



17th St. & Constitution Avenue N.W.
Washington, D.C. 20006
United States of America

**INTER-AMERICAN DRUG ABUSE
CONTROL COMMISSION**

CICAD

Organization of American States

P. 202.458.3000

www.oas.org

Secretariat for Multidimensional Security

**FIFTY-SECOND REGULAR SESSION
November 28 - 30, 2012
San José, Costa Rica**

**OEA/Ser.L/XIV.2.52
CICAD/doc.1984/12 Rev.1
30 November 2012
Original: English**

**SYSTEMS FOR CONFISCATED ASSETS SHARING BETWEEN DIFFERENT COUNTRIES
GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING**

Systems for confiscated assets sharing between different countries.

Since early 2008, the Group of Experts of the Interamerican “*Against Drug Abuse*” of the Organization of The American States, specifically in the sub-working group of Confiscation, has focused in the most relevant topics, find what are the different systems used by Member States for the sharing of property and assets, that has been confiscated from criminal organizations linked to drug trafficking, money laundering, terrorism financing. Those things are deteriorating day by day in our society.

This has led us to achieve determine that there are different areas in the domestic law of each country that provide the possibility to share assets, provided that they are legally enabled to harmonize with the other part, the realization of such sharing.

As an example of this, we can note the model of Forfeiture, Law has been implemented in recent years in countries like Honduras and Guatemala and right now its application is of great relevance to their legislation laws. Now, as a reference to identify systems to share assets between governments, we will mention some of them where they could observe the process more clearly. In Argentina, in regard to the international legal assistance mechanisms for the seizure and forfeiture of assets, it would be important to reflect the framework to provide mutual legal assistance that applies in Argentina for both cases of money laundering as for any offense arising and terrorist financing. In this regard, Law 24,767 establishes in its Article 1 that Argentina offered to all States that so request with "All possible assistance" in the investigation, prosecution and punishment of offenses under the jurisdiction of another State. Also, under this section "any authority concerned shall act as quickly to ensure that the procedure is completed in an expeditious manner and does not hinder the operation." This law regulates all matters related to countries with which Argentina does not have a mutual legal assistance treaty, guaranteeing assistance on the reciprocity bases or offer (Article 3). When such treaties exist, its provisions must determine attendance procedures and the provisions of Law 24767 should be used to interpret the text of treaties and determine aspects not covered by them (Article 2). As for international assistance, the judiciary applies the same methods for the purpose of obtaining evidence for internal procedures. Law 24,767 allows a wide range of mechanisms for mutual legal assistance in material production, search and seizure of evidence in investigations and prosecutions of crimes of money laundering and terrorist financing, to be adopted in the general terms of Articles 67-81 of the Act Under this Act, Argentina can also identify, freeze, seize and confiscate property laundered or have tried to be washed, the product of money laundering and

assets used for or who have attempted to use to terrorism financing, as well as instruments such crimes. In Brazil, they determine how to share the goods as well follows from the law 9613, Money Laundering Act, which in Chapter VI refers us to the international cooperation mechanisms for the administration of seized and forfeited during the delayed recovery and / or state to share in the case of property, rights or securities from the offenses committed abroad, the money laundering law provides assurance measures through legal cooperation procedures internationally. This is provided for in art. 8 °. Article 8 The judge will determine, on the assumption that there is an international treaty or convention at the request of a competent foreign authority, security measures of assets, rights or values from the crimes described in Section 1, committed in the abroad. 1 applicable, apply the provisions of this Article, whether a treaty or international convention, when the government of the country of the applicant authority reciprocal promises to Brazil. 2 ° In the absence of a treaty or convention, property, rights or private securities subject to security measures at the request of a competent foreign authority or resources from their alienation will be divided between the requesting State and Brazil, in the proportion of a half, prejudice to the rights of the injured or a third party in good faith.

Currently, Brazil supports four types of international legal cooperation system: Letter of Request, Approval of foreign judgments, Direct protection and Extradition. These instruments are contained in Resolution No. 9, of the Superior Court of Justice, based on the modification of art. 105 of the Federal Constitution, backed by Constitutional Amendment 45/2004. The letter rogatory is intended acts not decisive acts makers and not definitive. By the letter of request, requested to be executed in Brazil act uttered by foreign judicial authority, not fitting the Brazilian authorities cognition worthwhile exercise on what is requested. Common examples of use of the letter rogatory requests for communication acts of process (summons, summons and notifications). The letter rogatory is embodied in an official document that serves as a means to a request for legal cooperation. That means is exploited in all bodies responsible for their implementation, whether foreign or domestic. In practice, the same document signed by the requesting authority is one that will, after analysis and monitoring by the competent authorities, the judgment prayed. Competition for uttering exequatur to letters rogatory is the Superior Court of Justice, under the terms of article 105, I, i, of the CF. Receipt of the Letter Rogatory in Brazil, it is routed to the STJ that in judgment seat of deliberation, verifies the adequacy of the application to the formal and public order concept in which are inserted the sovereignty and morality. There is, in this view, merit analysis of the reasons which led to the foreign authority to decide for the realization of the action requested. Exequatur granted, begins in the Letter the

second phase of the procedure. It happens to the execution of the act of judgment abroad through local federal enforcement in Brazil. Exequatur, which is Latin for "run", "execute", is the word that concretizes positive deliberative judgment exercised by the Superior Court of Justice in the letters rogatory. Present budgets for grant of the exequatur, the STJ transmitted to Judge of first instance the news that the procedural alien is able to produce effects in Brazil, asking for his execution. In the judgment of the STJ appreciated deliberation four issues: 1) international competition authority decision styled, 2) possibility of prior contradictory, 3) absence of res judicata; 4) no public order offense. Being positive deliberative judgment, granting the exequatur. With increasing global relations and the spread of transnational crimes, it was felt that the classic mechanisms of international legal cooperation were inapplicable or inefficient in certain situations yet. To cope with the new demands, States were faced with the need to create mechanisms that viabilizasen thrown legal cooperation, preserving, while its speed and security. Surge, well, it was agreed to call the request Direct Assistance (in Portuguese: ' *auxílio* direto'). Direct assistance differs from the other mechanisms because it Brazilian authorities prefer not act approving exequatur or foreign jurisdiction. Through this instrument, the Brazilian authorities know of the facts stated by the applicant authority to utter there a national decision. It can be applied for direct support a wide range of measures ranging from acts of communication process, taking of evidence, the testimony of witnesses, the bankruptcy of bank secrecy, tax and telematics, location of property and individuals, the seizure of property, blocking bank accounts until the repatriation of assets or securities tucked abroad illegally. Application received direct assistance in Brazil, is routed to the competent authority, knowing the facts presented by the foreign authority or perform the action requested, requiring according to our legislation, plateará the measure before the federal trial of first instance. Importantly, the application provides direct assistance procedure identical to that provide a purely domestic case, so that it applies the rules of Brazilian process with all its guarantees. Thus, the trial judge has the assisted cognition to appreciate it fully, establishing the basis for its self-contradictory belief. Finally, the approval of the foreign judgment is an instrument used to test the effectiveness, in national territory of final judicial decisions applied in foreign territory. In Brazil, the law prohibits the registration of a foreign criminal judgment, except in cases where it may be to produce civil effects arising from a criminal conviction and the imposition of a security (art. 9 of the Penal Code), as explained further below. In Colombia the form that determines how to use the sharing of goods, is embodied in Chapter VII, Administration and destination of goods by the Forfeiture Act, Act 793 of 2002, which clearly states in Article 42 subsection f, which is how they can share assets with other States which have cooperated for forfeiture and that in all cases, the decision on the

destination of the goods shall be taken by a college of higher authority. In this sense it is also clear to Colombian law when establishing their approval with extinction law to run the division of property. This provision is included in Article 21 of the Law of yore, that what matters says: Article 21. Cooperation. Conventions and treaties on judicial cooperation undersigned, duly approved and ratified by Colombia, are fully applicable for obtaining cooperation in allocation of goods, if the content is compatible with the forfeiture action. Costa Rica, for its part, has also been implemented gradually an idea of how to treat these goods that are requested by a country so determined and this is being rescued under the new amendment was made to the Act 8204, Act Narcotic Drugs, Psychotropic Substances, Drug unauthorized uses, money laundering, related activities and terrorist financing, as well as regulations governing the Act, which was enacted by decree 36948. The decree takes us back to Article 101, which says what matters: Article 101.- International assistances. - International authorities requesting mutual legal assistance for asset recovery, should cover the costs of administration, maintenance, safekeeping, assurance and provision incurred by the ICD, while the same is found in its favor in judicial deposit condition. Is also given by the Assets Management Unit Costa Rican Drug Institute, technical assistance for the management of assets that have been seized or confiscated in the process that aired in the requesting country. In the case of United States is able to identify interesting pan which seeks to share the goods through bilateral treaties, executive agreements and letters rogatory; same that have been ratified with mutual legal assistance (MLAT). America has such treaties with several countries of our working group, some of them, Argentina, Canada, Colombia, Grenada, Dominica, Panama, Dominican Republic, among others, which have been signed with fifty-four jurisdictions of other continents. (Section 981). That State has since 1989 sharing goods with other countries in the world and has a distribution that is made of approximately 270 million dollars with the fifty-four countries with which it has created different legal instruments to perform this activity. United States has two funds to determine how to distribute the money seized countries have provided assistance directly or indirectly in the process.

One is the Department of Justice and the other is administered by the Treasury Department. The distribution of money and goods is regulated by various scenarios broken down below: 1. The goods must have been finally seized without legal options of appeal after a process undertaken by the Department of Justice or the Confiscated Assets Fund of the Treasury Department. 2. The recipient country must have participated - directly or indirectly - in the seizure or forfeiture of specific property to be shared. 3. The deal must be approved by the Attorney General (for deliveries DOJ) or the Secretary of the Treasury (for deliveries Treasury) through delegated authorities. 4. The decision of allocation should be agreed by the Secretary of State through

delegated authorities. 5. The distribution must be authorized by an international agreement between the United States and the recipient country. 6. If applicable, the country must be certified in July. Must be under the Foreign Assistance Act. Criteria which handle U.S. international cast All this is set in an interagency memorandum of understanding in 1995 between the Departments of Justice, State and Treasury Support Essential: (50-80%) usually includes assistance related assets located in the country of destination. Important Assistance: (40-50%) usually involves assistance on assets located in the country of destination and additionally provides other assistance. Facilitation Assistance (Up to 40%) usually involves and or operational research assistance on assets located in the United States or a third country, usually indirectly helping forfeiture. The largest contributors to the United States has had in recent years have been Switzerland, Colombia, Luxembourg, the UK and most recently Belgium, Bermuda (Mutual Legal Assistance) and Uruguay. For purposes of having a greater understanding of how the United States has for the distribution of goods. The application must be submitted in English. Meanwhile Guatemala, has been implemented in recent years, the most suitable mechanisms to share the goods, that on the basis of recent approvals in the Termination Act of domino as this is reflected in the documents studied for this draft. By Act 55-2210, the Congress of Guatemala has determined the assistance and cooperation sharing mechanisms goods; this as well is clear from Article 8, which says what matters: Article 8. International assistance and Cooperation. The international conventions and treaties of cooperation and legal assistance or mutual judicial cooperation on location, identification, recovery, repatriation and termination of ownership of goods, signed, approved and ratified in accordance with the Constitution of Guatemala, are fully applicable to cases under this Act, through the procedures established in the Mutual Legal Assistance Agreements. Notwithstanding the preceding paragraph, the Attorney General, directly or through agents designated prosecutors, may request and obtain directly, information from the authorities of the State, territory or jurisdiction in which they are located or are suspected of the property to be the forfeiture action, or may move to place abroad to carry out investigations. Information or documents obtained may appear before the tribunal hearing the case in Guatemala and has probative value. Honduras in recent publications Final Act Deprivation Domain illegal assets, which was created by Decree 26-2010 of 16 June 2010, gives an orientation which rule to use in such situations in which is given the ability to share assets with other states. As we noted in the article referred to, with the new legislation may create mechanisms for sharing of goods. Article transcribed for analysis. Article 79. The competent courts, the Public Ministry, the Central Bank of Honduras, the National Banking and Insurance and the other competent authorities, using mechanisms MOU, conventions, treaties and international agreements can apply fully applicable

and provide cooperation and mutual legal assistance to other countries in relation to the matter that the law has Mexico When a treaty or international agreement on mutual legal assistance in criminal matters, a foreign authority may submit a request for legal assistance to the central authority in Mexico , the Attorney General's Office, through the Directorate General of Extraditions and Legal Assistance. When there is no international treaty or convention, a foreign authority may submit a request for letters rogatory through diplomatic channels. Mexico we refer to Article 6 of the Federal Law of Property Disposal Management and Public Sector Management Service and Property Disposal (SAE) which is responsible for assuming management of all assets seized / confiscated pending the conclusion of the criminal proceedings. The SAE may contract management responsibilities to companies or outside agencies. If the goods seized / confiscated are flora and fauna, to be deposited in a zoo or a similar institution. If the goods seized are works of art, antiques and historical pieces, which will be deposited in museums, cultural centers or institutions. Case of vehicles, which shall be deposited with their users or their registered owners. The real estate shall be in possession of your manager, tenant or owner. The SAE, or the designated contractor may sell or dispose of all goods that are subject to rapid deterioration or devaluation of the seized assets are not in official use. Meanwhile Peru plans in the form of legal structure sharing goods through Executive Decree No. 1104. This Legislation related to the loss domain and aims under Article 19 of this standard exposing seek international cooperation as follows: International conventions and cooperation or judicial legal assistance and any other international agreement governing collaboration confiscation international and localization, identification, recovery, repatriation and loss or termination of ownership of goods are applicable to cases under this Decree. In this regard, the State may enter into bilateral or multilateral cooperation to facilitate delivery of goods. With regard to the Dominican Republic can be seen how Congress determines the feasibility of sharing as negotiate and determine the distribution of goods to other countries. This on the bases of Law 50-88. In this country one looks at Article 110 and 111 of the Act referred to above and see how the courts are called upon to perform such a negotiation. As a review of the above, transcribe mentioned in previous articles, Article 110. - (Added by Law 95 of 17 December 17, 1995). - The court dealing cooperate with the competent court of another State, to mutual assistance in cases of illicit trafficking related offenses within the limits of their respective legal systems and norms of international law. Art.111. - (Added by Law 17 95 of 17 December 1995.) - The competent court may receive a request from a court or competent authority of another State to identify, detect, seize or confiscate assets, products or instruments related to an offense of smuggling or related offenses and may take the necessary measures, including those identified in this Act, provided that such solicited is accompanied by a

court order or judgment issued by the authority and in accordance with the laws of the Republic Dominican and international law. In the case of Salvador, when the asset seized or confiscated, must be properly inventoried and a judge appoint an agency employee or employees responsible for administration until the matter is resolved. Any employee or agent of the workers may be responsible for the administration of assets seized / confiscated, except judicial police or employees of the Public Ministry. The items seized by customs agents can only be handled by a customs officer. If forfeited property is a vehicle, airplane or boat can be given to the National Police and Armed Forces, at the request of the Attorney General's Office to combat organized crime. However, in relation to the forfeited property for violations of the Law Against the Laundering of Money and Assets, was issued the Regulations of the Financial Investigation Unit Special Equity Relative to forfeited property in order to determine the fate and beneficiaries such property, effects, instruments, etc. With regard to the Bolivarian Republic of Venezuela and since had a new approval of the Organic Law Against Organized Crime and Terrorism Financing, as appears from the Official Gazette No. 39912 of April 30, 2012, Act clearly states what would how to share goods within their criminal law is that we refer to section 89. But not before mentioning that since Article 74 comes facilitating mode how to apply and file the Mutual Legal Assistance in regard to international cooperation. In view of the foregoing, it is transcribed to confiscation of goods and sharing the same interests us: Article 89. disposition. When the State forfeited or seized assets under this chapter, disposed in the manner prescribed by its domestic law and its judicial and administrative proceedings. When acting on the request of the other party under the provisions of this Article, the Venezuelan State will pay particular attention to the possibility of concluding agreements: 1. Provide all or a significant portion of the product value and property, or funds derived from the sale of this act, to intergovernmental bodies specializing in the fight against illicit trafficking and abuse of narcotic drugs and psychotropic substances or other transnational organized crime and terrorism financing. 2. Sharing with other parties under a regular or in each case, the product, goods or funds derived from the sale, under the provisions of its domestic law, administrative procedures or bilateral or multilateral entered into for this purpose. 3. If proceeds have been transformed or converted into other property, such property shall be subject to the measures applicable to the product described in this chapter. 4. If proceeds have been intermingled with property acquired from legitimate sources, without prejudice to any powers relating to seizure or freezing, may seize or confiscate such property to the assessed value of the intermingled. 5. Such measures shall also apply to income or other benefits derived from:

A. The product

B. Of the property into which proceeds have been transformed or converted, or:

C. Property with which the product is mixed in the same manner and to the same extent it.

This is a draft that has some abilities to share assets with other States, is also able to identify that there are major empty places or gaps in this field. Which is of great relevance urge honorable members of this expert group to provide their most recent laws in this area, to share confiscated assets.

This information can be nurtured in the future for countries that needs those laws, and be are intended to inform the Executive Secretariat of the Inter-American Commission of the Organization of The American States to incorporate more data.

Lic. Engels Jiménez Padilla

Costa Rica Delegation

Sub-Group of Forfeiture Coordination

Panel Against Forfeiture Money Laundering