



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

Organization of American States

P. 202.458.3000  
[www.oas.org](http://www.oas.org)

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CONTROL COMMISSION

**CICAD**

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SELF-EVALUATION GUIDE FOR THE FORFEITURE AND ADMINISTRATION OF ASSETS



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## SELF-EVALUATION GUIDE FOR THE FORFEITURE AND ADMINISTRATION OF ASSETS

ANTI-MONEY LAUNDERING SECTION  
BIDAL PROJECT  
2013



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## Introduction

In 2008, the Organization of American States (OAS), through the Inter-American Drug Abuse Control Commission (CICAD) of the OAS Secretariat of Multidimensional Security (SMS), began developing the Seized and Forfeited Asset Management Project in Latin America ("BIDAL project"). The BIDAL project provides OAS member states with technical assistance designed to improve their internal systems associated with asset investigation and the seizure, confiscation, and management of assets derived from unlawful activities and organized crime.

As a part of the experience gained throughout the region and with the support of the Group of Experts for the Control of Money Laundering (GELAVEX), this Self-evaluation Guide for the Forfeiture and Administration of Assets was developed, with the goal of gathering information that will allow the member states to evaluate the progress of their system of seizure, forfeiture, and management of assets of criminal origin, considering the new recommendations of various international organizations working with the subject.

## Objective

This document is designed to serve as a self-evaluation guide for the member states of the Organization, with a view to enabling them to identify the strengths and weaknesses of their national systems governing the management of seized and forfeited assets. This document takes into account the recommendations put forward by international organizations such as CICAD/OAS,<sup>1</sup> the G8,<sup>2</sup> the Financial Action Task Force (FATF),<sup>3</sup>

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<sup>1</sup> *Best Practices Manual on Management of Seized and Confiscated Assets*, approved by the Expert Group for the Control of Money Laundering, held in Montevideo, Uruguay, from August 31-September 2, 2009, and in the Plenary Meeting of CICAD 46, held in Miami, Florida, November 18-20, 2009.

<sup>2</sup> G8 *Best Practices for the Administration of Seized Assets*. G8 Lyon/Roma Group. Criminal Legal Affairs Subgroup. Final version dated April 27, 2005.

<sup>3</sup> FATF, *Best Practices. Confiscation (Recommendations 3 and 38)*, February 19, 2010.



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and the United Nations Office on Drugs and Crime (UNODC), which promote the creation and development of specialized mechanisms to administer assets of criminal origin.<sup>4</sup>

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<sup>4</sup> UNODC Model Law on *In Rem* Forfeiture, Chapter VII, "Management and Disposal of Property."



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#### COUNTRY DATA

COUNTRY:	
AUTHORITY OR INSTITUTION:	
DATE:	

#### RECOMMENDATION 1

##### Asset Investigation

As an integral part of each investigation, law enforcement authorities should ensure that any assets subject to seizure are identified via a parallel or simultaneous investigation to the main investigation. The purpose of this "asset investigation" is to assist the pertinent authorities in identifying money or assets, asset transfers, or methods employed to conceal the origin or destination of the different instruments used in the commission of the crime.

- 1) Does your country have a criminal policy in place to dismantle the assets and finances of criminal organizations?

A) Yes	
B) No	

- 2) Aside from the financial intelligence unit, does your country have an investigative force that specializes in financial and/or asset investigations?

A) Yes	
B) No	



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If yes, please provide the name of this investigative force:

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3) This investigative force is attached to the:

A) Judicial police	
B) Administrative police	
C) Other	

4) Does your country have a training center, academy, or institute that offers a training module on asset investigation?

A) Yes	
B) No	

5) Does this training center employ financial professionals with knowledge of criminal investigations?

A) Yes	
B) No	

6) At what point of a main investigation is an asset or financial investigation launched?

A) In parallel and from the start of the main investigation	
B) During the course of the main investigation	
C) Following the arrest of suspects	
D) All of the above	



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7) What level of priority does the Office of the Attorney General (*Ministerio Público*) assign to the teams responsible for conducting asset investigations?

A) High	
B) Medium	
C) Low	

8) How often are asset and/or financial investigations launched in connection with a main investigation?

A) Always	
B) Never	
C) Occasionally	

9) Does your country have protocols, manuals, guidelines, and instructions in place to govern asset investigations?

A) Yes	
B) No	

10) Do the financial intelligence units (FIUs) take part in asset and/or financial investigations?

A) Yes	
B) No	
C) Occasionally	

11) In the context of an asset investigation, are the outstanding amounts on assets subject to liens and mortgages in favor of bona fide third parties identified?

1) Yes	
2) No	
3) Occasionally	



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12) Do you believe judges, prosecutors, and investigators receive sufficient asset investigation training?

A) Yes	
B) No	
C) Occasionally	

13) How would you rate the legal, technical, and operational infrastructure used to carry out asset investigations?

A) Very good	
B) Good	
C) Satisfactory	
D) Unsatisfactory	
E) Substandard	

14) In your opinion, how effective are authorities at seizing the ill-gotten assets or financial instruments that have been identified in an asset report or study?

A) Very effective	
B) Effective	
C) Satisfactory	
D) Unsatisfactory	
E) Substandard	





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## RECOMMENDATION 2

### Access to Sources of Information

Where appropriate and duly authorized in the course of a criminal investigation, the competent authority should have access to sources of information that facilitate the accurate and detailed identification of the assets of the criminal organization. Access to this information may be obtained through the use of special investigative techniques, such as wiretaps, undercover operations, surveillance, controlled delivery, and informers, among others.

- 1) How would you rate access to sources of information used to identify and locate the assets of persons under investigation?

A) Very good	
B) Good	
C) Satisfactory	
D) Unsatisfactory	
E) Substandard	

Please elaborate on your answer:

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- 2) What sources of information are accessible to the agency responsible for carrying out asset investigations in your country?

Register of real estate and movable property	
Register of natural persons	
Register of legal entities, corporations, and other commercial entities	
Register of migratory flows	
Register of public services	
Register of movements of funds at financial institutions	



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Tax records	
Government concessions or permits	
National and international criminal records	
Insurance policy registries	
Notary registries	
Banking regulatory system records (banking regulation and supervision agencies)	
Customs registries	

Others (please specify):

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3) Are special investigation techniques used to identify the assets of persons under investigation?

A) Yes	
B) No	
C) Occasionally	



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**RECOMMENDATION 3**  
**Pre-planning for the Seizure  
of Assets**

Where possible, prior to restraint or seizure, assets should be valued and analyzed with a view to anticipating the costs and means required for their future management and so that the competent authority may determine the appropriate preventive measure. This should be done according to the criteria of reasonableness, discretion, and objectivity.

The relevant authority should not be obliged to seize any identified asset, but should have sufficient discretionary power to determine which assets to seize, as well as to establish different mechanisms to limit the number of assets, thus preventing their transfer.

- 1) Is there coordination between the competent authority tasked with asset seizure and the specialized agency responsible for administering seized and forfeited assets?

A) Yes	
B) No	
C) Occasionally	

- 2) Do the competent authorities engage in any pre-planning regarding the administration of assets subject to seizure?

A) Yes	
B) No	
C) Occasionally	



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- 3) Do prosecutors engage in any pre-planning with the specialized asset management agency regarding the possible administration of assets to be seized?

A) Yes	
B) No	
C) Occasionally	

- 4) Do the competent authorities engage in any pre-planning regarding precautionary measures that may be requested in connection assets subject to seizure?

A) Yes	
B) No	
C) Occasionally	

- 5) Are asset restraint, attachment, or freezing orders efficiently and effectively communicated to the appropriate asset registries?

A) Yes	
B) No	
C) Occasionally	

- 6) Are there effective procedures in place in your country governing the seizure and freezing of financial assets?

A) Yes	
B) No	
C) Occasionally	



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- 7) Are other precautionary measures occasionally adopted as a result of strategy or planning—e.g., asset freezing, advanced sale, or others—designed to avoid unnecessary asset administration costs?

A) Yes	
B) No	

**RECOMMENDATION 4**  
**Asset Forfeiture**

States should endeavor to seize assets that have economic value and for which the asset administration agency can be responsible for care, custody, management, preservation, and disposal. Therefore, experts should appraise assets in order to determine their market value.

To avoid storage, maintenance, and custody of assets of small value, some states use minimum value thresholds for determining whether to pursue forfeiture, subject to appropriate exceptions allowing for seizure of low or negative value assets in the public interest.

- 1) Does your country make a distinction between assets that constitute elements of evidentiary value and those of economic interest that require administration?

A) Yes	
B) No	
C) Occasionally	



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2) Are low or negative value assets routinely seized?

A) Yes	
B) No	
C) Occasionally	

3) Does the competent authority responsible for ordering the seizure of assets rely on protocols and clear criteria governing the disposal of assets subject to precautionary measures?

A) Yes	
B) No	
C) Occasionally	

4) In your country, are seized assets subject to expert appraisal or market value assessment?

D) Yes	
E) No	
F) Occasionally	

5) Do you use minimum value thresholds for determining whether to pursue the seizure of assets or goods?

A) Yes	
B) No	
C) Occasionally	



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#### RECOMMENDATION 5

##### Agency Specialized in Asset Management

Each state should establish or enhance the competence of its specialized agency responsible for receipt, identification, inventory, management, maintenance, preservation, and custody of seized or forfeited assets, involved in illicit activities that generate large profits.

The agency's purpose is to ensure transparency in the management and administration of seized assets. Consequently, the specialized asset management agency should have professional and highly qualified personnel to perform its specific tasks, such as lawyers, business managers, accountants, appraisers, mechanics, computer engineers, and inspectors. The agency should also have means to hire outside services in order to fulfill its mission.

Once the process is finalized, the agency should be responsible for managing the liquidation of forfeited assets through sale or auction.

The distribution of proceeds from seized assets and money should be carried out according to national law.

- 1) Does your country have an agency that is responsible for the custody of evidence in criminal or forfeiture proceedings?

A) Yes	
B) No	

- 2) Is this agency independent of the specialized agency responsible for managing assets of economic interest seized in connection with drug trafficking, money laundering, or organized crime investigations?

A) Yes	
B) No	



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- 3) Does your country have a specialized national agency responsible for the receipt, identification, inventory, management, maintenance, preservation, and custody of seized or forfeited assets derived from organized crime, drug trafficking, or money laundering?

A) Yes	
B) No	

- 4) If yes, what is the nature of this agency?

A) Administrative	
B) Judicial	
C) Police	
D) Other	

- 5) Does this agency have legal personality to manage its resources and assets?

A) Yes	
B) No	

- 6) Does this agency have legal standing to carry out actions or enter into contracts in connection with seized or forfeited assets?

A) Yes	
B) No	





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- 7) Does this agency have highly qualified technical and professional personnel responsible for the management and administration of seized and forfeited assets?

A) Yes	
B) No	

- 8) The asset management role of this specialized agency is NOT limited to custody-related activities, but also includes generating financial returns on productive assets.

A) True	
B) False	

- 9) Is this same agency in charge of selling and auctioning forfeited assets?

A) Yes	
B) No	

- 10) How would you rate the management of seized and forfeited assets in your country?

A) Very good	
B) Good	
C) Satisfactory	
D) Unsatisfactory	
E) Substandard	



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**RECOMMENDATION 6**  
**Engaging of Specialized Third  
Parties**

Seized assets should be turned over to a central and specialized management agency under a legal provision that stipulates the legal responsibilities for their management and custody. This provision should prohibit such assets from being modified, altered, or disposed of, with the exception of assets that are perishable or whose advanced sale is warranted to prevent their deterioration, loss, or destruction.

The appointment of custodians or administrators should be the exception to the general rule. Where such outside managers are appointed, they should be supervised by the specialized asset management agency and should submit regular reports on the supervision, maintenance, and custody of assets.

- 1) Does the specialized agency tasked with administering seized and forfeited assets have legal standing to recruit specialized third parties to manage certain types of assets?

A) Yes	
B) No	

- 2) Does your country have clear regulations and procedures in place to govern the recruitment of specialized third parties?

A) Yes	
B) No	

- 3) Are the financial returns obtained from seized assets used to engage the services of specialized third parties?

A) Yes	
B) No	



**RECOMMENDATION 7**  
**System for Registering**  
**Seized and Forfeited Assets**

States should consider using software applications to maintain a registry of seized and forfeited assets, sometimes called asset management systems (AMS). This technological tool will be used to record income, transfers, judicial proceedings, legal situation, identification of objects, and the location of each asset in custody, in order to permit quick verification of its current status.

An AMS will also facilitate the generation of reports on the amount of real estate and personal property, as well as the preparation of statistics on seized and forfeited assets, accountability, management costs, and financial statements.

An AMS also promotes transparency and good governance in the administration of seized and forfeited assets, because the data recorded in the system will be subject to public scrutiny.

- 1) Does your country have a software application designed to maintain a registry of seized assets that records data on income, transfers, judicial proceedings, legal situation, identification of objects, and the location of each asset in custody, in order to permit quick verification of its current status?

A) Yes	
B) No	

- 2) If yes, is this software application centralized in a single specialized agency?

A) Yes	
B) No	



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3) Does this software application provide for accounting control of productive assets?

A) Yes	
B) No	

#### RECOMMENDATION 8

##### Seized Money and Asset Fund

The specialized asset management agency should maintain a single and centralized fund of seized money—preferably within public financial entities—into which all competent judicial authorities deposit seized cash, as well as the proceeds of liquidated assets, when authorized by domestic legislation. Exceptions should be permitted for evidentiary purposes.

In any case, whenever the competent judicial authority orders the return of the money, accrued interest should be included where applicable.

1) Does your country have a centralized fund into which forfeited money is deposited that is managed by the specialized agency responsible for administering assets derived from organized crime or other crimes that generate large profits?<sup>5</sup>

A) Yes	
B) No	

<sup>5</sup> Crimes associated with drug trafficking, money laundering, financing of terrorism, organized crime, and others.



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- 2) Does your country's legislation provide for safe investments using seized money in search of financial returns?

A) Yes	
B) No	

- 3) Is accrued interest on seized assets used to cover asset administration expenses?

A) Yes	
B) No	



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#### RECOMMENDATION 9

#### Forfeited Money and Assets Fund

The specialized asset management agency should maintain a single and centralized fund of forfeited money, preferably within public financial entities. This fund would aim to manage the resources obtained through judicial rulings or final resolutions indicating the regime under which seized assets should be managed. Additionally, profits obtained as a result of an auction or transfer of forfeited assets will become part of said fund.

- 1) Does your country have a central account, managed by the agency specializing in the administration of assets derived from organized crime,<sup>6</sup> into which forfeited money is deposited?

A) Yes	
B) No	

- 2) Does your country's legislation allow for safe investments using forfeited money in search of financial returns, provided such returns are distributed in accordance with the law?

A) Yes	
B) No	

- 3) Is accrued interest on forfeited money used to cover asset administration expenses?

<sup>6</sup> Crimes associated with drug trafficking, money laundering, financing of terrorism, organized crime, and others that generate large profits.



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A) Yes	
B) No	

4) Does the specialized asset management agency receive any forfeited money?

A) Yes	
B) No	

5) Are the proceeds from the auction, sale, or transfer of forfeited assets deposited to the aforementioned centralized fund for use subsequently?

A) Yes	
B) No	



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#### RECOMMENDATION 10

##### Resources Appropriated for Asset Maintenance

Funds allocated to the forfeited money and assets fund should be used as an alternative funding source to administrate seized assets, as well as those derived from interest, savings, or income of those companies or businesses that have been seized. These resources could also be used to cover the maintenance costs of said assets or others that may be seized.

The Specialized Asset Management Units (AMUs) should be adequately financed to ensure that they have the ability to properly carry out their functions. National legislation should anticipate the need for external financing, at least in the first years of operation, in order to sustain the asset management program. After said program is in operation, it is expected to be self-sufficient. As such, it is desirable that the legislation ensures that some of the forfeited assets are to be used to further support the asset forfeiture program and the functions of the AMUs.<sup>7</sup>

1) Does the specialized asset management agency have its own budget to administer seized assets?

A) Yes	
B) No	

2) Is accrued interest on the seized money and assets fund used to maintain seized assets?

<sup>7</sup> Some countries have adopted different approaches in assigning resources for maintaining these assets. Such approaches include a) providing an autonomous budget to the entity responsible for managing the assets, at least until the asset forfeiture funds are self-sufficient; b) using a percentage of the interests generated from seized cash c) designating a percentage of funds from forfeited assets; d) deducting or collecting from the owner and/or lawful third party at the time to order their return for the expenses in managing and keeping custody of the seized assets; e) when the seized assets are profitable through their own budget; f) and through different provisional preventive measures, such as the immobilization, freezing, or entry registration in a real estate registry.





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A) Yes	
B) No	

- 3) Does your country allow for the use of resources in its forfeited money and assets fund to invest in financial products, with a view to using the accrued interest on such investments to maintain seized assets?

A) Yes	
B) No	

- 4) Are the savings and income of seized and forfeited businesses used to maintain these or other seized assets?

A) Yes	
B) No	

- 5) Is your country's asset administration program self-sufficient?

A) Yes	
B) No	

- 6) If yes, how would you rate the program's performance in terms of maintaining seized assets?



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A) Very good	
B) Good	
C) Satisfactory	
D) Unsatisfactory	
E) Substandard	

7) Does the program's asset maintenance fund have sufficient resources to maintain seized assets?

A) Yes	
B) No	



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#### RECOMMENDATION 11

##### Existence of Controls

States should ensure strict controls over management of seized or forfeited assets, in application of transparent public administration principles.

There must be a clear division of tasks to ensure that no person has exclusive authority over management of the assets, and actions involving the assets should be supervised by a higher authority. To this end, an internal or external audit should be carried out, as applicable, at least once a year.

No person officially responsible for the seizure of assets should receive a personal financial reward in connection with the value of a seizure, nor should funds from any mechanism for the administration of seized assets be used for personal purposes.

Some states may wish to require that a committee rather than an individual make decisions on alienation, lease, management, and end use of forfeited assets.

- 1) Does the specialized asset management agency have a committee presided by representatives of related organizations to manage and dispose of forfeited assets?

A) Yes	
B) No	

- 2) Does this committee make important decisions concerning asset administration or disposal?

A) Yes	
B) No	



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- 3) Is there a clear division of tasks so as to ensure that no person exercises exclusive authority or control with respect to the administration of the assets?

A) Yes	
B) No	

- 4) Is there an institution, unit, or department that regularly oversees the administration of seized money and assets?

A) Yes	
B) No	

- 5) Is there an institution, unit, or department that regularly oversees the final disposal of forfeited money and assets?

A) Yes	
B) No	



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- 6) Is this entity—or entities—subject to regular internal or external audits regarding the administration of seized and forfeited money and assets?

A) Yes	
B) No	

#### RECOMMENDATION 12

##### Pre-sale of Assets

Under its domestic law, each state may adopt legislation enabling the specialized asset management agency to sell or auction seized perishable or livestock assets prior to a judicial ruling or final resolution.

Legal authorization should be made through the competent authority and rely on the idea of preserving the value of assets whether forfeited or ultimately released by preventing deterioration of seized assets during the criminal proceeding or the significant loss of their commercial value due to depreciation, risk of loss or destruction, or as a consequence of their excessive or costly administration.

In such cases, the proceeds of the sale or auction should be deposited in the seized money and assets fund until such time as the competent authority orders their return or forfeiture.

- 1) Does your country have regulatory discretion to sell or auction seized assets before a judicial ruling is issued?

A) Yes	
B) No	



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- 2) Is the advance sale of an asset based solely on whether it is subject to deterioration or is costly to maintain?

A) Yes	
B) No	

- 3) Is the advance sale of an asset based on preserving its value with a view to preventing the deterioration or destruction of assets seized during the judicial proceedings?

A) Yes	
B) No	

- 4) Is the advance sale of an asset an administrative decision made by the specialized asset management agency?

A) Yes	
B) No	

- 5) Is authorization from the relevant judge required before an advance sale can take place?

A) Yes	
B) No	



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- 6) Are the proceeds from the sale or auction of assets retained until the appropriate stage of the proceedings?

A) Yes	
B) No	

- 7) Can a third party or owner contest a decision to liquidate an asset in cases where legislation provides for the advance sale of assets whose maintenance costs are excessive or onerous?

A) Yes	
B) No	



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### RECOMMENDATION 13

#### Forfeiture for Abandonment of Assets

States should establish clear legal procedures to order forfeiture if, after appropriate notice, a person fails to claim the assets within the time period to protect his interest in the property.

The competent authority may issue a final decision ordering definitive forfeiture when:

- a) If after a reasonable period of time from the seizure of the asset, it has not been possible to identify its owner or the author or perpetrator of the act, or that person has abandoned the asset.
- b) If after a reasonable period of time following the close of the criminal proceeding persons who might have a legitimate legal interest in the asset have made no effort to claim it.

In either case, due process of law should be followed to guarantee the rights of any interested party during the proceedings.

- 1) Does your country's legislation provide for definitive forfeiture if, after appropriate notice, a person fails to claim the asset within the time period to protect his interest in the property?

A) Yes	
B) No	





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- 2) Does your country's legislation provide for the forfeiture of assets or money if, after a reasonable period of time from the seizure of the asset, it has not been possible to identify its owner or the author or perpetrator of the act?

A) Yes	
B) No	

- 3) Does your country's legislation provide for the forfeiture of assets or money on grounds of abandonment (discovery) if, after a reasonable period of time, no one has come forward during the proceeding to claim them?

A) Yes	
B) No	

- 4) Does your country's legislation provide for the forfeiture of assets and money if, after a reasonable period of time, the person declared to be in default or absent during the proceeding has failed to come forward?

A) Yes	
B) No	



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- 5) Does your country's legislation provide for the forfeiture of assets and money if, after a reasonable period of time following the order of their return, the person has failed to come forward to claim them?

A) Yes	
B) No	

#### RECOMMENDATION 14

#### Asset Forfeiture as Incidental Consequence of the Crime

States may wish to consider establishing procedures for the forfeiture of property in the absence of a conviction where there is sufficient proof to demonstrate that the assets are proceeds of or involved in an illegal activity.

Some legislation has replaced the traditional definition of forfeiture as an additional penalty of the offense with the concept of forfeiture as a legal consequence of the act, which permits forfeiture of assets that have been proved to be proceeds or instrumentalities of criminal activities.

This being the case, the forfeiture of assets as an incidental consequence of a criminal activity should be maintained through the following parameters:

- Forfeiture cannot be ordered when the assets, goods, or instruments are the property of a bona fide third party not responsible of the crime as set forth under Article 7 of the CICAD/OAS Model Regulations.
- The assets should be identified and individualized in a precise manner in the charge as proceeds or instrumentalities of criminal activity.
- The illicit origin or relationship of the asset to the criminal activity should be demonstrated by means of an asset investigation.



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A forfeiture order should only be issued by a competent judicial authority at the request of the Office of the Attorney General (*Ministerio Público*) or by the prosecuting authority.

Additionally, some states have adopted procedures based upon *in rem* jurisdiction (civil forfeiture) to adjudicate property rights in favor of the state, while others may wish to adopt procedures to extinguish individual ownership interests due to its origin as proceeds of or use as an instrumentality in a crime.

- 1) Does your country's legislation address the establishment of procedures for the forfeiture of property in the absence of a conviction, provided there is sufficient proof to demonstrate that the assets are the proceeds or instrumentalities of criminal activities?

A) Yes	
B) No	

- 2) In the event of the death of the accused, can orders be issued for the seizure of assets when there is sufficient proof to demonstrate that the assets are the proceeds of a criminal activity?

A) Yes	
B) No	



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#### RECOMMENDATION 15

##### Provisional Use of Seized Assets

When seized assets cannot be reasonably preserved under the same conditions as when they were seized without being used by the state or their administration would be excessively onerous, the best practice is advanced liquidation, if permitted under domestic law.

Some states, as set forth in Article 7 paragraph 6 of the CICAD/OAS Model Regulations, have adopted certain procedures that permit the provisional use of seized assets, which is authorized in exceptional circumstances and under strict conditions, when established by the domestic legislation.<sup>8</sup>

Other states believe that the provisional use of seized assets jeopardizes the integrity of the forfeiture system because it makes it more vulnerable to corruption and abuse, subjecting it to public criticism. Additionally, such use could be incompatible with fundamental rights, such as due process of law.

Under no circumstances should the personal use for private reasons of an asset be authorized.

1) Does your country's legislation permit the use of seized assets?

A) Yes	
B) No	

<sup>8</sup> These conditions should include, in addition to those set forth in Article 7(6) of the CICAD/OAS Model Regulations, the contracting of insurance as necessary.



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- 2) Does your country's specialized asset management agency assume control of preventively seized assets?

A) Yes	
B) No	

- 3) Does your country have inter-institutional framework cooperation agreements in place for the use of seized assets (commodatum agreements) that stipulate the rights and duties of the parties with respect to the use of seized assets?

A) Yes	
B) No	

- 4) Does your country's specialized asset management agency provide oversight with respect to the appropriate use of assets allocated for provisional use?

A) Yes	
B) No	



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5) Is the system governing the provisional use of assets in your country vulnerable to corruption and abuse?

A) Yes	
B) No	

**RECOMMENDATION 16**

**Waiver or Suspension of Tax  
Charges**

When assets are seized, states may consider provisional suspension or exemption from taxation, including taxes, revenue stamps, or any contribution from the time of seizure. The assets should be considered covered under the principle of tax immunity, because in the case of assets seized and pending criminal proceedings, the state is managing property it does not own.

States should not be liable for tax obligations incurred on assets prior to their seizure.<sup>9</sup>

1) Does your country suspend the tax burden (taxes, duties, or any other type of contribution) on seized assets upon assuming responsibility for their custody and administration?

A) Yes	
B) No	

<sup>9</sup> In the experience of some asset management units, unpaid taxes can be equal to or greater than the value of the assets, rendering them unproductive even if they are still in good condition.



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- 2) In the event productive assets are seized, are they used to generate revenue to pay taxes, duties, or any other type of contribution on said assets?

A) Yes	
B) No	

- 3) Should countries assume responsibility for the payment of tax obligations incurred on assets prior to their seizure?

A) Yes	
B) No	

- 4) Are the taxes incurred on forfeited assets waived for purposes of their sale or public auction?

A) Yes	
B) No	



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#### Recommendation 17

#### Recruitment Processes

The specialized asset management agency should have adequate contracting authority to appropriately and expeditiously administer external services whenever the nature of the asset is beyond the scope of its capacity or expertise.

In order to do this, the agency could rely on expedited mechanisms for recruitment, when authorized by the state agency in charge of its supervision.

This is intended to allow more flexible and expeditious contracting in order to acquire an asset or service while protecting, maintaining, and safeguarding seized and forfeited assets.

The purpose of the foregoing is to guarantee that seized assets continue to be productive and prevent the activities associated with their maintenance and custody from generating expenditures for the public budget. Likewise, the specialized asset management agency should enter into contracts for asset leasing, administration, and related areas.

- 1) With respect to the administration of seized and forfeited assets, is it possible for your country to enter into contracts governed by the provisions of the Civil Code and the Commercial Code?

A) Yes	
B) No	





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- 2) Does your country's specialized asset management agency have adequate contracting authority to appropriately and expeditiously administer external services when the nature of the asset is beyond the scope of its capacity or expertise?

A) Yes	
B) No	

- 3) Does your country's specialized agency for managing seized and forfeited assets have transparent recruitment regulations or procedures in place to provide greater flexibility and improve the time it takes to contract a good or service for these assets?

A) Yes	
B) No	



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#### RECOMMENDATION 18

##### Bona Fide Third Parties

States should establish procedures for the notification of bona fide third parties so that they may appear before the competent judicial authority in a timely manner to contest the liquidation of assets. Such procedures should include adequate advance notice, subject to appropriate exceptions for perishable and rapidly depreciating assets or assets with costly maintenance.

- 1) Does your country's legislation provide for the notification of bona fide third parties with a view to their timely participation in proceedings?

A) Yes	
B) No	

- 2) With respect to asset investigations, are potential bona fide third parties taken into account, such as banks and finance companies that may have a claim in the form of a lien or mortgage on a seized asset?

A) Yes	
B) No	



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- 3) Do investigation procedures provide for the identification of straw parties who aim to conceal the effects or instruments of the crime to avoid its confiscation—and differentiate them from those bona fide third parties who cannot be prosecuted as authors or accomplices to the crime?

A) Yes	
B) No	

#### RECOMMENDATION 19

#### Liens and Mortgages

It is recommended that when a seized asset is the subject of a lien or foreclosure proceeding in favor of a bona fide third party, the specialized asset management agency or competent authority may appear before the civil proceedings and request the necessary measures or agreements to facilitate the claims of bona fide third parties.

In this regard, payment for liens and mortgages may be made to bona fide third parties, including in the following circumstances:

- When forfeiture of the asset is ordered, the state may pay the borrower or mortgagee creditor the amount owed to remove the respective liens through the corresponding regulation.
- When the asset remains seized, the asset management agency, in application of the principle of sound resource management, may pay the amount due the bona fide creditors, provided that there is likelihood that the asset will be forfeited at the end of the proceeding.
- When anticipated auction or disposal of assets subject to deterioration or costly maintenance is ordered.

In any case, if the judicial authority orders return, the specialized asset management agency may exercise its right to retain the asset until either the sum paid by that agency is reimbursed or the subrogated right is executed.



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- 1) Does your country's specialized asset management agency take steps to identify potential liens or mortgages on the assets it manages?

A) Yes	
B) No	

- 2) Does your country's specialized asset management agency have standing to appear in civil court lien or foreclosure collections proceedings on a seized asset?

A) Yes	
B) No	

- 3) Does your country's legislation allow for the suspension of civil collections proceedings involving assets seized in a criminal proceeding?

A) Yes	
B) No	



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- 4) Does your country's legislation provide for the cancellation of liens and mortgages on seized assets?

A) Yes	
B) No	

#### RECOMMENDATION 20

##### Destination of Forfeited Assets

Through the specialized asset management agency, the member states should consider adopting regulations or legislation allowing for forfeited assets to be:

- Maintained to carry out their objectives.
- Disposed of in accordance with Article 11 of the CICAD/OAS Model Regulations.
- Put up for public auction or sale according to the parameters defined herein.
- Shared with other countries where joint operations are conducted, in accordance with the principles that govern international legal cooperation or through the application of bilateral or multilateral agreements.

Securities, cash, and proceeds from publicly auctioned or sold assets that have been forfeited should be:

- Partially allocated to support and maintain the asset management program.
- Where appropriate, used to compensate victims of the crime that gave rise to the forfeiture of the particular asset.
- In accordance with its national legal system, destined for strengthening the agencies responsible for the prevention of crime; the control of drugs and their use; the fight against organized crime, money laundering, and the



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financing of terrorism; and, where permitted by national legislation, allocate a percentage thereof to finance projects of the international organizations in these areas.

- d) Shared with other countries in the context of joint operations, in accordance with the principles governing international legal cooperation or through bilateral or multilateral agreements.

Decisions regarding the disposal of forfeited assets or money should be made transparently and with appropriate oversight and accountability.

- 1) Is a portion of the proceeds of these assets used to support and maintain your country's asset management program?

A) Yes	
B) No	

- 2) Is a portion of the proceeds of these assets used to strengthen your country's law enforcement agencies?

A) Yes	
B) No	



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- 3) Is a portion of the proceeds of these assets used to support projects that address drug prevention and treatment and/or the problem of gangs?

A) Yes	
B) No	

- 4) Could your country allocate a percentage of such proceeds to finance projects of the international organizations in the areas of drug trafficking, asset laundering, organized crime, or the financing of terrorism?

A) Yes	
B) No	



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#### RECOMMENDATION 21

#### International Cooperation

International cooperation may be necessary for the identification and administration of assets located abroad.

The requests of foreign governments for the administration of seized assets should be treated according to the principles governing international legal cooperation, or through the implementation of bilateral or multilateral agreements.

Pre-seizure planning and coordination through formal mechanisms or informal networks may be particularly important with a view to ensuring the timely identification and administration of assets located abroad.

- 1) Does your country have any international cooperation mechanisms for information sharing in place to track, locate, and identify assets and money abroad?

A) Yes	
B) No	

- 2) Does your country have any international legal assistance mechanisms in place to request the attachment, freezing, or seizure of assets and money abroad?

A) Yes	
B) No	





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3) Is your country able to administer assets at the petition of a requesting state?

A) Yes	
B) No	

4) Does your country have agreements in place to facilitate the sharing of forfeited assets or money with the authorities of countries that participate in joint operations?

A) Yes	
B) No	

5) Does your country participate in an international asset recovery network for the purpose of sharing information to track and identify assets and money in your country?

A) Yes	
B) No	