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THE IMPORTANCE OF A PARALLEL AND PROACTIVE FINANCIAL INVESTIGATION



MINISTERIO DE ECONOMÍA Y FINANZAS

The Importance of a Parallel and Proactive Financial Investigation

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CURRENT SITUATION

- **Organized crime with operative schemes based on market criteria**
- **Use of the advantages provided by the Global Economy**
- **Progressive increase in the volume of the economic benefits of certain illicit activities (drug trafficking, human trafficking, smuggling, weapons trafficking, etc.).**
- **The penalty as calculated risk, and assumed as function of the magnitude of the potential gains**

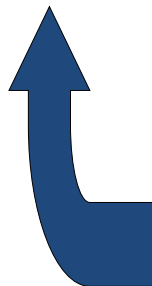
The Vicious Circle

- **Offenders**
- **Organized Crime**



Illegal Activities

(Drug Trafficking, money laundering, smuggling, traffic of weapons, procurement, corruption, etc.)



**ECONOMIC
BENEFITS**



SUBSTANTIAL FACTORS FOR THE EFFECTIVENESS OF THE SYSTEM

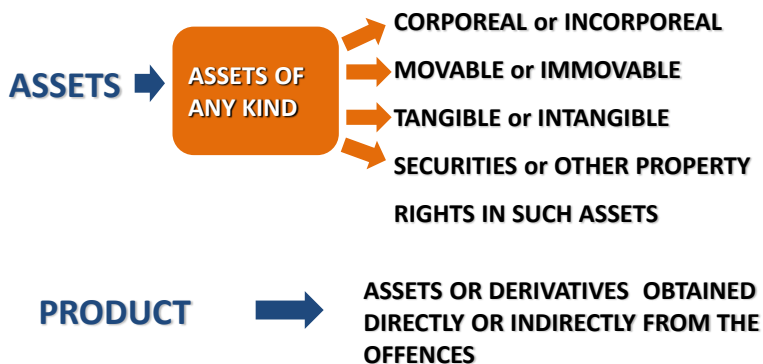
✓ **NORMATIVE.** Appropriate legal means to deprivation of the proceeds of crime (regulations on precautionary measures, confiscation, special investigative techniques, international cooperation)

✓ **OPERATIVE.** Financial Investigation developed from the beginning carried out simultaneously to the offence investigation

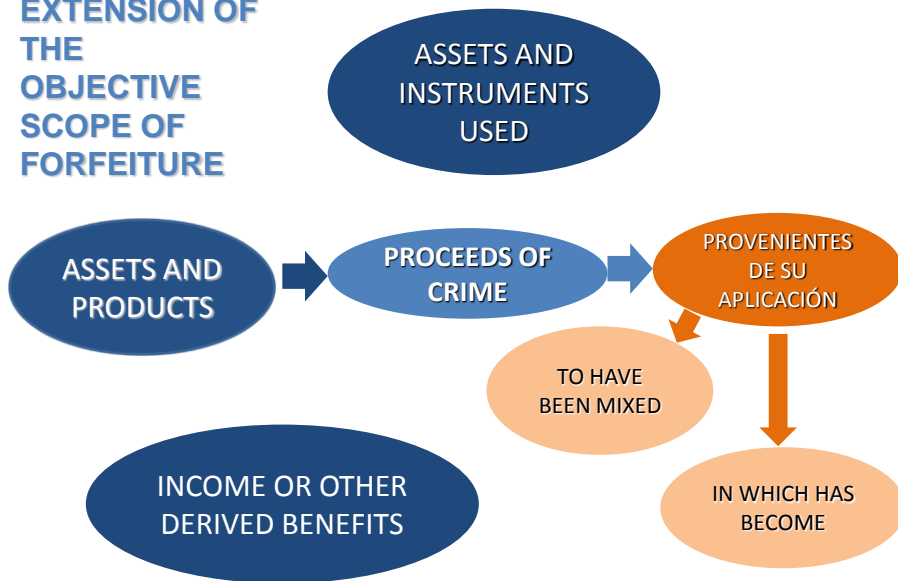
✓ **MANAGEMENT.** Seized and Forfeited assets efficiently managed.

OBJECTIVE OF THE FINANCIAL INVESTIGATION

UN Instruments (Viena, Palermo, Mérida)
RANGE OF CONCEPTS



EXTENSION OF THE OBJECTIVE SCOPE OF FORFEITURE



**THE FORFEITURE OF ASSETS, PRODUCTS
AND INSTRUMENTS OF CRIME, **IMPLIES**
NECESSARILY AND INEVITABLY THEIR:**

**IDENTIFICATION,
LOCATION,
and RECOVERY**

PORPUSE OF THE FINANCIAL INVESTIGATION

TO PROVE OR ESTABLISH A RELATIONSHIP
BETWEEN PERSONS AND ASSETS OR
PROPERTY RIGHTS

¿WHO IS THE OWNER
OF THIS ASSET OR
RIGHT?

¿WHICH ASSETS
OR RIGHTS
OWNS THIS
PERSON?

KEY ISSUES TO
BE
DETERMINED

NON
JUSTIFIED
EQUITY
INCREASE OF
THE INQUIRED

CASUAL LINK
BETWEEN THE EQUITY
INCREASE AND THE
CRIMINAL OFFENCE

INQUIRED = FINAL
BENEFICIARY

Are funds from
known sources in
line with expenses
and assets?

What is the
source of the
suspicious
funds?

How the
inquired use the
known funds or
assetss?

Exercises ultimate control over a legal person,
a trust, an investment fund, trust or any other
legal structure

Is the end owner or manager of a legal person,
or on whose behalf is performed an operation

FATF's RECOMMENDATION #30

Responsibilities of law enforcement and investigative authorities

Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations within the framework of national AML/CFT policies.

At least in all cases related to major proceeds-generating offences, these designated law enforcement authorities should develop a **pro-active parallel financial investigation** when pursuing money laundering, associated predicate offences and terrorist financing. This should include cases where the associated predicate offence occurs outside their jurisdictions.

Countries should ensure that competent authorities have responsibility for expeditiously identifying, tracing and initiating actions to freeze and seize property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime.

Countries should also make use, when necessary, of permanent or **temporary multi-disciplinary groups specialized in financial or asset investigations**. Countries should ensure that, when necessary, cooperative investigations with appropriate competent authorities in other countries take place.

FATF's RECOMMENDATION #31

Powers of law enforcement and investigative authorities

Powers of law enforcement and investigative authorities. When conducting investigations of money laundering, associated predicate offences and terrorist financing, competent authorities should be able **to obtain access** to all necessary documents and information for use in those investigations, and in prosecutions and related actions.

This should include powers to **use compulsory measures for the production of records** held by financial institutions, DNFBPs and other natural or legal persons, for the search of persons and premises, for taking witness statements, and for the seizure and obtaining of evidence..

Countries should ensure that competent authorities conducting investigations are able to use a wide range of **investigative techniques** suitable for the investigation of money laundering, associated predicate offences and terrorist financing. These investigative techniques include: undercover operations, intercepting communications, accessing computer systems and controlled delivery.

In addition, countries should have effective mechanisms in place to identify, in a timely manner, whether natural or legal persons hold or control accounts. They should also have mechanisms to ensure that competent authorities have a **process to identify assets** without prior notification to the owner.

When conducting investigations of money laundering, associated predicate offences and terrorist financing, competent authorities **should be able to ask for all relevant information held by the FIU**.

RECOMEMNDATION #30

Most relevant aspects

PRO-ACTIVE PARALLEL FINANCIAL INVESTIGATION

Recommendation #30 Interpretative Note

**A FINANCIAL INVESTIGATION IS
AN INVESTIGATION ABOUT
FINANCIAL ISSUES RELATED
WITH A CRIMINAL ACTIVITY
AIMED TO**

**Identify the
extent of criminal
networks and
scale of
criminality**

**Develop evidence
that may be used
in criminal
proceedings**

**Identify assets from crime,
terrorist funds and other
assets that may be subject
to forfeiture**

METHODOLOGY OF FINANCIAL ANALYSIS

- ✓ It should show what the subject **has, owes, earns and spends** in a given time or over a period of time
- ✓ Produces **direct** evidence of illegal income or hidden assets, or **indirect** evidence of illegal activity, showing that the expenses of the subject exceed the known sources of funds

FINANCIAL ANALYSIS



**From financial
information**

- ✓ Identify and corroborate criminal activity with which the subject has generated assets in order to

→ To Finance and
Extend illicit
activities

→ To Build
Wealth

→ Enjoy a lifestyle beyond
their logical possibilities

- ✓ Identify Assets for
Freezing and Seizing

SOURCES OF FINANCIAL INFORMATION

- ✓ Banks
- ✓ Public Registry
- ✓ Law Enforcement Agencies Data Bases
- ✓ Commercial Data Bases
- ✓ Surveillance
- ✓ Informants
- ✓ Interviews
- ✓ Search Warrants
- ✓ Electronic Surveillance
- ✓ Undercover Operations
- ✓ Trash
- ✓ Bills of long distance phone calls

**THE SOONER THE
INVESTIGATION BEGINS,
GREATER IS THE CHANCE OF
IDENTIFICATION, LOCATION
AND ASSET RECOVERY**

► It is essential to overcome the difficulties derived from the normative and cultural order of the traditional approach to criminal justice system primarily aimed at pursuing the predicate offense and the sanction of the author, with a secondary role of economic legal consequences

TRAINING

PROTOCOLS OF ACTION

Selection and
Collection of
Evidence

Safeguard
of the chain
of custody

Analysis
Methodology

etc.
etc...

FATF's RECOMMENDATION #30

Most Relevant Aspects

PRO-ACTIVE PARALLEL FINANCIAL INVESTIGATION

**Permanent or temporary MULTI-
DISCIPLINARY GROUPS
specialized in financial or asset
investigations**

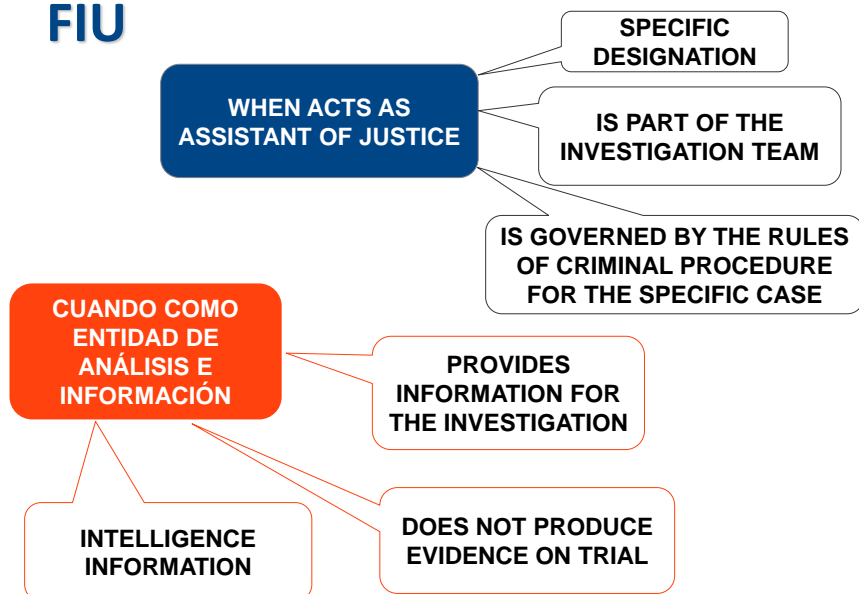
CHARACTERISTICS OF MULTI-DISCIPLINARY GROUPS

- ➔ **Units with an special organization, designed with particular specifications and assigned to a particular mission.**
- ➔ **Usually conformed by officers from different agencies.**
- ➔ **Has proven to be a very effective structure to combat complex financial crimes**

AGENCIES THAT PROVIDES TO THE MULTI-DISCIPLINARY INVESTIGATION AND ARE SOURCES OF INFORMATION

- ✓ **Financial Intelligence Unit**
- ✓ **Tax Administration**
- ✓ **Social Security Organisms (Agencies)**
- ✓ **Public Registry**
- ✓ **Customs**

FIU



TAX ADMINISTRATION AUTHORITY

It has information for individuals and legal persons:

- ✓ Registry information (names of the owners of the legal persons, tax address, personal address, ID documents, commercial turn, in some cases data about the managers, etc.)
- ✓ Links between individuals and legal persons.
- ✓ Information presented by the own tax payers (affidavits)

SOCIAL SECURITY ORGANISMS (AGENCIES)

They have information about:

- ✓ Special Features categorized as Professional Social Security: information about the employee, company or activity. It provides tax information for collecting the resources for the Social Security System.
- ✓ Special features categorized as universal: information about the individual and his family as well as his economic situation.

CUSTOMS

Can provide information about Foreign Exchange Trade operations and about people declaring moving cash through the border.

- ✓ **Embarking and disembarking.**
- ✓ **Entry, Exit and Transit of Goods.**
- ✓ **Import**
- ✓ **Export**
- ✓ **Transit**
- ✓ **Cargo manifests**
- ✓ **Movements of goods in port facilities.**

Since 2006 -before FATF's recommendation # 30 of FATF was issued- Uruguay is using multi-disciplinary teams.

These teams operate under the direction of the judge, being lifted of bank and tax secrecy.

They help to justice in financial investigations of money laundering.

OBLIGATION TO COOPERATE WITH SPECIALIZED JUSTICE IN ORGANIZED CRIME

Article 2 of Law No. 18,914 of July 30, 2012

"All State agencies and persons of non-state public law and private companies in which the State participates, are obliged to provide the advice required by the Courts of First Instance specialized in Organized Crime on the causes of its competence, through the provision of specialized personnel. "

THANKS

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