

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 or sub-national States, except for the rights of restitution or compensation of the victim and third parties.

When the convicted person acted as somebody's agent or as an organ, 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 with 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 facts are being conducted parallel 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).

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 on 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 to identify 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 on 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 mention 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

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 ARS 30 000 (near than USD 6 600), 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 with 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 with 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 are already interconnected. As this system is in a development stage is not available yet.

The transfer of real property is taxed in the country. For that reason the Tax Agency (AFIP) is notified 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 the 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 Direccion de Aeronavegabilidad (Airworthiness Direction) is maintaining a register of all registered planes in Argentina. The register is searchable by the name of the owner of the plane. It is publicly available: www.dna.org.ar

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

The Nacional Directorate of Nacional Registries of Automobile and Securities 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, registering 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 sector, 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, on transactions equal or over ARS 30 000 – USD 6 600 (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://seguro.ssn.gov.ar/antilavado/>): 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 on 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.

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), whose aim is the identification, registration, appraisal, and location of the total of the assets seized, confiscated or affected to an injunction during a criminal procedure.

The Argentine Ministry of Foreign Affairs and Worship, is the Central Authority for almost all treaties on legal assistance in criminal matters, except the bilateral treaty with the United States of America. 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