

STEP-BY-STEP GUIDE FOR ASSET RECOVERY

FROM G20
COUNTRIES

MEXICO

I. INTRODUCTION

In the Mexican law, there are three procedures by which the State can acquire assets that are related to the commission of any criminal conduct, these are the forfeiture, abandonment and non-conviction based forfeiture.

Forfeiture is the allocation of assets in favor to the State, which are the instruments, objects or proceeds of the crime decreed by the judicial authority as a sentence. It proceeds on the aforementioned assets that were previously seized by the ministerial authority, .Regarding the property of illicit use, the forfeiture will only proceed when the offense is intentional. This can be only decreed by the judicial authority and is governed by articles 40 of the Federal Criminal Code, and 250 of the National Code of Criminal Procedures.

Abandonment is the loss of the right to property or a real right. It proceeds for all the seized goods that have not been forfeited and that are not claimed by the person entitled to it. The abandonment may be ordered by the agent of the public prosecutor or by the judicial authority and it is governed by the article 41 of the Federal Criminal Code and 231 of the National Code of Criminal Procedures.

Non-Conviction Based Forfeiture (extinción de dominio) is the loss of rights on movable or immovable property, without consideration or compensation to the owner or for anyone who behaves as such, and which are linked to investigations or criminal processes initiated by the following offenses: organized crime, illicit trafficking of drugs, kidnapping, vehicle theft, money laundering, trafficking in persons, crimes related to hydrocarbons, oil products and petrochemicals, crimes for acts of corruption, concealment, crimes committed by public officials, operations with resources of illicit origin and extortion¹, and which lawful origin cannot be credited. It must be ordered by the Specialized Judge on matters of Non-Conviction Based Forfeiture, and its procedure is regulated by the National Law of Non-Conviction Based Forfeiture (LNED by its acronym in Spanish) regulatory of Article 22 of the Political Constitution of the United Mexican States.

When the assets are located abroad or subject to the jurisdiction of a foreign State and it is necessary that Mexico exercise the action of non-conviction based forfeiture, or when a foreign government needs to exercise this action in Mexico, the LNED regulates the procedure corresponding to the chapter entitled "International Cooperation", which is carried out through International Legal Assistance, as required by Articles 244 to 251 of said Law.

In case of that the goods are within Mexican territory, a request for legal assistance should be made in accordance with the provisions of the international legal instruments in which Mexico is a party or on the basis of international reciprocity.

¹ To date (July 3rd, 2023), the National Law of Non-Conviction Based Forfeiture reflects that the paragraphs regarding the following offenses were declared unconstitutional by sentence of the Supreme Court of Justice: crimes for acts of corruption, concealment, crimes committed by public officials, vehicle theft and operations with resources of illicit origin.

The request for legal assistance will be processed by the Prosecutor General's Office (Central Authority), but in case of absence of a legal assistance treaty; the processing will correspond to the Ministry of Foreign Affairs.

Once the Prosecutor General's Office of the Republic (through the General Directorate of International Procedures) receives the legal assistance request from a foreign authority and verifies that the request fulfill the necessary requirements for its processing, according to the provisions of the International Treaty applicable to the specific case, the collaboration will be requested to the Specialized Unit on Non-Conviction Based Forfeiture (UEMED by its acronym in Spanish) of the Prosecutor General's Office, in order for it to promote thenon-conviction based forfeiture action on the property located in Mexico before the specialized Judge in non-conviction based forfeiture and to request for the corresponding pre-trial precautionary measures.

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

In order to seek the restraint, seizure and forfeiture/confiscation of criminal proceeds from Mexico, the following steps should be followed:

1. IDENTIFICATION OF THE ASSET

In order to recover the proceeds of corruption held within Mexico, you must make a location request in writing via legal aid, containing the following information:

- The name of the institution and of the competent authority that is responsible for the investigation or criminal proceedings which resulted from the request;
- The purpose of the request for legal assistance and legal description of the assistance sought;
- The description of the facts object of the criminal investigation or proceeding, the text of the legal provisions that define the behavior as an offense and, when necessary, the amount of the caused damage;
- The rationale and description of any special procedure the requesting Party wishes to be practiced at the moment of executing the request for legal assistance, provided they are not contrary to the national law of the Requested Party;
- The identification of persons subject to investigation or prosecution;
- The location and description of the place to search or inspect;
- The location and description of the property to seize and subsequently forfeit or those that could be subject to the process of non-conviction based forfeiture;

Mexico can immediately start the process to receive legal assistance by fax, electronic mail or other similar means of communication with the foreign State's commitment to formally forward the request in the predetermined time.

It is important to stress that for assisting in the identification of assets in Mexico, the following mechanisms, inter alia, are available:

- Reports of the National Banking and Securities Commission regarding bank accounts or shares in the stock market, which could be related to criminal behavior.
- Information of Financial Intelligence Unit, regarding relevant, unusual or suspicious transactions carried out within the financial system, as well as notices from those who carry out DNFBPs

according to article 17 of the Federal Law for the Prevention and Identification of Transactions with Illicit Proceeds (LFPIORPI), which could be related to criminal behavior.

- Information of the Tax Administration Service, on the fiscal situation of the individuals and entities that may be related to the investigated facts.
- Information of the Public Vehicular Registry regarding motor vehicles. Information of the Federal Agency of Civil Aviation on aircraft and ships.
- Information of the various Public Registers of Property and Commerce of the various states, regarding ownership of real estate and social participation in legal persons on behalf of the alleged perpetrators of the behavior investigated.
- Information provided by the Ministry of Public Administration regarding the assets of public officials of the federal public administration.

2. FORFEITURE (NON-CONVICTION BASED FORFEITURE) OF PROPERTY RELATED TO OFFENCES COMMITTED ABROAD

Once the assets have been identified, the foreign authority may request Mexico the cooperation through legal assistance to seize and recover the instruments, objects or proceeds of the crime that are under Mexican jurisdiction, through the procedure of non-conviction based forfeiture (extinción de dominio) foreseen in the Chapter of International Cooperation (articles 244 to 251) of the National Law of Non-Conviction Based Forfeiture.

3. DISPOSAL/RETURN OF ASSETS

To return the forfeited goods or assets to a foreign State, the following requirements must be met, according to the article 250 of the National Law of Non-Conviction Based Forfeiture: once requested the legal assistance for the non-conviction based forfeiture of the property located in national territory, said action will be promoted before the competent Court. In case the Court issues a sentence declaring the non-conviction based forfeiture of the property, once the judgment becomes final, the Judge shall order the delivery thereof (or the proceeds of its sale) through the Prosecutor General's Office of the Republic and the Ministry of Foreign Affairs to the relevant foreign authority, unless there is a legal assistance agreement regarding a mechanism on asset sharing, in which case the corresponding part or parts will be delivered. The delivery of the goods will be made after deduction of the expenses of their administration and the payment of contributions and liens to which they are subject.

III. ASSET RECOVERY AGENCY/ AGENCIES – CONTACT INFORMATION

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IV. OTHER USEFUL REFERENCES