

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 forfeiture.

Forfeiture is the allocation of assets in favor to the State, instruments or objects of crime, and products thereof decreed by the judicial authority. It proceeds on all the instruments, objects or proceeds of crime that are insured and of forbidden use, so that makes those that are of illicit use, the forfeiture will proceed only when the offense is intentional. This can be decreed only by the judicial authority and is governed by Article 40 of the Federal Penal Code, 182 Q and 182 R of the Federal Code of Criminal Procedure.

Abandonment is the loss of the right to property or a real right. It proceeds in respect all goods insured that are not seized and not picked up by the person entitled to it. Abandonment may be ordered by the public prosecutor or judicial authority and find its fundament in Article 41 of the Federal Penal Code, 182 A and 182 Ñ Federal Code of Criminal Procedure.

Extinction of Domain is the loss of rights on property, instruments, objects or proceeds of crime, without consideration or compensation to the owner or for anyone who has or behaves as such. It proceeds in respect of goods that are assigned to investigations initiated by organized crime offenses, drug crimes, kidnapping, vehicle theft and trafficking. Must be ordered by the Judge of Extinction of Domain, and its procedure is regulated by the Federal Law of Extinction of Domain (LFED) regulatory of Article 22 of the 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 extinction of domain, or when a foreign government needs to exercise this action in Mexico, the LFED regulates the procedure corresponding to the chapter entitled "International Cooperation", which is carried out through Legal Aid, as required by Articles 63 to 70 of that Act.

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

The legal aid application will be processed by the Attorney General's Office (Central Authority), in case of absence of legal assistance treaty; it will correspond to the Ministry of Foreign Affairs.

Once the Attorney General has the Legal Aid application, shall be exercised the action of extinction of domain on property located in Mexico before the specialized Judge in extinction of domain and it will request for precautionary measures.

In accordance with the above, the State has a mechanism to recover assets that are proceeds of acts of corruption only abandonment and forfeiture, whenever the assets linked to behaviors that criminalize corruption offenses cannot be the subject of a forfeiture procedure.

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 in the application;
- The purpose of the request for legal assistance and legal description of the assistance sought;
- The description of the facts regarding criminal investigation or proceeding, the text of the legal provisions that define behavior as offense and, when necessary, the amount of damage;
- The rationale and description of any special procedure the requesting Party wishes to be practice to run the application for legal aid, provided they are not contrary to the domestic law of the Requested Party;
- The identification of persons subject to investigation or prosecution;
- The location and description of the place to flunk or inspect;
- The location and description of property to securing and subsequently confiscate or those that could hold the process of extinction of domain;

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

It is also necessary to identify whether the goods are subject to abandonment or forfeiture in accordance with the considerations outlined in advance.

In the abandonment is only necessary that the goods are insured under a ministerial or judicial order and within the period established by law has not been made any manifestation with respect to such assurance by a person legally empowered to do so, or rather than having decreed the return of such goods, the person entitled to them has not been presented to collect them within the legal term.

In order that the judicial authorities may order the forfeiture, it is necessary that judgment has been entered in the respective criminal proceedings, for which previously had to be proved the existence of the offense and the responsibility of the accused in the commission

Importantly, to assist in the identification of assets in Mexico are available including the following mechanisms:

- Reports of the National Banking and Securities in respect of bank accounts or shares in the stock market, which could be related to criminal behavior.
- Information of Financial Intelligence Unit, for significant transactions, unusual or suspicious carried in the financial system, which could be related to criminal behavior.
- Information of Tax Administration Service, on the fiscal situation of the individuals and entities that may relate these facts investigated.
- Information of Public Record Information on Motor Vehicle.
- Information of Civil Aviation Directorate 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 with respect to the assets of public servants who make up the federal public administration.

2. CONFISCATION OF PROPERTY RELATING TO FOREIGN OFFENCES

Once the assets have been identified, Mexico offers the following forms of assistance to recover: securing or restricting the domain ("assets where there has been no condemnation") of assets by implementing the Federal Act of Extinction of Domain, through a request of international legal assistance is exercised the action of extinction of domain.

3. DISPOSAL/RETURN OF ASSETS

To return confiscated assets to a foreign State, the following requirements must be met: once requested legal assistance for the extinction of domain of the property located in national territory, it will promote the action of extinction of domain before the competent court. When declaring sentencing of extinction of domain of property, once the judgment becomes final, the Judge shall order the delivery thereof (or the proceeds of sale) through the Public Ministry and the Ministry of Foreign Affairs foreign authority.

III. ASSET RECOVERY AGENCY/ AGENCIES – CONTACT INFORMATION

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IV. OTHER USEFUL REFERENCES