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**REPORT ON CHALLENGES AND SOLUTIONS IN THE MANAGEMENT OF COMPLEX ASSETS**

## INTRODUCTION

In the last ten years of the fight against the scourge of organized crime, law enforcement agencies have worked to identify, locate, and seize assets, objects, means, and instruments of crime, with the goal of neutralizing and weakening the economic branch of criminal structures in accordance with the recommendations from international organizations.

With this in mind, Professor Isidoro Blanco Cordero mentions that:

“In the last decade, crime has become a business that generates a significant amount of revenue. In order to fight this illegal activity, criminal policies were designed in order to deprive the perpetrators of the profits prevent from illicit activities. ...; an essential complement to these policies is to take action regarding the assets (and not just the people).”<sup>1</sup>

The objective of confiscation systems is to send the message that “*crime does not pay*”, however, when it comes to active companies and businesses, it is undeniable that crime generates employment. Therefore, the specialized agency’s legal and operative capacities are extremely important to prevent, as much as possible, to close such business. Hence, it shall seek to protect employees by promoting the creation of new employment opportunities and developing the social function of the assets.

Therefore, specialized governmental agencies must efficiently manage “complex assets” such as: companies or businesses still in operation, cattle ranches, zoos, transportation companies, boats, aircrafts, yachts, automobiles, and real estate, among others.

Multiple documents developed by the Group of Experts for the Control of Money Laundering have emphasized the importance of adopting mechanisms

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<sup>1</sup> Asset Management Systems in Latin America Special reference to the evolution of the legal definition of forfeiture and asset recovery entities, Isidoro Blanco Cordero, pg. 14.

that promote the efficient management of seized and confiscated assets in cases of money laundering, financing of terrorism, in-rem forfeiture, and organized crime.

In this respect, it was established that States need to rely on specialized agencies for the management and administration of seized and confiscated assets, and the need to develop legislation for the legal, operative, effective and adequate mechanisms that allow these agencies to preserve the assets during the process.

Depriving perpetrators of the proceeds of crime is a priority and the efficient management and administration of the assets constitute a substantial challenge for each country. This requires the commitment of States to address issues related to specialized agencies for the management of assets, planning prior to the seizure, financial or budgetary considerations, the possibility of prior alienation as an interim measure, and the use of computer and control systems, as well as complimentary legislation.

The relevance of the challenges posed by complex asset management, such as enterprises still in operation or assets that are difficult to manage, demands an urgent and effective intervention. This concerns the Sub-Working Group on International Cooperation and Forfeiture since some countries have already established guidelines to address the challenges of managing and administrating complex assets. Their experience in this subject is fundamental to those States currently making efforts to improve their systems and to resolve issues associated with these types of assets.

## **Background**

The Group of Experts for the Control of Money Laundering (GELAVEX) approved the Sub-Working Groups' strategic plan at the XXXIX GELAVEX meeting held in Montevideo, Uruguay in 2014. This document defines the

lines of action for each of the Sub-Working Groups for the 2015-2017 period.

According to the agreements from the XLI GELAVEX Meeting held in Lima, Peru, the Sub-Working Group on International Cooperation and Forfeiture will work on the following lines of action for the 2015-2016 period: 1. Administration of Complex Assets and 2. Promotion of the development of effective forfeiture laws and their effective implementation in Member States.

With regard to the first line of action, the Sub-Working Group shall present a **“Study on challenges and solutions in the management of complex assets”**. To summarize, the study shows the principal set-backs, difficulties or challenges faced by countries in the management of complex assets such as: “companies still in operation” and “some that, by their characteristics, are considered to be difficult to manage”. These will be addressed by means of examples and specific cases using a questionnaire addressed to selected countries.

In addition, the countries will share solutions and legal tools and procedures that have helped to resolve set-backs related to the seizure, reception, and administration of companies or businesses still in operation or assets of difficult or complex management.

This study will identify mechanisms and substantive requirements that specialized agencies must have for the efficient and responsible management of these types of assets.

This study will be developed according to the objectives and methodology described below.

## **GENERAL OBJECTIVE**

To identify the mechanisms and substantive requirements that specialized agencies must have for the efficient management of complex assets so as to analyze the main challenges and practical and legal solutions that were

implemented in Member States' experience and during the execution of the project BIDAL.

This report's specific objectives are to share information with countries that are modifying their legislation and provide a guideline to improve and develop their technical and operative capacities to address issues regarding the management and administration of complex assets.

## **SPECIFIC OBJECTIVES**

1. Identify OAS Member States with experience managing complex assets.
2. Compile experiences from Project BIDAL regarding the implementation of substantive requirements for specialized agencies that allow for the management of complex asset.
3. Share concrete cases that are examples of main challenges in the management of complex assets.
4. Become familiar with the most common challenges faced by the countries in the project.
5. Analyze the main practical solutions for the management of complex assets that States have used efficiently.
6. Analyze the legal tools that used by specialized agencies for the management of complex assets.

## **METHODOLOGY**

This study was developed with the participation of the BIDAL project Member States with experience in these matters, such as: the United States, Colombia, Honduras, Mexico, and Venezuela. Each of these countries will receive a

questionnaire so that they can share their experiences with concrete cases of complex assets management and administration. This will help to determine the challenges they faced and the solutions they found.

The Sub-Working Group on International Cooperation and Forfeiture will present a STUDY ON MANAGEMENT OF COMPLEX ASSETS with support of the Technical Secretariat, BIDAL Project, and the REACT Program, that shall be called “**Study on challenges and solutions in the management of complex assets**”.

## QUESTIONNAIRE

Country	
Name of Specialized Agency	

1. Budget for management and maintenance of seized complex assets from:

Special Fund	
Institutional Budget	
Profits from the asset	
Other: Explain	

Explain: \_\_\_\_\_

2. Are the procedures for establishing procurement contracts for the maintenance, administration, and disposal of complex assets subject to State Procurement Laws?

YES
NO (skip to question 4)
Special Procurement System

Explain: \_\_\_\_\_

3. In your experience, what have been the benefits or difficulties you have encountered as a result of being subject to such regulations?

Explain: \_\_\_\_\_

4. What kind of administrative procedures does your legislation include regarding the seizure phase? Explain if there is any priority for applying these procedures according to management purposes.

ADMINISTRATION PROCEDURE	MARK WITH AN X	PRIORITY LIST
Management of Complex Asset		
Prior alienation		
Abandonment		
Seized money investments		
Provisional Use		
Destruction		
Other		

Explain: \_\_\_\_\_

5. Does your country's legislation allow seized money to be invested in order to support the seized asset maintenance and preservation program?

YES
NO

Explain: \_\_\_\_\_

6. Does your country's legislation allows the use of profits from the seized assets for the maintenance and administration of complex assets?

YES
NO

Explain: \_\_\_\_\_

7. How does your country cover the expenses for the maintenance and administration of assets that are not profitable and difficult to manage?

Explain: \_\_\_\_\_

8. Does the Public Ministry or the specialized administration agency coordinate actions prior to the seizure of a productive asset, company or business?

YES
NO

9. What types of “preparations” are taken prior to a seizure?  
Mark with an X.

Data on the economic activity of the company or commercial business	
Physical and legal identification of the company or commercial business	
Identification of partners, directors, or legal representatives	
Suspension of powers of the right holders	
Identification of account numbers and financial products	
Identification of professionals or specialized third parties who may be put in charge of the company or commercial business	
Prior coordination with other government institutions to support the process of receiving the enterprise or commercial business (Ministry of labor, tax authority, other)	
Qualitative analysis identifying the likelihood of continuing business activities	
Other: Explain	
None	

10. When it comes to assets which by their nature can be considered of complex management, such as: boats, real estate, aircraft, farms, livestock, etc. (not companies or commercial businesses), what are the actions carried out prior to the seizure?

Explain: \_\_\_\_\_

11. What are the major difficulties at the time of receiving a seized company or business?

Explain: \_\_\_\_\_



12. What are the major inconveniences or difficulties at the time of receiving a seized asset of complex administration such as: boats, real estate, aircraft, farms, livestock, etc., when it is not a company or commercial business still in operation?

Explain: \_\_\_\_\_

13. What aspects are considered during the acquisition process in order to analyze the likelihood of continuing its operation? Mark with an X.

<b>Commercial Aspects of the Business:</b> the identification of the commercial or industrial activity of the company, its business strategy, customers, suppliers, its operational mode, etc.	
<b>Organizational Aspects:</b> the organizational structure of the company, human resources, processes and productive means, assets in general.	
<b>Financial Aspects:</b> the economic-patrimonial situation, registration status, accounting documents, cash flow, account balances and investments, loans, mortgages, actives and passives of the company in general.	
<b>Fiscal or tax aspects:</b> Payment Statements submitted to the Ministry of Finance or the Tax Agency, this can provide important data on the financial performance reported by the company for taxes purposes.	
<b>Legal Aspects:</b> the evaluation of aspects of compliance with operation requirements of the company, health, fishing, environmental, commercial, and mining permits, and general concessions by the State for the exercise of certain activities.	
<b>Other, Explain:</b>	

14. What is the competent authority that decides to close or not to close a company or commercial business' operation?

Public Ministry	
Court	
Asset management agency	
Other:	

15. Does the specialized agency replace the legal and administrative management of the company or commercial business? (contracts, bank accounts, patents, payments, etc.)

YES
NO

Explain how this is done: \_\_\_\_\_

16. Does your country's legislation allow for the hiring of professionals of specialized third parties to help with the management of companies or commercial businesses or of assets of complex management?

YES
NO

17. In the case that this management is done by a specialized third party, how is the work supervised?

Explain: \_\_\_\_\_

18. How do the operations or commercial activity of the seized company continue under the administration of a specialized entity or of a specialized third party? (Example: payment of suppliers, hiring of personnel, product or services sales, handling of financial statements, etc.)

Explain: \_\_\_\_\_

19. Professionals and Specialized Third Parties are payed using:

Special Fund	
Institutional Budget	
The profits from the asset	
Other: Explain	

20. Does your legislation allow a "capital injection" for a company or commercial business so that it can continue its operation?

YES
NO

Explain: \_\_\_\_\_

21. Is this "capital injection" refundable?

YES
NO

Explain: \_\_\_\_\_

22. If according to the feasibility analysis the company or commercial business cannot continue its operations, what is the procedure for the closing of operations?

Explain \_\_\_\_\_

23. What substantive requirements should specialized agencies have for the efficient management of complex assets?

Explain: \_\_\_\_\_

24. According to your practical experience, what are the strengths and weaknesses in the management of seized companies or commercial businesses?

Answer: \_\_\_\_\_