry will exercise before the judge the act of *extinción de domino* and will request precautionary measures to which this law refers, and*

***III.*** *The procedure is unburdened in the terms set out in the present order.”*

On the other hand, the diverse 68 of the oft cited law, when it will be mentioned when there is international legal assistance to exercise the *extinción de domino* and in consequence, which are the requirements that must be fulfilled, following the following:

***“Article 68.*** *The action of *extinción de domino* based on the request of international legal assistance will always be provided that:*

***I.*** *The wrongful acts were committed in the foreign state. If located in national territory, are located in the cases provided for in Article 7 of this Act, and*

***II.*** *The respective assets of which are solicited the *extinción de domino* are located in some of the cases provided for in Article 8 of this Act.”*

In relation to earlier, article 7 of the Federal *extinción de domino* Act states the following:

***“Article 7.*** *The action of *extinción de domino* will be exercised, with respect to the assets to which the following article refers, although the criminal responsibility has not been determined in cases of scheduled offenses in section II of article 22 of the Constitution.*

*The use of the action of *extinción de domino* will be supported by the information that the Public Ministry receives when it has begun the preliminary investigation, or in the actions leading to the respective criminal trial, or both, when it appears that the illicit act happens that the assets are located in the cases of the next article, as well as the resolutions to which article 12 Bis of this law refer.*

*The death of the alleged perpetrators will not end the action of the *extinción de domino*.”*

And meanwhile, article 8 mentions that:

***“Article 8.*** *The action of *extinción de domino* will be exercised with respect to the assets related or linked with the crimes to which the earlier article refers, in any of the following circumstances:*

***I.*** *Those which are instruments, objects, or products of crimes*

***II.*** *Those that have been used or intended to be used to hide or blend assets of the proceeds of crime*

**III.** *Those that are being used for the committing of crimes by a third party, if they had knowledge of it and did not notify the authorities about it by whatever means or did not do anything to stop it either. It will be the responsibility of the Public Ministry to confirm it, which cannot be found only in the confession of the guilt of the crime;*

**IV.** *Those that are titled to the name of a third party and are confirmed that the assets are products of the committing of a crime to which section II of article 22 of the Constitution and the accused for these crime holds or behaves as owner.*

However, for the substantiation of the procedure of *extinción de domino* it must fulfill the requirements of article 20 of this law, which are mentioned in the following:

**“Article 20.** *The article of extinción de domino will be formulated by application to the Public Ministry, agreed upon by the Attorney General of the Republic or by the attorney in who delegates this power, and it must contain the following requirements:*

**I.** *The competent court*

**II.** *Description of the respective assets of which the extinción de domino is being requested, referring to its location and also information of its localization*

**III.** *A certified copy of the pertaining evidence of the preliminary inquiry to investigate crimes related to the real matter of the action*

**IV.** *If the agreement of assurance of the assets, ordered by the Public Ministry within the preliminary investigation, the acting stating their inventory and physical state, the evidence of registration in the corresponding public registry and the certificate of charges of the property, as well as the estimation of value of the assets and the relative documentation notification procedure for the declaration of abandonment and in the event any, the demonstration has been made about the applicant or his legal representative.*

**V.** *The name and address of the rightholder, of the one who holds or behaves as such, or both;*

**VI.** *The actions lead, derived from other criminal investigations, criminal proceedings in progress or completed processes;*

**VII.** *The necessary precautionary measures for the conservation of the assets, and the terms that are established in this Act;*

**VIII.** *The petition of extinción de domino on the assets and other claims, and*

**IX.** *The offered proof must then exhibit in the documents or show in the archive where they can be found, specifying the necessary elements for the substantiation and settling of other means of proof.”*

Then, considering all that has been mentioned, for any application that should be filled with the established requirements in the articles of reference, provided they are based on the prerequisites set out in the Federal *extinción de domino* Act.

Mexican legislation includes in its national regulations relative dispositions to respect victims' rights at the moment of signing agreements or arrangements for sharing assets between States, the Political Constitution of the United States of Mexico in the second paragraph of article 1, says that:

**“Article 1...**

*The relative regulations to human rights will be interpreted in accordance with this Constitution and international treaties encouraging at all times the protection of the most vulnerable populations...”*

Meanwhile, article 20 of the Mexican Constitution, in paragraph C, parts IV, VI, refers to the following:

**“Article 20...**

*C. Of the rights of the victim or the offended:*

*IV. Who receives compensation. In cases where this is appropriate, the Public Ministry will be obligated to request compensation, without prejudice to what the victim or offended may apply directly, the judge will not be able to absolve the sentenced of this reparations if they have given a condemnatory sentence*

*VI. Requesting precautionary measures and necessary provisions for the protection of restitution of their rights, and...*

In the same way, the Federal *extinción de domino* act in its Second Title with the number "Of the Competition and Procedure of *extinción de domino*", in its Chapter V named "Of the Sentencing" says in the last paragraph of article 43 the following:

*"Article 43. The sentence should find extinción de domino or the inadmissibility of the action. In the latter case, the Judge will rule on the raising of the precautionary measures that have been imposed and the person and the person who will be the return of the same, pursuant to Article 49 of this Act. Judge shall rule on all matters of real controversy. When assets have been several in forfeiture, shall, with due separation, the corresponding statement to each of these. The statements by the inappropriateness of the forfeiture action is resolved without prejudice regarding precautionary security measures for purposes of confiscation, provisional seizure for purposes of reparations or other that judicial authority in charge of the criminal process agreed .*

Hence it is claimed that in Mexico regardless of whether there is an agreement on sharing of assets with other States, the internal rules of the country itself contain provisions on respect for the rights of victims at the time of entering into agreements or arrangements to share assets between States.

So in Mexico, the possibility exists of signing bilateral arrangements or agreements to resolve specific cases on the matter of sharing assets between States based on reciprocity and good international practices.

The Secretary of International Relations based on the established in article 28 of the Organic Act of Federal Public Administration, which says the following:

*"Article 28.- The Secretary of International Relations corresponds to the following matters:*

*I. Promote, favor, and assure the coordination of actions in the exterior of the dependencies and entities of the Public Federal Administration; and without affecting the exercising of the attributes that the exercise of the powers each of them appropriate, conduct foreign policy, for which intervene in all treaties, agreements and conventions to which the country is party*

Additionally, the Celebration of Treaties Act in articles 1, 6 and 8 refers to:

*"Article 1 – The present law has for a regular objective the celebration of inter-institutional treaties and agreements in the international scope. The treaties can only be celebrated between the Government of the United States of Mexico and one or various subjects of international public law. The inter-institutional agreements can only be celebrated between a decentralized facility or organism of the Federal Public Administration, State, or Municipality and one of the various foreign government organs or international organizations.*

*"Article 6 – The Secretary of International Relations, without affecting the exercise of the power of the agencies and entities of the Federal Public Administration, will coordinate the necessary actions for the celebration of whichever treaty and will formulate an opinion about the merits of signing and, when it has been signed, will register it in the corresponding registry."*

*"Article 8 – Whichever inter-institutional treaty or agreement that contains international mechanisms for the solution of legal controversy in which they are part, on one*

*hand the federation, or Mexican individuals or corporations and, on the other, governments foreign individuals or governments or international organizations should:*

*I.- Award to the Mexicans and foreigners which are parties to the dispute the same treatment in accordance to the principals of international reciprocity*

*II. Assure to the parties the right to a hearing and the proper exercise of its defenses; and*

*III. Guarantee that the composition of the decision makers assures their impartiality*

The Attorney General of the Republic, in accordance to what is established in the fraction VII of the 5th article and fraction IX of the 6th article of the Organic law of the General Attorney of the Republic, which says the following:

**“Article 5.-** *Corresponding to the Attorney General of the Republic:*

*VII. Promote the celebration of international treaties and inter-institutional agreements in matters related to their duties, as well as monitor compliance, in coordination with the Secretary of International Relations and also the other involved agencies of the Federal Public Administration...”*

**“Article 6.-** *Delegated powers of the Attorney General of the Republic:*

*Celebrate conventions of collaboration with the Federal District and the integrated states of the Federation, in accordance with article 119 of the Political Constitution of the United States of Mexico, as well as inter-institutional agreements with foreign governments’ organs and international organisms, in terms of the law on the Celebration of Treaties...”*

## **PERU**

Currently the internal legal legislation of Peru does not have specific procedures for sharing forfeited assets with other States nor specific regulations that define percentages and prerequisites or circumstances in which the forfeited assets should be or can be shared; however, there is the Legislative Decree N 1104<sup>1</sup> and its Regulation<sup>2</sup>, which permit the state to perform bilateral or multilateral agreements of cooperation in order to facilitate the administration of assets.

Article 19 of the cited Legislative decree notes that the state can perform bilateral or multilateral cooperation agreements in order to facilitate the administration of assets.

In the same manner, the mentioned article stipulates that international cooperation conventions and legal or judicial assistance, as well as whatever other international convention that regulates international collaboration on the matter of forfeiture and localization, identification, recovery, repatriation, of lost and *extinción del domino* of assets, are applicable in the cases provided in Legislative Decree 1104.

On the other hand Peruvian national regulations do not consider the possibility of deduction of expenses incurred in investigations, processes or judicial proceedings related to the forfeiture of proceeds of crime. However, it should be noted that the cited Legislative Decree 1104 permits the deduction of expenses produced in the administration of the said property seized and/ or forfeited proceeds of crime incurred by the state.

The National Commission of Seized Assets is authorized to dispose of in a provisional or definitive manner the objects, instruments, effects, and earnings of crime, in a manner that public sector entities and/or private non-profit institutions can request the assignment of temporary or permanent use of the seized/forfeited assets, in accordance with Legislative Decree N 1104 and its regulation.

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<sup>1</sup> Legislative Decree N 1104, legislative decree that modifies the legislation on the *perdida de domino* published the 19 of April 2012 in the official newspaper “El Peruano”

<sup>2</sup> Supreme Decree N 093-2012-PCM, through which the regulation of Legislative Decree N 1104, that modifies the legislation on the *perdida de domino*, published the 8<sup>th</sup> of September 2012 in the official newspaper “El Peruano”

The requirements that these entities should fill are the following: the request has to be written by the head on the requesting entity or by the official having jurisdiction for that purpose, having to prove the corresponding representation, specifying the need for seized assets for institutional purposes, which should be compatible with the characteristics of the assets; in the case of property with an assigned zoning, as well as demonstrating the administrative capacity and the budget for maintenance, reparations, and good use of the assets that guarantee its conservation, depending on the type of good request, therefore according to the Manual for the Reception, Registration, Administration and Disposition in *perdida de dominio*, approved by agreement of the Directive advice of CONABI the 30 of October 2012.

Currently, the national regulations do not consider provisions to respect victims' rights at the moment of signing agreements for the sharing of assets between States.

In Peru the legal possibility exists of signing bilateral agreements or arrangements with other States, on the matter of administration of assets, in accordance with the article 19 of Legislative Decree 1104.

The administration of seized and/or forfeited assets given to CONABI is founded in the administrative efficiency of these assets, the same that permits CONABI to do administrative acts and/or disposal of the assets that they find under their control within the framework of Legislative Decree N 1104.

### **DOMINICAN REPUBLIC**

In the Dominican Republic, by means of Act 72-02 on Money Laundering from the Trafficking of Illicit Drugs and Controlled Substances, in relation to international cooperation and specifically in relation to assets article 63 says:

*"ARTICLE 63.- The competent authority of the Dominican Republic will understand and adopt the appropriate means, in relation to the request of competent authority from another state, to identify, detect, seize the assets, products or instruments related with the infractions of money laundering sanctioned by the present law, in accordance with the Constitution of the Republic and its laws."*

However, there are not concrete procedures for sharing assets with other States nor are there percentages nor prerequisites or circumstances in which the forfeited assets can be or should be shared. In contrast, another form of allocation and distribution of the assets or products of crime in favor of the institutions of the Dominican Republic has been set.

Regulations do not exist either that establish the possibility of including the interest or revaluation of the proceeds of crime or the forfeited good and deducting reasonable expenses incurred during the investigations, but a common agreement between the States can be established, as well as the requests for assistance for sharing the proceeds of crime or forfeited assets.

On the other hand, in the Dominican Republic the Attorney General of the Republic has a department for the protection of victims of all infractions, including money laundering and it has the possibility of signing bilateral agreements or arrangements for resolving specific cases in the matter of sharing assets. The Attorney General is the one who would have the legal capacity for this.

### **El Salvador**

In the case of El Salvador, when assets are seized or frozen, they should be duly inventoried and a judge will designate an employee of the competent agency or the workers for their administration until the case has been resolved. Any employee or agent of the workers can be tasked with the administration of forfeited/confiscated assets; except the judicial police or employees of the Public Ministry. The objects seized by customs agents can only be controlled by a customs employee. If the seized assets are a vehicle, plane or boat they can be given to the National Police or the Armed Forces, by request of the Attorney General of the Republic, in order to fight organized crime.

Regulation of the Financial Investigation Unit Concerning the Special Heritage seized property in order to determine the fate and beneficiaries of such property, effects, instruments, etc. are issued.

## **VENEZUELA**

The Bolivarian Republic of Venezuela established the possibility of sharing seized and confiscated assets in accordance with the Organic Act against Organized Crime and the financing of Terrorism, article 89, paragraph 2, that says:

*Article 89. Regulation.*

*When the State seizes or confiscates assets in accordance with the present chapter, they will dispose of them in the form previewed by international law and judicial proceedings and administration.*

*Acting at the request of another party in accordance with the provisions of this law, the Venezuelan state will be able to lend particular attention to the possibility of concluding agreements to:*

...

*2. Divide with other parties in accordance with a pre-established or defined criteria for each case, these products, assets or funds derived from the sale of them, in accordance with the provisions of internal law, its administrative procedures or the bilateral or multilateral agreements that have been decided.*

However, percentages and prerequisites or circumstances are not defined regarding seized goods that could be or should be shared.

On the other hand and with respect to the possibility of taking into account the interest and revaluations of proceeds of crime or seized assets and deducting reasonable expenses incurred during the investigation, processes or judicial proceedings that have taken place for the seizure of the products or assets of crime, the Organic Act against Organized Crime and Financing of Terrorism (Current) provides in article 84 that the ordinary expenses that are incurred in the execution of a request of reciprocal legal assistance will be covered by the requesting state, unless both States have agreed upon another way. However regulations indicate that in case of numerous expenses, the States will consult in order to determine the terms and conditions to comply with this request, as well as the way in which they will cover these expenses.

In Venezuela requests for sharing the proceeds of crime or seized assets do not exist in an exhaustive manner; but numeral 2 of article 89 and related, establishes that the sharing of assets will be adjusted for internal legal regulations or for bilateral or multilateral agreements that have been signed thus far. In the same way, the cooperation conventions for sharing assets would consider the victims' rights.

As observed in the cited numeral 2 of article 89, the legislation of Venezuela permits the signing of bilateral agreements or arrangements in order to resolve specific cases on the matter of sharing assets between States, always respecting the national sovereignty. In those cases, the person with the legal capacity to sign them is the President of the Republic, as the Executive National Power and the Minister with competence in international relations or whoever is acting as a delegation for these.

## **CANADA**

Canada has legislation on the sharing of seized assets with foreign States: *The Seized Property Management Act (SPMA), Forfeited Property Sharing Regulations and Regulation of Seized Property.*

Section 3 of the *Forfeited Property Sharing Regulations* indicates that Canada is not able to share seized assets with a foreign state without an asset sharing agreement. Section 11 of the *Seized Property Management Act (SPMA)* establishes that the Attorney General of Canada, with the approval of the Governor in Council, can enter into a reciprocity asset sharing agreement with the government of a foreign state if the police agencies of those States have participated in these investigation. Meanwhile, section 7 of the *Forfeited Property Sharing Regulations* mandates that the evaluation of the contribution

with the purpose of sharing includes an assessment of the nature of the information provided and its importance and the participation of the jurisdiction. It also offers, with the proposal of an evaluation, the faculty of consulting. Also section 7 establishes that the contribution of the foreign state to the investigation will be evaluated on the base of residual value of 10/50/90%. The Federal Government of Canada will always receive their contribution at a minimum of 10%.

All the seized assets are managed in accordance with the positions of the *Seized Property Management Act* and the *Seized Property Availability Regulation*. The interest or value recalculated from confiscated property considered in the asset management process, for example, interest on bank accounts or investments, and increase in value of real estate.

Canada does not have national regulations to meet the costs incurred in the investigations, process, or judicial proceedings.

As indicated Canada can only share with foreign States in accordance with an asset sharing agreement. Section 4 of the *Seized Property Sharing Regulations* requires that there be an agreement between the Government of Canada and that of the foreign state; that the sharing be in accordance with the Regulation, there are no conditions for the use of shared funds that can be imposed; and, the title of the official to who the amount is due is signaled, or designated by the central authority. Applications for sharing the seized assets should be in accordance with whichever applicable regulation of the asset sharing agreement of the foreign State with Canada. Section 7 of the *Seized Property Sharing Regulation* indicates that the sharing be determined based on the contribution of the agencies involved in the investigation; thus, the role of the foreign agency and their participation in the investigation can be emphasized.

Specific regulations do not exist regarding victims. However, Section 4 of the *Seized Property Sharing Regulation* provides that the agreements for sharing Canadian assets with foreign States should not contain conditions with the respect to the use of funds obtained in accordance with the agreement. This would permit the foreign state to use the money for the victims, if this is the application of the chosen state.

Canada has the legal capacity to enter into specific case agreements, or general agreements for sharing assets.

The Attorney General of Canada has the authority to enter into asset sharing agreements with foreign States.

## **SPAIN**

The implementation of European regulations (Framework Decisions and Regulations) within the national legislation of its Member States regulates the mutual recognition of freezing and confiscation in the European Union.

Act 4/2010 of the 10<sup>th</sup> of March has as a regular objective the procedure that the Spanish judicial authorities should follow to transmit to the competent authorities of other Member States of the European Union, a firm forfeiture resolution imposed as consequence of the committing of a criminal offense.

However, the seized assets will be disposed of in accordance with Spanish legislation (art. 127 of the Penal Code and following).

Article 24 of Act 4/2010 of the 10 of March for the execution of judicial resolutions of forfeiture in the European Union, in relation to specific regulations that define percentages and prerequisites or circumstances in which the forfeited assets can be or should be shared, in which that following is established:

*Article 24. Regulations of Seized Assets.*

*1. The Criminal Judge shall have jurisdiction over the obtained money from the execution of the confiscation in accordance with the following rules:*

a) *If the proceeds of the execution of the resolution of the seizure is less than 10,000 euros or the equivalent to this amount, the same will be deposited in the account of judicial deposits and appropriations.*

b) *in all other cases, 50% of the amount that has been obtained from the execution of the resolution of the seizure will be transferred to the state. 50% remaining will be deposited in the account of judicial deposits and appropriations.*

*The amounts that, when applied to the earlier information correspond to Spain, will be transferred by the Judicial Secretary of the Public Treasury with application, in this case, which is established by special regulations and particularly, provided for in article 374 of the Criminal Code and by Act 17/2003, of the 29 of May, for which the fund of forfeited assets from the illicit trafficking of drugs and other related crimes and in the developing rules is regulated.*

For the seizure and forfeiture of assets the only way possible for the execution in Spain is through Spanish judges and/or tribunals.

Regarding consultation on if the Spanish legislation has the possibility of including the interest and revaluations of the proceeds of crime or seized assets and deducting reasonable expenses incurred during investigation, processing or legal proceedings that have taken place for the forfeiture of the proceeds of crime or seized assets the same Act 4/2010 article 12 says:

*Article 12: Refund of Exceptional Expenses*

*The Spanish judicial authority that receives a communication from the state authority on the execution on special expenses that have led to the execution of the resolution of forfeiture, it will be communicated to the Ministry of Justice to the purpose of a possible agreement on the refund with the state of execution.*

Act 4/2010 also defines the requirements that the requests for the sharing the proceeds of crime or seized assets and the articles 5, 9 c and 19 of the same Act should contain, including relative regulations with respect to victims' rights at the moment of signing agreements or arrangements for sharing assets between States.

The General Council of the Judicial Power indicates that the applicable convention should be duly mentioned in the Commission Rogatory directed to the Spanish authorities and those signed by Spain can be consulted in [www.prontuario.org](http://www.prontuario.org). The CGPJ also states that if a country is not a member of the EU, the referral to the Spanish court or tribunal should go through the Central Spanish Authority: Minister of Justice: General Care of International Legal Cooperation.

## **PARAGUAY**

In accordance with the order of preference established in the National Constitution of Paraguay in the framework of international agreements and treaties ratified and redeemed by the Republic, this can be brought forward in proceedings by virtue of those which are able to share seized assets with other States. This is done through central organisms designed in the same instruments, like the Nassau, Bahamas Convention that is used in Latin America as a framework convention for cooperation in criminal matters.

Art. 13 of the Nassau Convention establishes that:

*"The Requested State shall execute the request for registration, seizure and delivery of any object, including among others, documents, records, or effects, if the competent authority determines that the application contains the information justifying the proposed measure. This measure is subject to the procedural and substantive law of the State. Under the provisions of this Convention, the requested State shall determine by law any requirement necessary to protect the interest of third parties on the objects that are to be transferred."*

Art. 14 of the same convention shows that:

*“The central authority of one of the parties will transmit the information that they possess on the existence of the asset of this end, of the incomes, products, or instruments of a crime to the central authority of the other party”.*

Also, art. 15 has that:

*The parties will lend mutual assistance, in the manner permitted by their laws, in order to promote the precautionary procedures and the security measures of the incomes, products or instruments of the crime”.-*

When the request for assistance refers to the following measurements: a) freezing and sequestration of assets; and b) inspections and seizure, including registered residences and raids, Paraguay will not be able to give assistance if the fact that originated the request is not punishable in accordance with their law. This is to say that if the underlying crime is not punishable according to this legislation.

Like that, Act N 1015/97 establishes three regulations with respect to sharing assets that will be given in later sections.

Clearly, regulations do not exist that establish expressed percentages or prerequisites. However Article 38 of Act 1015/97 and its modifier Act 3783/97, establishes that the competent judge will cooperate with their counterparts in other states for the processing of foreclosure warrants and other precautionary measures shown in this procedural law for the identification and locating of assets, objects or instruments related to the type of crime typified in article 3 of this law, for which purpose it will identify with all requirements formulated by demands received from abroad. This regulation is found completely in the earlier article, that textually reads, in its last part: ***“The judge will be able to arrange that part of the product of the assets be transferred to another country that has participated in the seizure of them, provided that they follow international agreements that regulate the matter.”*** The preceding regulation indicates the possibility of regulating these repartitions, although materially in this moment there are not specific percentages. Like this, the legislation does not say anything with respect to the reception on behalf of the Paraguayan state of the shared assets, seized in another country.

On the other hand, Paraguay does not have regulations that establish the administrative deals of the seized assets related to the possibility of including the interest and revaluations of the proceeds of crime or seized assets and deducing reasonable expense of the investigation, processing or judicial procedures that have taken place as a result of crime or the assets.

In relation to the requests that should contain the requests of sharing the proceeds of crime or the seized assets, in Art. 37 of Act N 1015/97, it is a judicial faculty (exclusively of the intervening criminal judge) in a way that will be what the judge sees fit. As a mode of reference, there is the framework convention that establishes judicial cooperation with other countries in addition to the American Convention on Mutual Assistance in Criminal Matters, also offers a reference to requests for assistance, which must be sent by the authorities designated for the purpose by the requesting country. In turn, the Paraguay has a central authority to receive and transmit requests for mutual legal assistance. The San Luis Protocol also contains requirements that must be such applications.

On the other hand, the Peruvian Penal Code provides protection for the bona fide third party, victims of seizure of property found in its power, to who guarantees indemnity on behalf of the state (Art. 89 C.P) as well as protecting also the victims of the crime, who may be allowed to compensate property damage caused by those confiscated. Furthermore Paraguayan law does allow the possibility of signing bilateral agreements or arrangements to resolve specific cases on sharing property between States and who has the legal authority to sign them is the Chancellor of the Republic, and representatives appointed by the Executive, whose actions are subject to ratification by the principal. In case of signing of treaties or bilateral or multilateral agreements, they must be duly ratified and exchanged in order to be considered within the Paraguayan legal system.

## **JAMAICA**

In Jamaica the Seized Property Sharing Act in 1999 that came from the Vienna Convention against the Illicit Trafficking of Narcotics and Psychotropic Substances, of 1988, in Section 4 it is established that the seized assets can be shared with a state by way conventions; however it does not establish specific norms that define percentages and prerequisites or circumstances in which the seized assets can be or should be shared. In addition the possibility of including interest and revaluations of the proceeds of crime or seized assets and deducting reasonable expenses incurred in investigations, processing or judicial proceedings that have happened as a result of the forfeiture of the proceeds of crime or the assets.

Concerning the requirements that the requests for sharing the proceeds of crime or seized assets should contain, Jamaica has established the following conditions: (1) Costs incurred by each country (2) the ability to realize property (3) value of the property (4) location of the property (5) input value of each country (6) the victims (7) innocent third parties, as earlier established, based in those judicial proceedings that have been completed. It should also be noted that Jamaica respects victims' rights.

Jamaica does have the legal possibility of signing bilateral agreements or arrangements to resolve specific cases on the matter of sharing assets between states which will be headed by the ministry concerned with the Attorney General.

## **BOLIVIA, URUGUAY, CHILE, SURINAME, HAITI AND PANAMA**

Legislation in the indicated countries does not include regulations that establish procedures for sharing seized assets with other States and, as a consequence, does not have a criterion to define percentage or circumstances in which the seized assets can be or should be shared with other States. In relation to the topic on requirements that the requests for sharing the proceeds of crime or seized assets should contain, the legislation of these countries does not have regulations on these matter, with the exception of Panama, a country with a basic guide for the formulation of projects that they use for these cases. In addition both Chile and Haiti show that the requests for international criminal assistance should contain the requests of form and founded that the international institutions of which they are a part establish.

The national regulations of these countries do not include relative regulations to the rights of the victims at the moment of signing agreements or arrangements for sharing assets between States.

The legislations of these countries does cover the possibility of signing bilateral agreements or arrangements to resolve specific cases in matters of sharing assets between States, with the exception of Suriname. In the case of Chile, it is the President of the Republic who should carry out the negotiations, conclude, sign and ratify the treaties that they deem appropriate to the interest of the country. In the case of Haiti, it is the Prime Minister (Minister of Justice) who has the legal to sign bilateral agreements for sharing assets between States. In Panama it is also the area of the President. In the case of Uruguay the concerns the National Board of Drugs and the National Secretary of Anti-Money Laundering

## **3. GENERAL CONCLUSIONS**

It is important to consider that the countries that have already signed treated in those which are mentioned the necessity of signing agreements in the sense of sharing the assets or proceeds of crime, and including protecting the rights of third parties in these cases, such is the example of the Convention of the United Nations against Organized Transnational Crime or the United Nations Convention against the Illicit Trafficking of Narcotics and Psychotropic Substances.

**1. Does your country have standards within its domestic law to establish procedures for sharing confiscated assets with other States? If so please describe.**

All the legislation with available regulations express that they offer the best assistance possible to other States in the matter.

Argentina, Brazil, Venezuela and Jamaica have general regulations that establish the possibility of sharing between States. Mexico has signaled that in agreement with the principals of international cooperation and reciprocity and based in good practices, it can sign bilateral agreements on specific cases, for an adequate and just repatriation of assets. Peru, for their part, has a decree that allows the state to celebrate bilateral or multilateral agreements of cooperation in order to facilitate the administration of assets.

In the United States Congress laid the foundations for the international exchanges of seized assets. The country had a memorandum of agreement in April 1992 signed by the Departments of Justice, State and Treasury with the transfers of seized assets to foreign countries and in 1995 the United States had a bilateral agreement model on the repatriation of the proceeds of crime o seized assets, in accordance with the United Nations Convention against Transnational Organized Crime and the United Nations Convention against the Illicit Trafficking of Narcotics and Psychotropic Substances. In this sense the United States has ample experience on the topic and does not only have rules enabling them but also with documents governing the activity, which have been made available to the GELAVEX and to be annexed to this document.

For their part Canada has legislation on the sharing of seized assets with foreign States- *The Seized Property Management Act (SPMA), Seized Property Disposition Regulation and Seized Property Sharing Regulation*- and cannot share seized assets with a foreign state without an agreement. These documents regulate the proceedings for sharing assets of this country.

Law 4/2010 of March 10 in Spain regulates procedure through which assets can be transmitted by the Spanish judicial authorities to final judgments by a recall to another Member State of the European Union and how the Spanish authorities will deal with them when they come from another Member State is imposed.

Importantly Paraguay may not provide assistance if the act giving rise to the request is not punishable under the law, that is, if the underlying crime is not punishable under the law.

However, there are governments that do not have a specific procedure for sharing confiscated assets with other States, as is the case of Paraguay, Dominican Republic, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Peru, El Salvador, Bolivia, Uruguay, Chile, Suriname, Haiti and Panama.

**2. In case of affirmative answer the first question: what specific rules of domestic law of the country defined percentages and prerequisites or circumstances on which confiscated property must or may be shared?**

With respect to the specific norms of the internal orders and definite percentages and prerequisites and/or circumstances in which the seized assets can be or should be shared, Jamaica, Paraguay, Dominican Republic, Venezuela, Argentina, Peru, Columbia, Guatemala, Honduras, Costa Rica, Mexico do not include them. In the case of Mexico, the regulation that exists is in relation to the assets subject to *extinción de domino*, not considering money laundering within the prerequisites that the law provides for forfeiture.

Brazil has a regulation that includes a percentage for sharing, but in each case the topic is treated in a very general manner.

There is legislation that includes more, like United States and Canada, which establish percentages and prerequisites and/or circumstances in which the seized assets should be or can be shared. The United States has defined a structure of three levels as prerequisites for sharing assets and

depends on which mode is defining percentages, all of which is described in the 1995 Memorandum cited earlier. In the case of Spain the cited law also defines prerequisites and percentages.

**3. Do the national standards have the possibility of including the interest and revaluations of the proceeds of crime or property confiscated and deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the confiscation of proceeds of crime or property?**

Regarding the possibility of including the interest and revaluations of confiscated property and deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the seizure, not all countries have rules that address these possibilities and have been linked to various ways in which some jurisdictions do adopt regulations that address these issues.

As for the interest and revaluations, it is important to note that there are countries in which its internal regulations show the way to be distribute confiscated property or proceeds of crime that have been seized, as in the case of Colombia, Costa Rica, Canada, Peru, Dominican Republic, Guatemala, Mexico (for the related assets forfeiture), where the sole purpose is the benefit of domestic institutions.

But, being related to international assistance, where it is the requesting State that has seized assets, these variables are not considered by most of the countries; however, the United States, Canada and Spain when allocating confiscated property, consider specific rules in each case

Brazilian law, for example, makes reference to "operational costs" and the ability to deduct reasonable expenses. In Costa Rica international authorities requesting mutual legal assistance for the recovery of assets must cover all costs incurred in respect of the assets, in the same manner as in Mexico in cases where an agreement to share assets is subscribed. A similar rule exists in Peru. Venezuela has also noted that the ordinary expenses incurred in the execution of a request for mutual legal assistance shall be borne by the applicant, except when both States have agreed on another form and, if large expenditures, existing legislation provides the way forward. Canada does not have such possibilities.

**4. What are the requirements to be included in the applications of distributing the proceeds of crime or confiscated property?**

Most of the laws have not developed a document that specifies what requirements applications must contain to deliver the seized assets, but they refer to the requirements of its internal system or signaling conventions subscribed to any request for assistance court, even if not related to the distribution of assets. Furthermore, in the case of Dominican Republic and Canada, you are given the possibility of an agreement between the parties.

However, Brazil, United States and Spain do have specific requirements for the case of requests for distribution of proceeds of crime or property confiscated and, in the case of the United States, as noted; there is also a Model Bilateral Agreement that establishes requirements and most important aspects to consider. Spain even has a certificate for the execution of confiscation orders in another Member State of the European Union. Mexico has also defined requirements in general if done on the basis of the prerequisites referred to in the Federal *extinción de domino* Law mentions and even when from the international legal services to enforce the forfeiture. Jamaica, meanwhile, has defined an exhaustive list of requirements by the Shared Confiscated Property Act 1999.

**5. Do national standards include provisions respecting the rights of the victims at the time of entering into agreements or arrangements to share property between States?**

On respect for the rights of victims, to enter into agreements or arrangements to share assets among countries most States protect the rights of victims and third parties in good faith during the negotiations related to the distribution of assets or the proceeds of crime. In that sense, the United

States included in their bilateral exchange agreements of cooperation and permanent asset forfeiture reciprocal obligation, namely that signatory countries must return all revenues related to fraud and theft to the requesting country for the purposes of compensation to victims. Laws for the countries that do not regulate this issue, such as Peru, Honduras, Canada, Guatemala, El Salvador, Bolivia, Uruguay, Chile, Suriname, Haiti and Panama are excluded.

**6. What are the legal abilities to enter into agreements or arrangements to resolve specific cases regarding property sharing between States?**

All States have the legal possibility of signing bilateral agreements or arrangements to resolve specific cases on sharing assets between States. Interestingly, under the laws of the United States, Brazil and Costa Rica central authorities are empowered to perform such procedures. In the case of Brazil, the conditions for sharing of assets in specific cases should be treated by exchange of correspondence between the central authority Brazilian and foreign central authority has been delegated to the Department of Assets Recovery and International Legal Cooperation for such transactions minimizing the obstacles that slow the process. Costa Rica has delegated this authority to the Costa Rican Drug Institute as the central authority for drug trafficking and money laundering and OATRI prosecutors on organized crime.

For its part, Colombia has reported that there have been cases where an exchange has involved illicit capital through agreements directly between the national government and the foreign State, without implying the existence of an international agreement. The United States Department of State has also granted the Department of Justice and the Treasury Department delegated authority to negotiate and conclude an agreement to share assets to specific cases with other countries. In Canada such capacity is delegated to the Attorney General. In Spain, if there is a request from a State that does not belong to the European Union the request must be made by the central authority.

**7. Which national authority(ies) has the legal capacity to enter into agreements or arrangements to share property between States?**

Many States have authorized the signing of these agreements to very high level government authorities, such as the President of the Republic or the legislature, as in Argentina and Colombia. It is important to encourage, in such cases, that in such countries the laws are adapted to enable the delegation of such authority to the proceedings relate to shared property between States and to facilitate the process.

In Mexico it is the task of the Foreign Secretary and the Attorney General's Office. In Peru it is the Ministry of Foreign Affairs. In Dominican Republic is a function of the Attorney General's Office. In Venezuela it is the President, National Executive and the Ministry competent in foreign affairs or those acting by delegation thereof who has the legal capacity to sign them. In Paraguay, it is the Chancellor of the Republic who has the legal authority to sign them, and representatives appointed by the Executive, whose actions are subject to ratification by the principal. In Jamaica it is up to the ministry concerned with the contribution of the Attorney General. Bolivia, Uruguay, Chile, Suriname, Haiti and Panama: all of these countries have in their internal systems standards and procedures governing the matter of sharing property with other States.

Conducting this study and updating the document "Mechanisms for sharing confiscated property between States", it appears that there is still no legislation governing this area and that there are large voids or gaps in this field.

For this reason, it is of great relevance to express to honorable members of this Panel that the need has been identified in our countries, so that lawmakers regulate the matter and that framework provisions from this group be generated to guide the work we do.

#### **4. Conclusions**

The coordination of the Working Subgroup on Confiscation and International Cooperation offers the following conclusions to the plenary and the Executive Secretariat of CICAD, as inputs for the Technical Assistance Program on International Cooperation in Asset Recovery.

1. That countries may cooperate in cases in which they receive requests for sharing of assets;
2. To consider the creation of framework regulations that establish conditions and percentages for the sharing of assets;
3. That agreements may establish the commitments of both the requesting State and the requested State;
4. That the requested country must have contributed directly or indirectly in the recovery of the assets to be shared;
5. That each country may consider the creation of a document that defines the requirements for requests for the sharing of assets (specifying the documents to be attached).
6. That agreements may take into consideration the costs incurred in the recovery for the assets;
7. That agreements may take into consideration the costs incurred in the management and maintenance as well as the interests and revaluations of the assets;
8. That agreements may establish the way in which the assets will be transported;
9. If it is impossible or inconvenient to transport the asset, that the requested country may arrange for the disposal of the asset or the transfer of funds of equivalent value to the requesting country;
10. That agreements include provisions that ensure and respect the rights of victims and bona fide third parties;
11. That the transmission and execution of requests of asset sharing may be executed by the central authorities;
12. That the possibility be considered of delegating to the central authorities or competent authorities the legal capacity of entering into agreements for the sharing of assets.

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