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GUIDE TO THE METHODOLOGY OF ASSET INVESTIGATION

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1. BACKGROUND

In recent years “asset investigation” has become an important tool in inquiries conducted in connection with various forms or degrees of organized crime.

“Asset investigation” is a recurring theme in statements made by various international organizations, and in the plans and objectives established for the criminal investigation agencies (OIC) and the financial intelligence units of the various countries.

Briefly stated, this expression is generally associated with the investigation process that will enable a State to seize assets (confiscation) that criminals may have obtained through the commission of some crime. This type of investigation is a chain of events in which the illegally obtained goods are identified, traced, temporarily secured (frozen) and finally confiscated by the State.¹

The foregoing notwithstanding, although this is the general idea, the various agencies involved in the system to prevent and prosecute the crime of money laundering, among them Financial Intelligence Units, police, and prosecutors, may bring their own approach, objectives and structure to this type of investigation, which only complicates the dialogue they should be having and makes it all the more difficult.

Accordingly, the Group of Experts came up with a proposal, which CICAD then approved, to develop a concept and a methodology for this type of investigation, all for the sake of a more standardized approach.

To prepare this guide, a model survey was circulated among the various delegations so that they might provide background information on what they believe this type of investigation involves and what steps such investigations generally follow. The results of the survey confirmed the group’s concerns, as the ideas about these investigations were very dissimilar and thus merely corroborated the need to achieve at least a modest degree of standardization that would enable those involved in asset investigation to speak the same language.

The results of the survey, disaggregated by country, were tabulated by the Executive Secretariat and made available to the various countries at the Experts Group’s website.

1. *In fact, in a number of international conventions on these subjects (Palermo/2000) this investigation technique tends to be highlighted, emphasizing that if properly applied, it will enable identification of the proceeds of crime, whereupon action can be taken against the property with a view to in rem forfeiture. Asset investigation is the first step in a chain of events whose final purpose is that the proceeds of crime should become the property of the State.*

2- CONCEPT

i. General observations

As previously noted, the replies on this point were similar in some respects, but very dissimilar in others. Therefore, the work focused on any common denominators there might be, with the idea of building a concept that all the countries could use without difficulty.²

Conceptually speaking, the purpose of this investigation technique is to prove or establish a connection between persons and tangible assets or rights on intangible assets, in order to be able to answer either of two questions: to whom does this tangible asset or right on an intangible asset belong, or what tangible assets or rights on intangible assets does this person have? This takes us to our first common denominator, which is that investigations of this type can target either the asset or the persons; in other words, it may find that a given asset is the property of a certain natural person or legal entity, or it may find that a person (natural or legal) has among his/her/ property a certain number of assets.

Investigations of this type are routinely retrospective, as it is very difficult to establish possible connections between assets and persons if those connections have not yet materialized.³

Furthermore, these are qualitative investigations as they are specifically based on a particular case and involve an in-depth examination of whatever records or other background information either establish or disprove the connection between a person and a tangible asset or right.

Lastly, other characteristics frequently mentioned are the fact that such investigations are very document intensive⁴ and often rely on the principles and

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2. *One has to bear in mind that some countries have their own definitions of the expression 'asset investigation', which obviously complicates the chances of standardization.*
 3. As a rule, the connections between persons and assets that materialize in the future will be approached as a right to an intangible asset (an option to buy, for example), which may also be part of the assets; the value of those rights will normally depend on the probability of their materializing.
 4. "Financial investigations are by their nature very document intensive. Specifically, they involve records, like bank account information and real estate files, which point to the movement of money. Any record that pertains to, or shows the paper trail of events involving money is important. The major goal in a financial investigation is to identify and document the movement of money during the course of a crime. The link between where the money comes from, who gets it, when it is received and where it is stored or deposited, can provide proof of

rules of heuristic analysis.⁵ As a result, it is common practice to look for mechanisms or applications that enable one to organize the large amount of information compiled and then convey it using some visually attractive means.

ii. Identification of common denominators

The following common denominators were identified based on the replies received from the various delegations:

- a. Investigation technique. A number of delegations underscored the point that asset investigation is an investigation technique that can be used by any financial intelligence unit or criminal investigation agency. This idea is an important one, as it goes squarely to the need to have a methodology. If the process is understood as an investigation technique, then one has to determine what the minimum stages or phases are that have to be completed to arrive at the proposed objectives.

Furthermore, from the practical standpoint, the investigation technique is a useful one, as it enables FIU or OIC personnel to verify their findings using objective parameters and methods, free of any prejudice or bias. Regarding the process as a technique tends to elevate the sense of professionalism brought to the task at hand and produces more reliable indicators of the certainty of the findings.

- b. Analysis of information. This investigation technique involves any analyses that can be done of various pieces of information obtained from different pre-determined sources. An important consideration here is that each country has to do its own internal review of the sources that supply relevant asset-related information and that help establish the connection between the assets and persons.

Once all the sources that supply relevant information have been identified, they should be classified and the reliability of the information they are providing assessed. Here, preference should be assigned to sources that are institutions in charge of public records where certain information may be on file.

Once the relevant sources of information have been classified by type of asset (movable/immovable property, tangible/intangible) or person

criminal activity.” [http://www.irs.gov/uac/Narcotics-Related-Financial-Investigations-Criminal-Investigation-\(CI\)](http://www.irs.gov/uac/Narcotics-Related-Financial-Investigations-Criminal-Investigation-(CI)) <http://www.irs.gov/compliance/enforcement/article/0,,id=107515,00.html>.

5. Examples of principles of heuristic analysis are analogy and reduction. As for rules, analytical visuals can be used (tables, flow charts, graphs, diagrams) and numbers can be used instead of data, etc.

(natural/legal), the persons doing the analysis may use those sources that are essential to the ends being sought, which in turn makes them more efficient in the amount of resources used in the investigative process.

- c. Asset investigation involves a chain of events. Many delegations made the point that asset investigation is a process or the culmination of activities that establish a link between persons and assets. While, as previously noted, these investigations are document intensive, other activities are also required to confirm the findings.
- d. Identification of assets having some economic value. Here, most delegations stressed the importance of efficiency in the search for assets. Although in the abstract the ideal would be to identify any and all connections between persons and assets that an investigation can uncover, in practice the only relevant connections are those between a person and assets having some financial value.

This does not mean that the other connections (those that do not have any financial value) don't matter, since often those other connections lead to an element of some crime; however, they will not be germane to the purpose of an asset investigation, which is to identify assets to be forfeited to the State, while also breaking up the criminal organizations that own those assets.

- e. An asset investigation focuses on a certain time frame. As a general rule, an asset investigation is directly related to the objectives of the criminal investigation or the process of *in rem* forfeiture. Therefore, the asset investigation will always be focused on a certain time frame, which will be short or long depending on the ends being sought.

Here, some contend that the further removed that time frame is from the present, the more unlikely it is that the connection between the asset and the person can be reliably established; even if a connection is established, tying it in with the investigation in progress is more complicated.

- f. One objective of asset investigation is to establish the subject's asset situation and environment. This point was one of those most frequently mentioned in the delegations' replies, and concerns the need to expand the investigation or to make the target of the investigation a specific subject and his/her family members.
- g. It is a cross-cutting investigation. Although such investigations tend to be associated with certain types of criminal behavior (drugs/money laundering/corruption), they can serve multiple purposes. Asset

investigations are common in cases involving certain crimes of violence, since they can be helpful in establishing motive or *modus operandi*.

A pre-established method for conducting investigations of this type means that the method can be adapted and used for any type of criminal investigation.

iii. Concept

Given the foregoing, an asset investigation will be defined as “an investigation technique used by the various Criminal Investigation Agencies and Financial Intelligence Units; through a process of analysis, asset investigation enables them to compare and contrast records and other information obtained from various sources with a view to establishing a connection between a person and certain assets, while also identifying the goods, properties and rights that comprise those assets.”

3 APPLICABLE METHODOLOGY

In the international sphere, one finds different methods used to organize an asset or financial investigation, some of which have been developed by police or special prosecutors' offices, financial audit institutions or Financial Intelligence Units. They are more or less standard with respect to the phases or stages that this type of investigation must involve (a determination of the target of the investigation/a review of available sources of information/compilation of records and other information/analysis/a findings report) and with respect to the purpose they seek to achieve.

That having been said, upon closer scrutiny one finds that these models are different in the approach they take, as evidenced by the emphasis that each model places on the various stages of an asset investigation. Thus, models developed by police and prosecutors generally tend to focus on the stages that involve the various sources of information available, how the information was obtained, and how to make a judgment as to whether ownership of a given asset can be attributed to a particular subject. On the other hand, the models developed by financial auditing agencies or Financial Intelligence Units emphasize the stage during which the information is analyzed, to look for the type of conclusions that can be drawn from the information available.

The structure proposed below draws on the two models described above, but adds other stages that are based on the delegations' answers to the survey, such as

the stage involving confirmation of findings by field investigative work; in other words, the structure herein proposed does not end with the findings arrived at by analyzing the documents; instead, it goes on to corroborate those findings by means of certain operations and inquiries.

i. First phase. Establishing the target of the asset investigation

This first stage is vital as it sets the course for the entire investigation.

a. Person/property or rights

As noted above, a determination has to be made as to whether the investigation will be approached from the angle of the identified targets or from the angle of the property or rights. If the investigation is from the angle of persons, then it must begin by establishing the universe of persons under investigation and the extent to which the direct family group will be investigated. This means that a determination must be made beforehand as to what degree of kinship the investigation will pursue (in most models, in investigations into money laundering it is recommended that the investigation go up to the fourth degree of consanguinity).

The case is more complex when the investigation begins from the angle of a legal person, since a determination will have to be made as to whether the investigation will be limited to just the legal person or include partners as well. Opting to include partners will likely expand the investigation, since many businesses are parts of or are owned by other businesses, and tackling all the corporations and partners in the chain will considerably complicate the investigation.⁶

If, on the other hand, the investigation is from the angle of the property or rights, the first order of business will be to determine who the current owner of the property or *titulaire* of a right is, or whether the investigation also wants to know who the previous owners or *titulaires* were, in which case the ownership history of the property will have to be traced.

b. Time frame

It is generally advisable to set a time frame that the asset investigation will cover, which should be the length of time needed to achieve the investigation's objective. Obviously, if the investigation is to uncover a given subject's every asset, no particular point in time will be selected for a starting point, since as a general rule, the other end of the investigation's time frame (the end point) will be implicit.

6. In the case of open corporations, investigating shareholders will be a difficult proposition, both because of their number and the difficulty of identifying them.

Establishing a time frame is helpful in organizing the information that will actually be relevant and enables the asset investigation to move more swiftly and efficiently.

On occasion, no time frame is set, since the idea is to trace the history of a subject's assets to find out when some unusual increase or decrease occurred.⁷

ii. Second phase. Identification and gathering of records and other information

a. Inquiry into the various sources of information

These days, sources of information tend to be classified as open sources (accessible to anyone), mixed sources (immediately accessible only to those who have a legitimate interest) and closed sources (accessible only to those legally authorized to view the information).

In asset investigation, all three types of sources are used, and the quality of the information that each source provides has to be assessed. One has to be especially mindful of how out-of-date some of the information from these sources might be. For example, some sources may provide information that is updated only every two months; depending on an investigation's time frame, investigators may have to wait until later to obtain the information they need.

Identifying relevant sources of information is critical to an efficient asset investigation. However, because the universe of sources is so broad, a careful assessment will have to be done to determine which sources will be used. Initially the temptation might be to rely only on those that provide asset-related information; even so, however, the possibilities are numerous. Hence, the ideal would be to use those sources that are germane to the objective of the investigation, which has already been established. All the while, one has to be mindful of the fact that the more sources that are used the more time will be needed to analyze them, and increasing the number of sources will not necessarily be matched by a proportional increase in the degree of certainty regarding the result one is seeking to achieve.

In other words, many times it will be much more efficient to use a smaller number of sources that provide high quality information rather than consult an entire array of sources, many of whom have no relevant information to contribute but whose information still has to be added to the pool of background information that will have to be analyzed. In the end, the effect will be counterproductive.

7. It is interesting to note that this time limit operates in both directions, forward-looking and backward-looking. For example, in investigations in which numerous financial flows are circulating, the normal thing to do would be to set a backward-looking time limit and specify that the asset investigation must include all the operations currently underway.

Finally, once the relevant sources of information have been identified, a determination will have to be made as to what type of information they will be asked to provide. Some sources have enormous databases, which makes it imperative to be precise about the type of records and other information the investigation is after.

Clarity about the information being sought will also help elicit prompt replies to the information requests. A request is likely to elicit a faster response if it is directed to the specific department (of the institution with which the request is filed) that handles the type of information being sought. Experience shows that one of the mistakes commonly made is that an application for information filed with an institution will include multiple requests that various departments of that institution will be called upon to answer. This slows down the reply, since the departments are not working on the requests simultaneously.

b. Compiling records and other information.

Here, special care must be taken to check that the information compiled is the information that was requested, in respect of time frame, or the persons or assets that the requests concern. Then, too, the information must be organized and classified in orderly fashion, as will be discussed below.

c. Records and other documentation seized

An asset investigation should also examine any records and other documentation seized. At times, this type of material is overlooked, since all the financial and economic records were obtained from various public and private institutions.

Experience shows that many records and other documents can only be found among the documentation seized, principally those that refer to powers of attorney, contracts and private deeds that are not on record with the respective notary offices. Checkbooks in which notations are entered concerning certain people have also yielded important information.

To use the records and other information obtained to maximum advantage, each one should be reviewed at least once and organized. While it is true that all records and other documents seized are part of a chain of custody, it is likely that not all the information will be relevant. Accordingly, the procedures for identifying and organizing each record or piece of information examined for the asset investigation will have to be worked out at the start of the analysis. If this point is not settled up front, in all likelihood the asset investigation will not be very efficient, since the records and other information will have to be checked again in order to identify each one.

The process whereby every record or any other piece of information is identified and organized also serves to filter out any that are not relevant to the asset investigation. Once all the records and other information have been individually identified, the information needs to be organized according to some criterion. Generally all the information pertaining to a given asset—a piece of real estate, for example—is grouped together; the property record can be located, as can the various required certificates (which vary from country to country), the contract of sale for the property record, the purchase commitment contract, the check through which payment was made, the notary's instructions, the bank account statement showing the check as paid, photographs of the property, and so on.

Then, every asset or right becomes a connection to the person in question, and forms a picture of his/her assets.

Special ways of organizing the records are sometimes requested when, for example, investigators need to see the connections between two specific persons, in which case the persons themselves will be analyzed, and then their connections to the assets will be established. The points of connection can be mapped out graphically.

d. Records requested through international cooperation

International cooperation may end up being one of the keys to solving crimes that involve transnational organized crime, since the assets are generally in a number of countries. Working through the traditional channels used to get international cooperation can be quite time consuming for an investigation.

While the formal and informal mechanisms the various countries use to share information are beginning to improve, this issue is still a topic of discussion. Our view is that the handbooks to international cooperation that LAVEX has been developing should be used so that the applications and requests are adapted to fit the requirements prescribed under the requested State's laws. This will abbreviate the response time.

Similarly, our recommendation is that in investigations of this type, one of the first requests for information that investigators should file should be for records located abroad, since the response time will be longer than it is in the case of requests made at the domestic level. Furthermore, in order to establish and clarify what the formal requirements are, a good place for investigators to start would be informal information sharing mechanisms like, for example, the Rrag (Assets Recovery Network of the GAFISUD) or other similar mechanisms.

iii. Third phase. Analysis of the information. Preparation of preliminary findings.

Asset investigation largely boils down to the process of examining and analyzing the information compiled. As previously observed, this process seeks to arrive at certain findings by analyzing the various documents. In our view, the findings that the analysis reaches should mention the specific documents consulted to arrive at a given finding. If certain technical or scientific expertise is required to develop the findings, an expert report will have to be prepared, but only with respect to the findings for which that expertise was required.

The findings of the asset investigation will be organized in respect of either certain assets or certain persons. For example, the finding may be that asset “X” has been owned by a certain group of persons, who acquired it on certain dates, that on the dates of purchase there is no record of said persons having legitimate incomes enabling them to buy the asset, and so on. If the investigation is conducted from the angle of the person, then the findings might show that subject “X” acquired a given number of assets over a certain period of time, that in that same period of time subject “X” was earning a certain amount of income from legitimate sources, that the expenditures of subject “X” over that period exceeded the amount of income coming in, and so on.

Finally, the findings have to be regarded as preliminary, since they are based on purely documentary sources. The findings might change once field investigative work is conducted. For example, it frequently happens that subjects have no investments listed in their own name, but own enormous assets acquired by using strawmen.

iv. Fourth phase. Confirmation of the findings through field investigative work

The issue here—one raised in various countries’ replies—is that the findings should not be considered conclusive unless the information obtained through documentary sources is confirmed by field investigative work. For example, reference is frequently made to cases in which the subjects give nonexistent addresses for properties, or an asset is listed on paper as having little value when in fact its value is enormous. With these considerations in mind, this phase should be added to the process of asset investigation, as it is one in which the investigation can prove or disprove the preliminary findings. Because the findings reached by examining documents can often be far from reality, it is important that the preliminary findings be confirmed by any other information available. Field investigative work can help confirm or disprove preliminary findings.

v. Fifth phase. Putting together the definitive findings.

Once the preliminary findings are checked against the facts on the ground, the definitive findings can be put together, incorporating any records and other background information that the field investigative work turned up. This is how the definitive finding is pieced together. It is important to identify the records or other information taken into consideration in arriving at a finding and the reasoning or methods used, all in order to show that they are technical in nature.