

STEP-BY-STEP GUIDE FOR ASSET RECOVERY FROM G20 COUNTRIES

ARGENTINA

I. INTRODUCTION

Argentina allows various alternative legal mechanisms to recover the illicit proceeds of a crime through criminal, civil or administrative procedures:

A.- Criminal Procedures: In criminal procedures asset recovery could be reached by the forfeiture or confiscation of the gains or proceeds of any offense punished by the Criminal Code or by special criminal laws. As a general rule, in accordance with Article 23 of the Criminal Code, confiscation requires a criminal conviction. In the conviction judges must confiscate the instruments used to commit the crime and also the proceeds of the crime or the goods in which they convert, for the benefit of the National State or the local governments, except for the rights of restitution or compensation of the victim and third parties.

When the convicted person acts as someone's representative or as a body, a member or manager of a legal person, and the product or profit of the crime has benefited the principal or the legal person, the forfeiture shall be executed against them. Consequently the Argentine system allows confiscation orders against legal persons when the defendant acts on its behalf and benefit.

Moreover when the product or profit of the crime gratuitously benefits a third party, the forfeiture shall be executed against him.

To ensure the effective final confiscation judges are allowed to adopt precautionary measures to freeze the assets at the beginning of a criminal investigation. Seizure or freezing orders are set by Article 23 of the Criminal Code and Articles 231 and 518 of the National Criminal Procedure Code. The rule of conviction based forfeiture has some exceptions. Non-conviction based forfeitures can be ordered in money laundering and terrorism financing offenses (Articles 23 and 303 to 306 of the Criminal Code, under Laws No. 26683 and 26734). Also according to Article 23 of the Criminal Code, non-conviction based forfeiture can also be ordered in other crimes against economic and financial order, such as the insider trading or in the financial fraud typologies (Articles 307 to 313 of the Criminal Code). In these cases must be checked the illicit origin and that the defendant could not be prosecuted for death, escape, prescription or any other reason that prevents prosecution, or when the defendant has recognized the illicit origin of the assets.

B.- Civil Procedures: These kinds of actions are based on the civil compensation for harm suffered. In civil proceedings the plaintiff must prove the unlawful damage. It is not necessary to promote a criminal action to claim compensation for damages in a civil action. Although the perpetrator or his accomplices were dead, the civil action for losses

arising from a crime may be inferred against its universal successors. When, for the same acts, there are simultaneous civil and criminal procedures, the civil conviction is subject to the issuance of a criminal conviction. There can be only previous civil conviction when the defendant has died or escaped before being prosecuted (Articles 1096 to 1106 of the Civil Code).

Emergency Executive Order 62/2019 regulated non-conviction-based asset forfeiture as an instrument for the State to recover title to property or goods derived from serious crimes. It provides that “corruption and crimes against the Public Administration, drug trafficking, human trafficking, terrorism and other serious crimes affect the ordinary operation of democratic and republican institutions resulting in great losses for the State, in every dimension, which ultimately derive in higher costs for the citizens”.

Article 5 of that Executive Order provides that “Any item of property incorporated to the assets of defendant after the date of the alleged commission of the crime under investigation, which may not reasonably be deemed to be compatible with the income of the holder, possessor or title owner, or which amounts to a patrimonial increase for which there is no support, thus rendering it possible to infer that such item of property derives directly or indirectly from one of the crimes listed in the article below, shall be subject to this regime.

The following items of property shall be included:

- a. Any goods regarded as having economic value, whether movable or immovable, tangible or intangible, subject to registration or not, or any legal documents or instruments evidencing title to or other interests in the goods mentioned, or any other asset that has monetary value;
- b. Any total or partial, physical or legal transformation or conversion of the items of property mentioned in the preceding paragraph;
- c. Income, rent, products, profits and other proceeds or benefits arising from the items of property or goods referred to in the preceding paragraphs”.

Article 6 of the said Emergency Executive Order provides that a non-conviction based asset forfeiture action is admissible with regard to assets that were allegedly acquired through the following offences: (a) The offences prescribed in articles 5, 6, 7, 8, 10, 23, 24 and 29 bis of Law 23,737, as amended; (b) The offences prescribed in articles 866 and 867 of the Customs Code, approved by Law 22,415, as amended; (c) The offences aggravated by article 41 quinquies of the Argentine Criminal Code; (d) The offences prescribed in articles 125, 125 bis, 126, 127, 128(1), 142 bis, 145 bis, 145 ter, 146 and

170 of the Argentine Criminal Code; (e) The offence prescribed in article 174(5) of the Argentine Criminal Code, provided the investigation prosecutes a public official who was responsible for the protection and/or management of State assets; (f) The offences prescribed in articles 256 to 261, 263 when the assets do not belong to private individuals, 264 to 268(2), 269, and 277 to 279 of the Argentine Criminal Code; (g) The offences prescribed in articles 300 bis, 303, 304 and 306 of the Argentine Criminal Code, provided the predicate offence is one of the crimes listed in this article; (h) The offences prescribed in articles 210 and 210 bis of the Argentine Criminal Code, provided the crimes attributed to the association are among those detailed above.

C.- Administrative Procedures: When the offense occurs within a public procurement, the Administration may require the reimbursement of all expenses issued. For that purpose, the annulment of the public procurement must be claimed. This claim needs to be based on a hidden defect in the way they expressed the will of the administration. If the hidden defect constitutes a crime (e.g. bribes), administrative action will be linked to criminal procedures (Articles 14, 15 and 17 of Law No. 19549).

II. HOW TO SEEK RESTRAINT, SEIZURE AND FORFEITURE/CONFISCATION FROM ARGENTINA

1. IDENTIFICATION OF THE ASSET

Mutual legal assistance request

In order to assist in identifying assets in Argentina mutual legal assistance can be requested according to the Law 24.767 on International Cooperation in Criminal Matters. This law establishes in article 1 the basic principle that inspires the whole Argentine system on mutual legal assistance:

[t]he Argentine Republic shall afford the widest possible measure of assistance, to any State requesting it, in the investigation, the prosecution and the punishment of offenses that fall within the jurisdiction of the requesting State.

Any authorities involved shall employ the maximum degree of diligence so that the request can be executed promptly in order not to distort the nature of the assistance sought.

In most cases, assistance is ruled by the treaties on mutual legal assistance signed by Argentina, or by the rules on the matters contained in the regional and international conventions subscribed to specific crimes. Where there is no applicable instrument binding the requesting country and Argentina, the assistance shall be conducted according to the law on international cooperation in criminal matters, on condition of reciprocity.

When seeking mutual legal assistance from the Argentine Republic, the steps mentioned below should be followed:

1. Consult with the Argentine Central Authority before submitting the

- request 2. Indicate the mechanism used to seek assistance
3. Identify the authority conducting the investigation or prosecution
4. Summarize the case
5. Set out the applicable legal provisions
6. Identify the assistance being sought
7. Highlight any specific confidentiality requirements
8. Identify any urgency in the execution of the request
9. Provide a list of relevant contact points in your country
10. Translate the request into Spanish

With regard to Argentine laws on mutual legal assistance in criminal cases, it should be noted that Law 24.757 (Part IV) includes provisions for measures to be taken relative to goods or assets (i.e. articles 95 and 109, providing for the execution of a judgment imposing a fine or ordering the confiscation of property; articles 101 and 110, governing the return of confiscated property). With respect to disposal of assets, the above-mentioned Law includes provisions that allow for the sharing of goods, by enabling the Ministry of Foreign Affairs, International Trade and Worship to agree with the requesting/requested State, on the basis of reciprocity, that a portion of the funds or goods obtained as a result of execution proceedings remain in the possession of Argentina or the requested State, depending on whether the mutual assistance request is active or passive.

Moreover, the Argentine Republic is a Party to several bilateral, regional and multilateral treaties including general provisions on international cooperation for the recovery of property, such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the International Convention against Transnational Organized Crime, the United Nations Convention against Corruption, the International Convention for the Suppression of the Financing of Terrorism, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Inter-American Convention against Corruption, among others.

With reference to regional and sub-regional treaties relative to international legal cooperation, the Inter-American Convention on Mutual Assistance in Criminal Matters lays the regulatory basis for the execution of measures on assets (articles 5, 7, 13 and 14). Also, both the Protocol of Mutual Legal Assistance in Criminal Matters of Mercosur (articles 2(f, g, h, i and j, and articles 22, 23 and 24) and the Agreement on Mutual Legal Assistance in Criminal Matters between the State Parties of MERCOSUR and Bolivia and Chile (articles 2(f, g, h, i and j, and articles 22, 23 and 24) include provisions applicable to international legal cooperation concerning measures issued on goods, precautionary measures, custody and disposal, etc.

Argentina has been the first State to deposit the instrument of ratification of the Framework Agreement for the Disposal of Assets Confiscated from Transnational Organized Crime in Mercosur (in force with Paraguay) whose purpose is to "establish cooperation and negotiation mechanisms between States Parties that make it possible to

dispose of confiscated assets resulting from crimes related to transnational organized crime" and has signed the Framework Agreement for the Distribution of Confiscated Assets with the Oriental Republic of Uruguay, having communicated compliance with internal requirements (not in force).

Identification of bank accounts

Upon the Section 1.7 of the Central Bank (BCRA) Compilation of AML measures (BCRA communication "A" N° 5162), banking and foreign exchange institutions are required to maintain several databases on a wide range of operations that individually or through a series of related transactions exceed EIGHT HUNDRED AND SEVENTY-FIVE (875) MINIMUM, VITAL AND MOBILE WAGES, including transactions related to cash deposits, purchase of sale of foreign currency, deposits of securities, depositions of negotiable instruments, etc. The database must include the transactions made in the last five years and must be at the disposal of the BCRA within 48 hours.

According to Law 21.526, Argentina has a bank secrecy system for the operations where the banks take deposits from the public (passive operations). For that reason financial institutions must lift financial secrecy in the framework of an STR, in which case bank secrecy may not be opposed to the FIU. Without an STR, apart from BCRA and the Tax Agency (AFIP), the secrecy may be lifted by a court order in case another institution from the State wants to access the financial information detained by banks.

Operations in which banks place money (active operations) are not covered by the bank secrecy. Through the Central Bank of Argentina, the FIU has access to financial system debtors (natural or legal persons) with the Argentinean financial system, rejected checks, checks reported as stolen or lost as well as information about outstanding tax provincial debts. This information may be available as well to other institutions of Argentina even without a court order.

There is no central registry of bank accounts in Argentina. If an authority wants to find out if a natural or legal person holds a bank account in the country, there is no immediate tool. A court order sent to all financial institutions through the BCRA seems to be the only way to find out.

Identification of property ownership

There is no centralized register of properties in Argentina. Each of the 24 jurisdictions in Argentina maintains its own real property registry. The National Registry of Real Property, depending on the Ministry of Justice and Human Rights, provides information for public agencies and the public, regarding properties located in Buenos Aires City. Nevertheless the National Ministry of Justice is promoting a system to exchange information between local registries. By June 2012, 17 jurisdictions had joined this system and 11 of them were already interconnected. As this system is in a development stage it is not available yet.

The transfer of real property is taxed in the country. For that reason the Tax Agency (AFIP) is noticed about each transaction of transference. Moreover, as a result of information exchange agreements with the Provinces, unifies the 24 separate real estate registries from the City of Buenos Aires (to which the FIU has direct access) and the 23

other Provinces (to which the FIU does not). These provincial registries are however bound to report suspicious transactions to the FIU.

The FIU maintains an internal database with information periodically sent by notaries public (pursuant to FIU Resolution 10/2004). The AFIP database collects all information related to a person (natural or legal), such as: incomes; companies where he/she is a shareholder or director; and real estate properties. AFIP's databases are covered by tax secrecy which may be lifted in favor of the FIU, without a court order, where a suspicious transaction report was filed.

The Administración Nacional de Aviación Civil (National Civil Aviation Administration) has a register of all aircrafts in Argentina: <https://www.argentina.gob.ar/anac>.

The Prefectura Naval de Argentina (National Coast Guard) maintains a national register of boats that are under the National Flag: www.prefectura naval.gov.ar

The Registros de la Propiedad Automotor (Motor Vehicle Registers) has a centralized database with information from the entire country: www.dnrpa.gov.ar

Identification of companies

All legal persons must be registered in the Public Registry of Commerce pertaining to the jurisdiction in which it does business. All articles of incorporation must include detailed information about the natural and legal persons involved. If the member/partner is a natural person: name, age, nationality, address, marital status, profession, and national ID; if the member/partner is a legal person: corporate name, address, registration data, and information about the person who was made available to appear before the notary public (personal data, competence, faculties) number of the members or partners, company name main office, and purpose, equity capital and contributions made by each member/partner, expiration of the original term, organization of the supervisory management, and of the members' meetings, clauses specifying the rights and liabilities of members/partners, rules to distribute profits and losses, and clauses about the operation, dissolution and liquidation of the company. All legal persons which are limited liability companies or companies divided by shares, except general and limited partnerships, must also publish this information, and the data about the company's authorities (directors or senior officers and statutory auditors, if applicable), specifying the names of its members, elected domicile, and term of office (with the exception of specifying contributions made by each member/partner to the capital stock, their rights and liabilities and clauses about the operation, dissolution and liquidation of the company) as well as the date of the articles of incorporation, for one day in the Official Gazette. The same publicity is required whenever this information is changed; otherwise the modification may not be inscribed in the Public Registry of Commerce.

All articles of incorporation and any changes of them (such as any change in the companies' purpose or name) must be registered or their enforceability is limited – it could be enforced between members or partners but not before third parties, however, third parties can enforce them against the company and its partners/members, except in the cases of companies divided by shares or limited liability companies (Law 19 550, section 12). This exception is not absolute, and is subject to rebuttal.

This information can be obtained publicly at the jurisdiction's Public Registry of Commerce. Members of a "Sociedad de responsabilidad limitada" (SRL) are registered in the Public Registry of Commerce of each jurisdiction. Each change in the percentage of ownership has to be equally registered. Members of a "Sociedad Anónima" (SA) are registered in the Public Registry of Commerce of each jurisdiction at the initial inscription of the company. Each change in the stock ownership has to be registered by the company. This registry has to be available in headquarters for state control.

Ability to gain timely access to adequate, accurate, and current information on the beneficial ownership and control of legal persons under law 19 550 is further limited by the lack of a centralized registration system, as each of the 24 jurisdictions maintains its own registry. An attempt to unify and centralize all data on legal persons throughout the country began with Law 26 047 (National Register of Companies) of 7 July 2005. This law empowers the Inspección General de Justicia (IGJ) to organize and operate national registries of shareholding companies (the National Registry of Companies Divided by Shares), created by section 2 of Law 19 550 and incorporated into the operational structure of IGJ by Executive Order 1755/2008), non shareholding companies, foreign companies, civil associations and foundations. These functions and faculties are regulated by IGJ Resolution 7/IGJ/05. IGJ, within the Ministry of Justice and Human Rights, manages the Public Registry of Commerce in the City of Buenos Aires and the other registers for the city. However, in order to implement the registries at a national level as envisioned in Law 26 047, each of the 23 provinces must pass a provincial law in order to be part of this system. So far ten provinces: Chaco, La Pampa, La Rioja, Mendoza, Jujuy, Rio Negro, Salta, Santa Cruz, Tierra del Fuego and Tucuman, plus the City of Buenos Aires (11 jurisdictions), have done so and are now participating in the centralized registries. The Provinces of Buenos Aires, Entre Ríos and Santa Fe, are planning to adhere soon. The National Registry is in a development stage.

Moreover, in March 2012, the AFIP set a new regulation (RG N° 3293) in order to obtain annual information about the holding of shares in legal persons in all the country.

Legal persons in Argentina are defined by its National Civil Code. Although the national law with requirements for all commercial companies applies throughout the country, registration and oversight of legal persons is set out by each of the 24 jurisdictions. While the centralized registry is being developed, competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons. Trust can be registered in Argentina and competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of these legal arrangements.

Identification of non banking financial interests

In the securities area, the Caja de Valores is a compensation and liquidation entity. It is not subject to the AML legislation. Caja de Valores S.A. is a corporation, totally private, which acts as central depository of public bonds and private securities. It was established in 1974 by Act 20,643, and it is supervised by the Comisión Nacional de Valores. Those authorized to make deposits of securities with the Caja de Valores S.A. are stockbrokers, banking financial institutions, and mutual funds.

Some FIU resolutions also provide that financial institutions should maintain electronic databases. For example, pursuant to FIU Resolution 50/2008, insurance companies and intermediaries shall maintain a database containing information on the customers, When transactions exceed the sum of EIGHT HUNDRED AND SEVENTY-FIVE (875) MINIMUM, VITAL AND MOBILE WAGES (premiums, supplementary contributions, partial or total withdrawals, payment of claims, cancellation of policies). Upon request, this information shall be made available to the FIU within 48 hours.

The FIU has direct access to the following databases: Office of the Superintendent of Insurance of the Nation (SSN—<https://www.argentina.gob.ar/superintendencia-de-seguros/>): life and/or retirement policies (restricted information).

2. CONFISCATION OF PROPERTY RELATING TO FOREIGN OFFENCES

When assets have been identified, Argentina law allows the freezing and confiscation of assets through the enforcement of foreign orders and judgments for a person convicted of a foreign offence.

The requirements to enforce a foreign judgment are mentioned in article 95 of the Law 24.767 on International Cooperation in Criminal Matters: the resolution which orders the confiscation of criminal proceeds should be final and definitive. A certified copy of that resolution should be provided, and dual criminality is required. A right to defense should have been granted. Argentina foresees, under reciprocity basis, authorizing the sharing of confiscated assets between Argentina and the requesting country when confiscation is directly or indirectly a result of coordinated law enforcement actions.

According to article 97 of the above mentioned law, the request should be sent through diplomatic channels.

The relevant provisions of Law on International Cooperation in Criminal Matters N°. 24,767 are:

SECTION 95.-Penalties consisting in fines or seizure of property imposed in a foreign country may be enforced in the Argentine Republic, at the request of the respective foreign court, where:

- a) the offence falls within the jurisdiction of the requesting State, pursuant its own laws;
- b) the sentence is final;
- c) the conduct on which the sentence is based constitutes a punishable offence under Argentine law, even where the penalties provided therefore are not the same;
- d) the circumstances provided for in Section 8(a) and (d)do not occur;
- e) the penalty has not been barred as provided by the law of the requesting State;
- f) the convicted person has not been prosecuted in Argentina or in any other country for the conduct on which the request is based;
- g) the convicted person has been personally summoned and its defence has been guaranteed;
- h) the reasons specified in Section 10 are not applicable.

Assistance shall not consist in the imposition of imprisonment in lieu of the payment of fines.

SECTION 96.-The Ministry of Foreign Affairs, International Trade and Worship may agree with the requesting State, on a reciprocity basis, that the Argentine Republic shall retain a portion of the proceeds or property obtained as a result of the execution process.

SECTION 97.-The request must be submitted through diplomatic channels.

The administrative proceedings shall be similar to those provided for in connection with requests for assistance in investigation and prosecution of offences.

In the court proceedings, interest in the execution shall be represented by the Public Ministry.

SECTION 98.-Court proceedings shall be governed by the rules related to ancillary proceedings provided for in the Argentine Code of Civil and Commercial Procedure.

SECTION 99.-Fines shall be enforced by requiring the payment of the amount and fulfilment of the terms set forth in the sentencing judgment. The amount shall be converted to Argentine currency according to Argentine law and practices.

SECTION 100.-Any extraordinary expenses incidental to the enforcement shall be borne by the requesting State.

SECTION 101.-The proceeds or property obtained shall be deposited to the order of the Ministry of Foreign Affairs, International Trade and Worship, which shall transfer or surrender such proceeds or property to the duly accredited authorities of the requesting State.

The relevant provisions of Law on International Cooperation in Criminal Matters N°. 24.767 are:

SECTION 109.-The Argentine authority that imposes a fine, seizure of property or disqualification may request that the sentence be enforced in a foreign country.

The conditions set forth in Sections 95 to 101 shall apply.

SECTION 110.-The decision to request assistance from a foreign country shall be governed by the provisions of Sections 62 and 65.

The Ministry of Foreign Affairs, International Trade and Worship may agree with the requesting State, on a reciprocity basis that the Argentine Republic shall retain a portion of the proceeds or property obtained as a result of the execution process.

On the other hand, in addition to the rules of cooperation for the confiscation of assets, The Law N° 24.737 in its article 68 also provides rules for assistance in the investigation and prosecution of crimes, which may include measures for the location and tracking of assets, as well as the execution of embargoes or other precautionary measures aimed at freezing assets. In such cases, it will be required that the fact that motivates the request for assistance constitutes a crime in Argentina.

The administration and custody of assets seized or affected by precautionary measures in

criminal proceedings is the responsibility of the judges hearing the cases in which such measures have been ordered.

Matters relating to the custody and disposal of seized assets in criminal cases under the jurisdiction of the national and federal courts must comply with the provisions of Law 20.785 of 11 October 1974.

With regard to the administration of assets subject to civil actions for forfeiture of ownership (DNU N° 62/2019), it has been decided to assign the management of assets seized in these proceedings to the Agency for the Administration of State Assets (AABE), a specialised agency under the Office of the Chief of Cabinet of Ministers. This allows for a professional administration in accordance with the nature of each type of asset, with specialised personnel in a position to carry out planning prior to the final disposal of the assets, assessing costs, risks, etc., ensuring that the assets are properly preserved during the process to mitigate the inherent risk of depreciation in value and deterioration of the assets over time.

By means of Decree no. 598/2019, dated 29/08/2019, the following was ordered:

ARTICLE 1.- The AGENCY FOR THE ADMINISTRATION OF STATE GOODS (AABE) is hereby instructed to proceed to the immediate disposal of the assets that enter the patrimony of the National Public Sector agencies included in section 8 a. of Law No. 24156, as amended, from seizures ordered by judicial decisions, unless a specific destination for their use and/or utilisation is provided for.

ARTICLE 2 - In case the seized assets are located abroad, the disposal of such assets shall be carried out by adopting suitable mechanisms, adapted to the modalities of the country where such disposal takes place, applying whatever the procedure may be, the guiding principles of publicity, price competition and equal treatment of bidders, and the intervention of official banking institutions specialised in real estate may be required.

ARTICLE 3.- It is hereby established that for the best and most efficient management of the proceedings under the terms of Section 2 herein, the STATE PROPERTY ADMINISTRATION AGENCY may request the MINISTRY OF FOREIGN AFFAIRS, INTERNATIONAL TRADE AND WORSHIP to carry out the necessary and conducive steps and formalities for the disposal of the property located abroad.

ARTICLE 4: The proceeds from the sale of assets that enter the National State's patrimony from seizures ordered by judicial resolutions shall be distributed in accordance with the provisions of the laws in force.

III. ASSET RECOVERY AGENCY/AGENCIES – CONTACT INFORMATION

Although the confiscation must be decided by a judge, and in Argentina is not a judge specialized in asset recovery, the PROCELAC created in December 2012, under the General Attorney Office has a special unit for asset recovery.

Decree 826/2011 of June 17, 2011 created the National Registry of Seized and Confiscated Assets (RNBSD--- <https://www.argentina.gob.ar/justicia/bienessecuestrados>), whose aim is the

identification, registration, appraisal, and location of the total of the assets seized, confiscated or affected by an injunction during a criminal procedure.

In the Argentine Republic, international legal cooperation on criminal matters, such as the request and delivery of MLA, extradition, freezing and confiscation of criminal proceeds, are channelled through the Ministry of Foreign Affairs, International Trade and Worship - International Legal Assistance Directorate (DAJIN, for its acronym in Spanish), which is the Central Authority, designated for most Mutual Legal Assistance Treaties (MLAT), except for requests to or from the United States, based on the bilateral Treaty which are channelled through the Ministry of Justice and Human Rights.

DAJIN fulfills a double role as a communication channel in these procedures; on the one hand as the Central Authority appointed in most of the treaties in the subject matter, and on the other hand through diplomatic channels.

Contact information:

Ministerio de Relaciones Exteriores y Culto
Dirección de Asistencia Jurídica Internacional
Esmeralda 1212, piso 4, oficina 402, Ciudad Autónoma de Buenos Aires, Código Postal 1007 Telephone: +54 11 4819-7172
Facsimile: +54 11 4819-7000 ext. 8121
Email: dajin@mrecic.gov.ar
Website: www.cooperacion-penal.gov.ar