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**STUDY ON THE CHALLENGES AND SOLUTIONS REGARDING THE MANAGEMENT OF COMPLEX
ASSETS**

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MANAGEMENT OF COMPLEX ASSETS**

**ORGANIZATION OF AMERICAN STATES
SECRETARIAT FOR MULTIDIMENSIONAL SECURITY
GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING
SUB-WORKING GROUP ON FORFEITURE**

DOMINICAN REPUBLIC, SEPTEMBER 2016

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Introduction

During the last decade, in the fight against the scourge of criminal organizations, various law enforcement agencies were determined to identify, localize and seize the assets which were the result, subject, means, or instruments of crime for the purpose of neutralizing and weakening the financial arm of criminal structures, with some recommendations provided by international organizations.

In this respect, Professor Isidoro Blanco Cordero, states:

“During the last decades, crime has turned into a business which generates a very important amount of wealth. To combat this illegal form of business a criminal policy has been designed that will deprive the criminals of the proceeds generated by their criminal activities...; an essential part of such policies is to act against their assets (and not only against individuals).”¹

These asset-forfeiture systems intend to send the message that "crime doesn't pay". However, since these companies and businesses are in operation it is undeniable that crime generates employment. Therefore, the scope of the operational and legal capabilities of the organization specialized in the management of seized and forfeited assets is extremely important in order to avoid, as much as possible, stopping their operations, and in this way protecting the rights of the workers, promoting job creation, and implementing the social function of the property.

Hence, these specialized organizations face the big challenge of efficiently managing the so called "complex assets", such as operating companies or businesses, commercial cattle ranches, zoos, transportation companies, boats, aircraft, yachts, vehicles, real property, hotels, and malls, among others.

¹ Sistemas de Administración de Bienes de América Latina, special reference is made to the legal development of the concept of forfeiture and asset recovery bodies, Isidoro Blanco Cordero, p. 14.

Many documents generated by the Group of Experts for the Control of Money Laundering also emphasize how important it is for states to adopt mechanisms that will help achieve an efficient management and administration of the seized and forfeited assets during procedures against organized crime, money laundering, financing of terrorism, *in rem* forfeiture, deprivation, or loss of title.

In this respect, it has been specifically recognized that the states need to have specialized agencies which will be in charge of the management and administration of the seized and forfeited assets, as well as the creation of national laws and mechanisms that are legal, operational, effective and adequate to ensure the preservation of assets during the judicial proceedings.

Depriving criminals of the proceeds and instruments of crime is a priority. However, the efficient management and administration of assets is a big challenge for every country and demands the commitment of the states to address certain issues, including but not limited to, the agencies specialized in asset management, pre-seizure planning, financial and budget considerations, early sales as a provisional measure, the development of the concept of "abandonment", hiring specialized third parties to support asset management and control activities, as well as acquiring computer and monitoring systems.

The challenges posed by the management of these assets become more relevant and demand urgent and effective intervention, especially because of their complex nature, as stated in various meetings of the Group of Experts for the Control of Money Laundering. Within the framework of the Sub-Working Group on Forfeiture and International Cooperation some countries have informed that they have laws in place that allow them to face the challenge of managing and administering complex assets. Their experience in that field is essential for the states that are in the process of adjusting their legal systems and are trying to resolve the problems associated with these types of assets.

Background

At the XXXIX Meeting of the Group of Experts for the Control of Money Laundering (Grupo de Expertos para el Control del Lavado de Activos, GELAVEX) of CICAD/OEA held in Montevideo, Uruguay, in 2014, a strategic plan for the sub-working groups was approved which defined the lines of action along which each sub/working group would be working during the 2015-2017 period.

Therefore, as agreed in the XLI Meeting of GELAVEX held in Lima, Peru, the Sub-Working Group on Forfeiture and International Cooperation will work during the 2015-2016 period on the following lines of action: 1. Management of complex assets, and 2. Promotion of the development of effective forfeiture laws and their efficient implementation in the Member States.

This ***“Study on the Challenges and Solutions Regarding the Management of Complex Assets”*** intends to show the main problems, difficulties, or challenges faced by the countries when they have to manage seized assets of a complex nature, such as "operating companies" and "some assets which due to their characteristics may be considered difficult to manage". The study has been based on the analysis of the answers sent to the Technical Secretariat by the following member states: **Bolivia, Brazil, Costa Rica, Colombia, El Salvador, the United States of America, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, the Dominican Republic, Uruguay, and Venezuela.**

This study analyzes and shares the main legal tools available in those countries which have been successful in managing these types of assets, as well as the procedures which have helped countries resolve the problems that may arise during the seizure, reception, and management of an operating company or business, or of assets which are difficult or complex to manage. In addition, the study identifies the mechanisms and essential aspects that should be available to specialized agencies in order to allow an efficient and responsible management of these types of assets.

This study was conducted in accordance with the objectives and method proposed in the report.

MAIN OBJECTIVE

Identify the mechanisms and essential aspects that should be available to the specialized agencies in order to allow an efficient and responsible management of complex assets, as well as analyze the main challenges and practical and legal solutions that have been implemented in some Member States, such as the solutions implemented in the BIDAL Project.

This study will make it possible to share information with those countries which are in the process of changing their legislation and need some guidelines to improve and develop their technical and operating capabilities to resolve cases relating to the management and administration of complex assets.

SPECIFIC OBJECTIVES

1. Identify the OAS Member States with experience in the management of complex assets.
2. To collect information on the BIDAL Project regarding the implementation of some essential aspects required for the management of complex assets.
3. Share experiences in some specific cases which show the main challenges in the management of complex assets.
4. Learn about the most common challenges faced by the countries who are sharing their experiences.
5. Analyze the main practical solutions in the management of complex assets which have been efficiently implemented by the states.
6. Analyze the legal tools available to specialized agencies to help them manage complex assets.

METHODOLOGY

To carry out the work we considered the participation and experience of the BIDAL Project and of some Member States which have been working on this matter. All

countries received a questionnaire where they could share their experiences regarding specific cases involving the management and administration of complex assets in order to determine common challenges and past and new solutions.

RESULTS OF THE STUDY

I. Source of Funds to Maintain and Preserve Seized and Forfeited Assets

With regard to the efficient management of the seized assets, particularly in the case of complex assets, the first challenge encountered by the agencies specialized in the management of complex assets is the source of the funds or the budget/financial allocation required to cover the costs of maintaining and preserving such forfeited assets, considering that such funds are part of state budgets and are subject to the processes and regulations of public spending².

The above usually makes the whole process difficult and inefficient in most countries, because the structure and schedule of state budgets are not adjusted or designed for the management of forfeited assets, but are intended to cover current expenditures in wages and basic services, along with the procurement of institutional goods and services. In this respect, an agency has to prepare a preliminary draft budget stating its needs and submit it to the budget approval process in the corresponding country.

However, when it comes to the management of forfeited assets, it is impossible to have an estimate of said expenditures or a budget, because the forfeiture depends on another agency, like the Attorney General's Office, and therefore, it is not easy to establish precisely the amount of assets that will be received and the amount of the expenses that may be incurred while managing said assets.

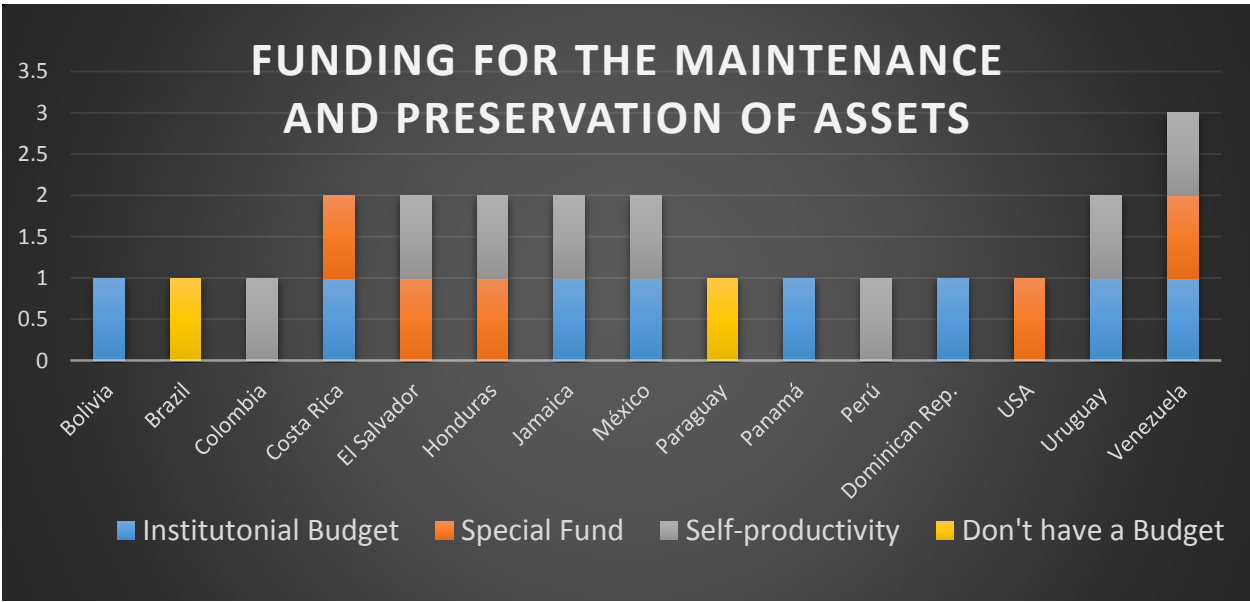
To this challenge we should add the various contracting methods of the Government³ according to the amount of the expenditure. This is why traditional budget structures

² Public Procurement Law and Budget Law.

³ Direct contracts, private tenders, public tenders.

make it difficult to manage forfeited assets efficiently and, even more so, when they require immediate intervention, such as forfeited operating companies or businesses or complex assets.

According to the study, some countries do not even have a budget to maintain the assets during the confiscation period⁴, while other countries have incorporated it into the structure of their institutional budgets⁵. In this respect, the states which participated in this initiative say that the benefit obtained from this type of process is greater transparency, yet all of them agree that it makes them less efficient, and, in many cases, they are not capable of maintaining the assets. It should be noted, however, that some countries have a special fund⁶ composed of the money awarded by the judges' rulings and, in some cases, the interest accrued from the investments made with the forfeited money is incorporated.



Likewise, it is worth noting the case of the Colombian Special Assets Corporation (Sociedad de Activos Especiales, SAE), an asset management agency established as a

⁴ Brazil, Paraguay
⁵ Bolivia, Costa Rica, Guatemala, Mexico, Panama, Peru, Dominican Republic, Uruguay, Venezuela
⁶ Colombia, Costa Rica, El Salvador, Honduras, Guatemala

partially government-owned corporation at the national level and authorized by law. It has unique characteristics and is subject to private law, according to the policies established by the National Narcotics Council or an equivalent agency, and therefore, it is not subject to the Public Procurement Law.

The system used in Honduras and El Salvador is also interesting since it does not depend on the institutional budget for the maintenance of the seized and forfeited assets; instead, such maintenance is covered by a Special Fund composed of a percentage of the money awarded in forfeiture related judgments and the interest accrued by the forfeited money through a self-supported or self-funded mechanism.

In both cases, it is expressly stated in the legislation that such specialized agencies⁷ are not subject to the Procurement Law⁸ or government budget procedures. In this way, the procurement of goods and services in connection with the management of seized and confiscated assets is possible by establishing regulations and alternative procurement processes containing the principles of public procurement but with no time or amount restrictions, thus resolving the above mentioned issues.

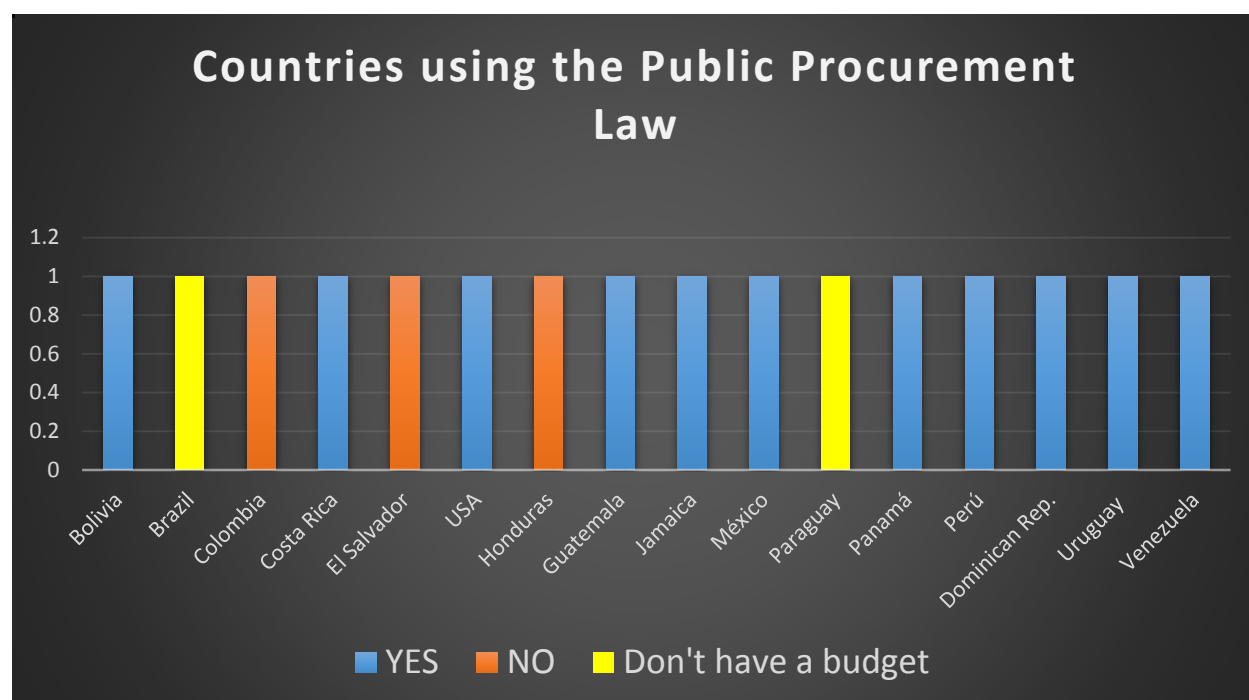
Both countries have two budgets: the institutional budget, used for the regular operation of the agency, such as for the purchase of goods and services and current expenditures; and the special budget and fund, used for the expenses involved in the maintenance and preservation of the forfeited assets and for the management of the seized operating businesses and companies.

⁷ Administrative Office of Forfeited Assets (Oficina Administradora de Bienes Incautados, OABI) of Honduras and the National Bureau for Asset Management (Consejo Nacional de Administración de Bienes, CONAB) of El Salvador.

⁸ Article 70 of Executive Order 51-2014, Honduras, "...Forfeited assets, personal and real property, shall be managed according to the Regulations on the Management of Seized and Forfeited Assets, which shall be exempt from the government Procurement Law and which shall be replaced by an effective special contracting expedited procedure which will be authorized by the Public Procurement Policy Office (Oficina Normativa de Contratación y Adquisiciones del Estado (ONCAE) and approved by the President of the Republic through the Secretary of State of the President."

Article 79, Forfeiture Act, El Salvador "The CONAB may enter into a lease agreement, commodatum, administration, trust, intervention and any other agreement to ensure fulfillment of its goals, it may also approve special or superseding procurement processes for the management and preservation of assets."

Also interesting is another source of funding identified in the study in countries such as Costa Rica, El Salvador, Honduras, and Guatemala. In those countries, their legislations allow them to make investments in term certificates of deposit using the forfeited money and the percentage difference of the interest accrued to support the maintenance and preservation program of the seized and forfeited assets. In the case of Brazil, although it is possible to invest the money, the law allows to pay for the services of the official receiver, bailee, and even a specialized third party.

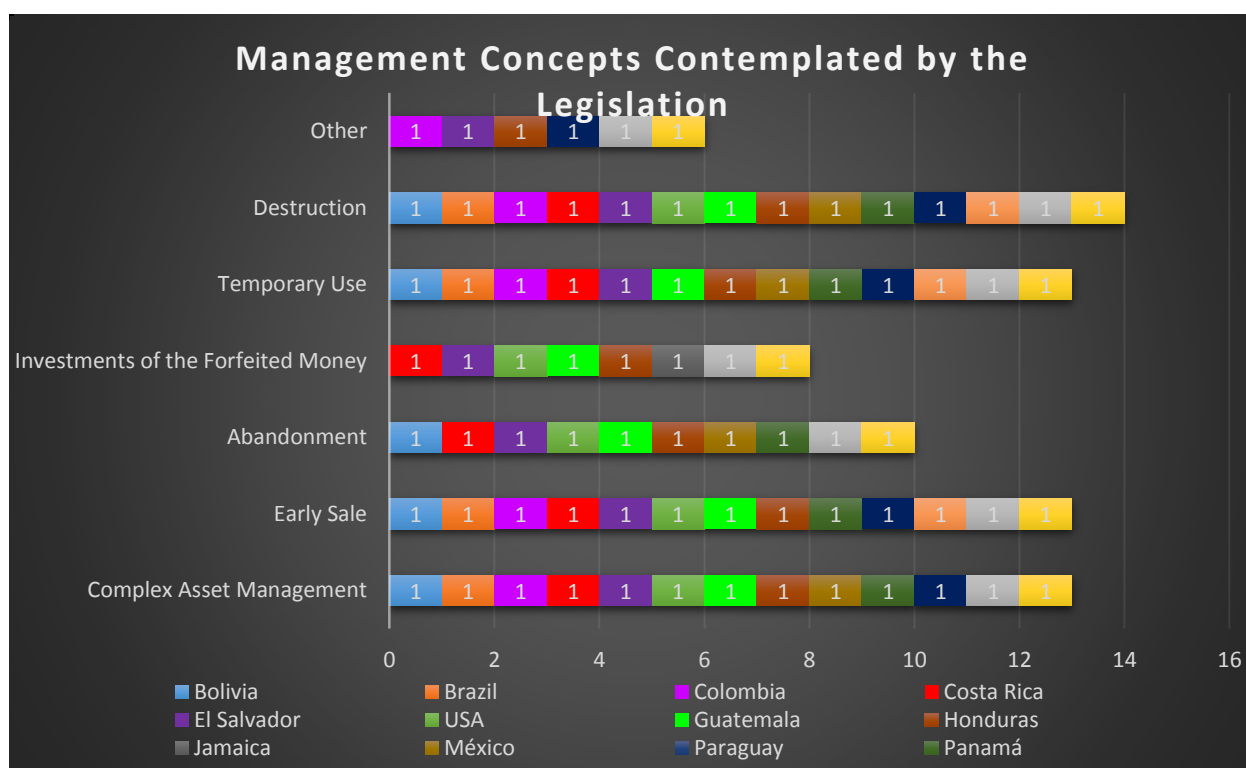


One of the countries with the most experience in the management of funds is the United States, because it has an Assets Forfeiture Fund and a revolving special fund for the participants of the United States Department of Justice Assets Forfeiting Program (FBI, DEA, ATF, United States prosecutors, USMS, and the Criminal Division of the DOJ, among others). The expenses estimated for the management and disposal of the assets are included in the annual allocation planned for the participants in the program, among which is the US Marshall Service, who is responsible for the management of the forfeited assets under its custody. The annual allocation for the

participants is calculated based on the expected costs (planned) of the program and the expected availability of the funds not committed for the next fiscal year.

II. Priority Management Decisions

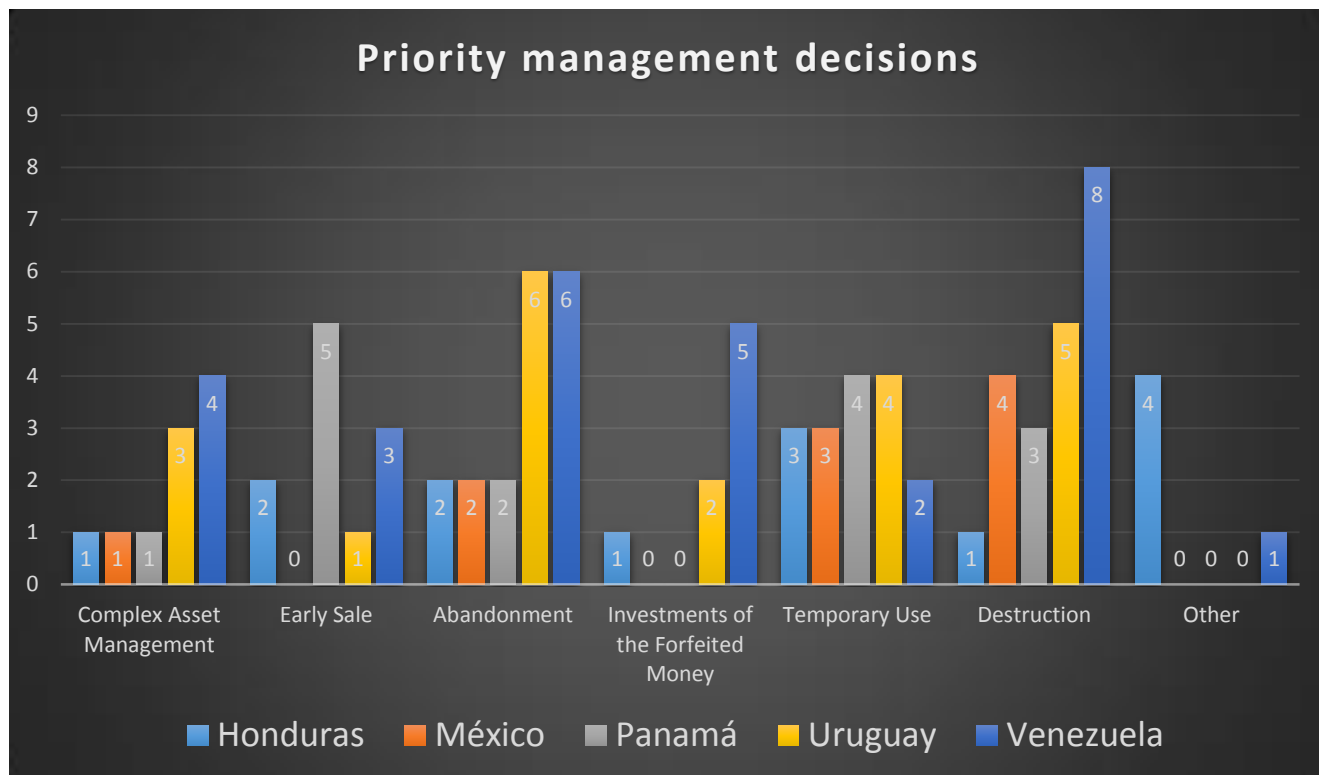
With respect to the management decisions of the countries regarding the maintenance and preservation of assets during the confiscation process, some progress was made in their decisions, since traditionally they used the civil law concept of "deposit". This concept was widely improved with the creation of specialized agencies for the management of assets. There was an increase in the legal tools available to meet their responsibilities in connection with the preservation, maintenance, and management of the assets seized through forfeiture. Therefore, most of the countries participating in this study have more than four mechanisms available to help them manage the assets under their responsibility.



In this respect, some countries worth noting are El Salvador, Honduras, Uruguay, and Venezuela, which in addition to having specialized agencies, also have the most legal tools to manage the assets under their responsibility, and, therefore, minimize their loss in value.

It is important to note that there was an increase in the implementation of concepts such as "management of complex assets, abandonment, early sales, and investments with forfeited cash".

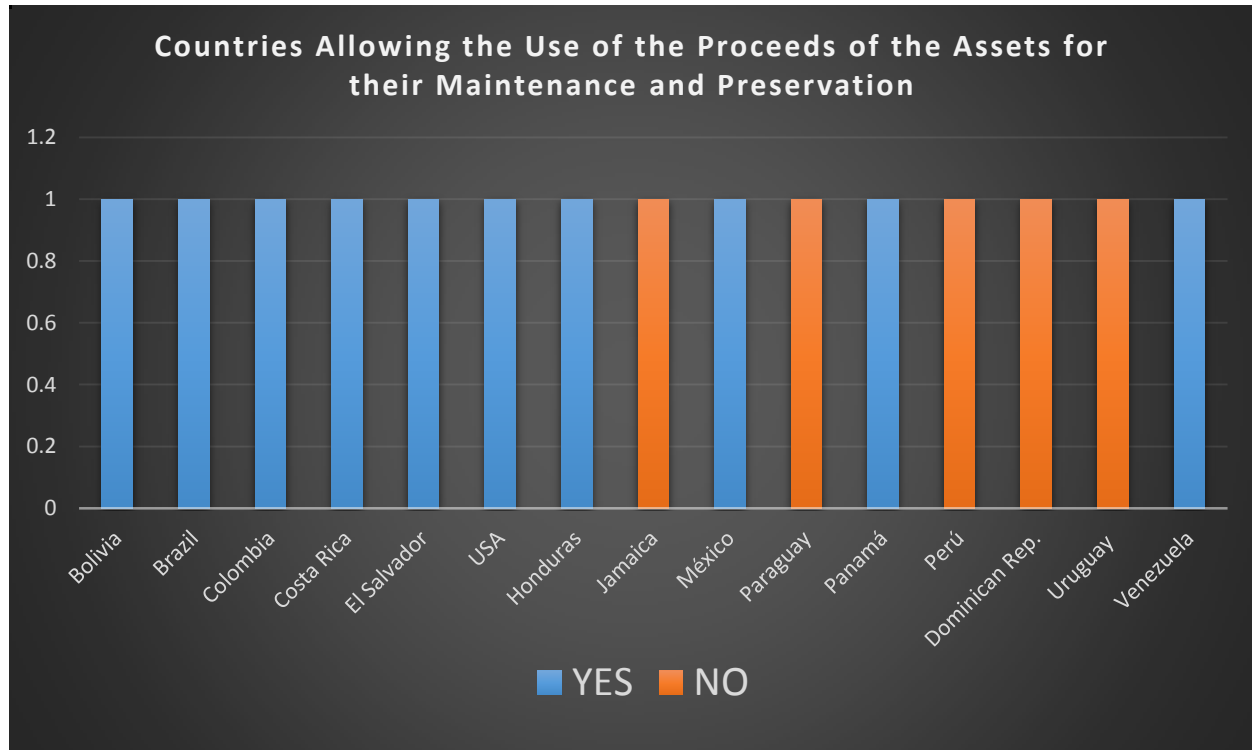
However, in spite of the existence of a wide variety of legal concepts as stated above, no priorities or policies have been established with regard to said management decisions, except in Honduras, Mexico, Panama, Uruguay, and Venezuela, where there is an order of priority for the use of these assets according to its productivity and characteristics.



III. On the Productivity of Assets

One of the greater challenges faced by the agencies specialized in the management of these assets is to maintain or turn productive the forfeited assets so that they do not become a financial or budget burden. In this respect, the implementation of trusts, renting real property, and hiring specialized third parties may help such assets generate proceeds to cover maintenance and management costs. In general, any remaining amounts eventually serve the same final purpose as the assets.

In the case of countries which do not have such capabilities, asset maintenance and preservation expenses are covered by the institutional budgets, and, in other cases, with the income derived from the sale of the confiscated assets.



An interesting case is Colombia. Article 110 of Law 1708 of 2014, states: *"Any obligations arising from assets subject to rem forfeiture or assets subject to precautionary measures, such as payments, common expenses, or public utilities, which are non-productive because they do not generate income due to their situation or status, will be suspended and will not accrue interest, until the occurrence of one of the following events:*

- a) They generate sufficient income up to the amount of the proceeds.*
- b) The sale and delivery of the asset.*

In the event set forth in item b) the new owner of the asset shall pay the amounts of the obligations not paid during the suspension within thirty days of the end of such suspension.

During the time of the suspension, the obligations derived from such assets shall not be enforceable through court action or debt collection, and the relevant assets may not be subject to precautionary measures.”

IV. Coordinating with the General Attorney's Office the Receipt and Management of Complex Assets

One of the determining factors for the success in the management of complex assets is the prior coordination between the General Attorney's Office and the agency specialized in asset management. In this respect, inter-agency cooperation is essential to identify the nature of the asset in order to identify the technical team or specialized third party that will receive the asset in the shortest possible time. If this is not done in a short time, the chances that the asset will be depreciated, lost or destroyed will increase with time, and if it is an operating company or business this may lead to closing or liquidation.

However, by analyzing the answers provided by the countries we may conclude that most of them do not share the following information previously:

- 1) Data regarding the economic activity of the company or business;
- 2) Physical and legal identification of the company or business;
- 3) Identification of partners, executive officers, and legal representatives;
- 4) Suspension of alienability of the holders of rights;
- 5) Identification of the account number and financial products;

We believe that to ensure efficient and effective complex asset management it is convenient to share this information so that the specialized agency may be able to identify in advance the possibility of:

- 1) Establish prior coordination with other government agencies to support the process of receiving the company or business (Department of Labor, competent tax agency, and others);

- 2) Analyzing the qualitative data of the company to determine if it is possible to continue its commercial activities;
- 3) Identifying the professionals or specialized third parties who may be in charge of the company or business.

Among the answers to the questionnaires, the answer of the delegation of the United States regarding the policies of USAO, AFMLS, and USMS is worth noting. In such cases, prior planning is necessary for the forfeiture and the coordination, in particular for the management of complex assets. In almost all cases, agencies work together to identify assets, examine potential property titles, and determine the probable value of assets (if possible), as well as to evaluate the capabilities of the government to store an asset (for example, storage space) and plan the logistics necessary to use that particular asset.

Furthermore, during the pre-seizure and pre-retention phase, the Attorney General and the US Marshall Service complete an analysis on the net equity in order to prevent situations in which the seizure and forfeiture of an asset may imply a significant loss for the government. In the case of assets with negative values, they usually do not carry out any actions to adjudicate their forfeiture. Assets with negative values may be confiscated for the main purpose of enforcing the law (for example, a house used for the purpose of prostitution or drug trafficking). Assets with negative values may be confiscated for purposes of public policy.

V. Difficulties and Problems Identified in the Receipt and Management of Operating Companies

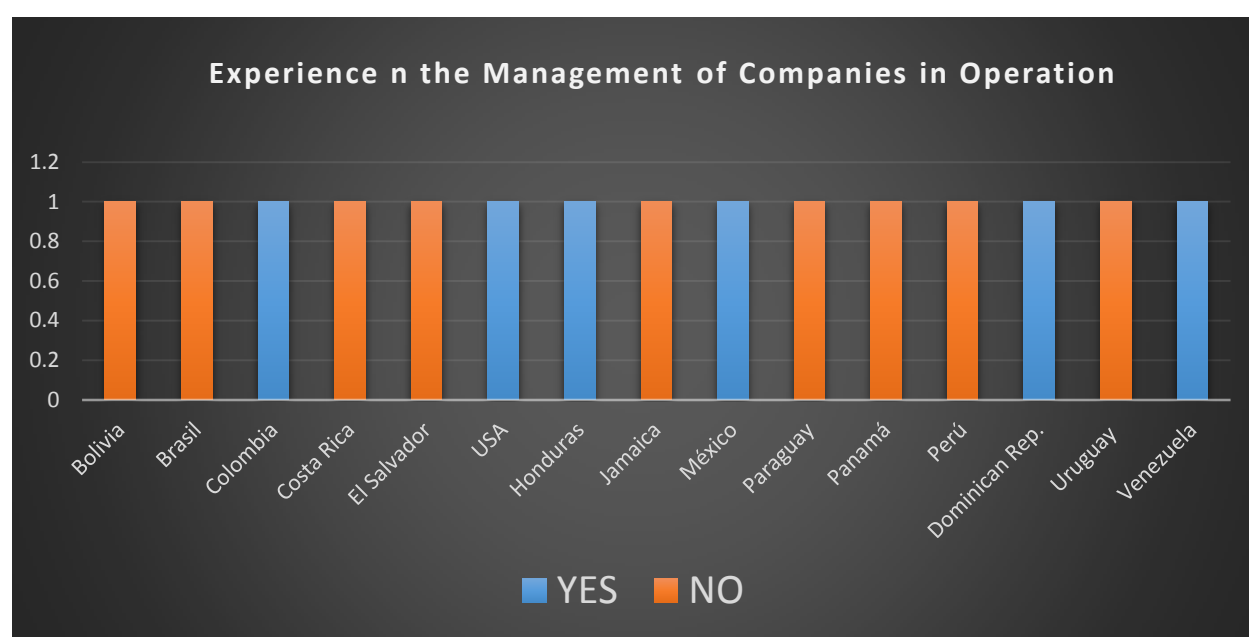
With regard to the first subject, the work done by this same working group in 2014 is worth noting, which through the BIDL Project prepared the ***“Manual for the Receipt and Management of Forfeited Operating Companies”***. The manual had the purpose of sharing some good practices regarding the administration and intervention of companies seized by the relevant authorities. It also intended to serve

as reference for the various agencies in the hemisphere specializing in the management of assets seized through confiscation, and to create manuals or protocols regarding the intervention of forfeited operating companies and the actions to be taken into consideration. Such actions cover the period "before", "during", and "after" the forfeiture of the operating company and the analysis of some fundamental factors such as:

- a) **Commercial or business aspects:** they refer to the identification of the commercial or industrial activity of the company, the business strategy, clients, suppliers, manner of operation, etc.
- b) **Organizational Aspects:** they refer to the organizational structure of the company, human resources, processes and production means, and assets in general.
- c) **Financial Aspects:** they refer to the financial position and assets, financial statements, accounting documents, cash flow, account balances and investments, loans, mortgages, collaterals, and assets and liabilities of the company in general.
- d) **Fiscal Aspects:** they refer to income tax declarations and declarations of turnover submitted to the Treasury or the Internal Revenue Service which may provide important information in connection with the financial profits declared for tax purposes.
- e) **Legal or Judicial Aspects:** they refer to the evaluation of the company's compliance with the requirements for the operation of the company; sanitary, fishing, environmental, commercial, and mining permits, and in general, government concessions in connection with certain activities.

Through the analysis of the documents sent by the countries which participated in this study we note that there is not much experience in the management of

confiscated operating companies in the continent. In this respect, we see that only the specialized agencies of Colombia, United States, Honduras, Mexico, Dominican Republic, and Venezuela had the opportunity to measure their legal and operating capabilities when facing the challenge of preserving and maintaining confiscated corporations or operating companies.

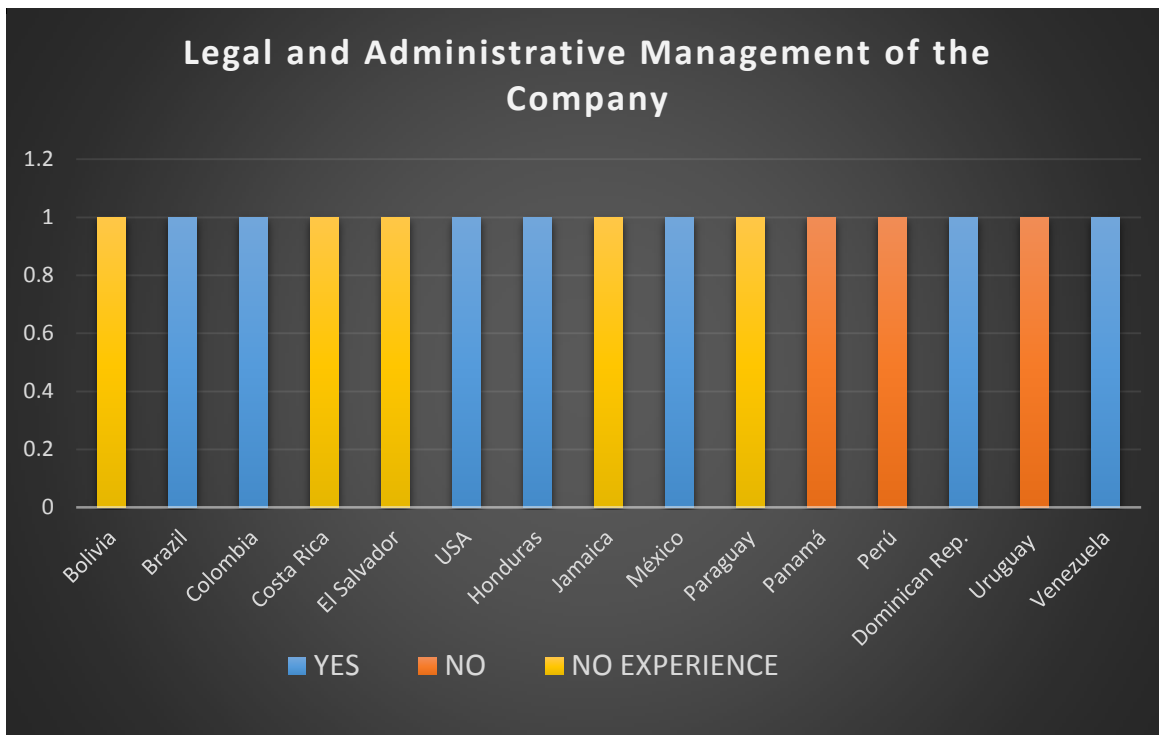


These countries' experiences have revealed the following main problems:

- no information prior to receiving the company;
- errors in the physical delivery of the company (inventory preparation, acknowledgment of financial statements, etc.);
- no registration of the precautionary measures in the corresponding registry;
- the company's bank accounts are not insured or frozen;
- not very reliable information;
- financial situation of the company not including illegal capital;
- no payment of the business or company's taxes;

- labor, administrative and/or commercial processes conducted without sufficient background;
- insufficient economic or financial resources;
- resistance by the company's employees;
- no payment of the contributions and social security taxes of the workers;
- no confiscation of the assets of the company or business;
- the need to maintain the operational continuity of the company.

The countries' answers reveal that most of the specialized agencies which have been successful in the management of the confiscated operating companies or businesses had their legal and administrative control. In this regard, they opened bank accounts or changed signatures, made payments to suppliers and employees, and made management decisions to maintain or improve the companies, in many cases, turning them into financial groups with various lines of business.



On this matter we should underscore the statement made by the Mexican delegation: *“In those cases in which the SAE is designated as administrator, it will assume the administration of all aspects of the company, except its corporate activities. The administrator will be independent from the owner, administrative bodies, meetings of shareholders, partners or participants, as well as from any other body associated to the companies, businesses or facilities under its administration. The administrator will be responsible for his performance only before SAE, and in the case of criminal liability, he will be subject to the applicable laws.”*

On the other hand, as a way to promote and preserve the jobs as an institutional policy, the specialized agencies in Honduras and Venezuela have the capability of “injecting capital” into an operating business or company to allow it to continue its commercial or business activities, provided such loan can be reimbursed into the special fund, taking into consideration the market research and accounting analysis conducted on the confiscated company.

“The advantage of the OABI, in comparison to other offices in the hemisphere, is that it has the possibility of granting “bridge loans” from the special fund to inject capital into the confiscated companies. These loans are then reimbursed to the profit and income fund of the company through a payment plan. The above, after the Administration and Management Unit has conducted the corresponding feasibility technical studies of the company or business.”

On the contrary, the company shall be closed down and liquidated, as stated by the Mexican delegation, *“Company activities shall not be funded with public resources; the goal is always to manage and maintain it in the situation in which it was received. However, the administrator may be authorized to suspend or close down the company, business or facility when their activities are unaffordable, and therefore, they shall be liquidated, dissolved, declared insolvent or bankrupt, merged, subject to a spin-off or sold, as appropriate.”*

On the other hand, the delegation of the Dominican Republic described the procedure used in their country: *“With regard to labor related issues, an application for the suspension of the work contracts due to the company's unaffordability is submitted before the Department of Labor. The dissolution is ordered by the Civil and Commercial Chamber corresponding to the company's registered offices through a bankruptcy proceeding after completing the amicable resolution or compulsory arbitration procedures conducted by the Chamber of Commerce and Production of the municipality where the company has its registered offices.”*

The members of the delegation of the United States also shared their experiences: *“In almost all cases the USMS recommends the USAO to issue a protection order to allow the USMS full access to the company and its records. This order usually makes it possible for the company to continue its operations under a designated monitor, but it enables the USMS to take certain actions (for example, before approving the operations, to hire/dismiss employees, take control of bank accounts, etc.). Except under unusual circumstances, the USMS normally supervises the business for at least 30 days before making any significant changes in the operations.”*

In some cases, the company's owners are innocent or the managers may continue in charge of the operations being monitored by the USMS. In other cases, the USMS may help the company find a third party to help conduct the operations (for example, by hiring new employees with specific responsibilities to do the jobs of the criminals). In other cases, the USAO and the USMS may recommend a federal court to appoint an administrator or special official to take control of the operations.”

VI. Difficulties and Problems associated to the Management of Complex Assets

With regard to complex assets such as boats, aircraft, livestock, or top of the line vehicles which are difficult or expensive to manage, the countries described the following problems:

- improper asset identification and characteristics;
- lack of registration of frozen, encumbered or insured forfeited assets in the corresponding registry;
- the procedure to take possession of the asset;
- the maintenance which may require specialized technical personnel;
- lack of resources to preserve the assets in the same condition as they were received, except for normal wear and tear;
- identification of the area and the personal property incorporated into the premises;
- provisional registration;
- risk of deterioration or loss of value during the forfeiture process;
- complexity in the management of the assets;
- insufficient space for the custody of the assets in warehouses and deposits;
- taxes on the sale of the assets;
- costs associated with the assets prior to the seizure;
- receipt and proper handling of cattle or any other type of animal.

To resolve many of the above mentioned problems, some legal concepts such as "early sale", which is the monetization of personal property intended to prevent the loss of value of the forfeited asset, may help specialized agencies manage assets more efficiently.

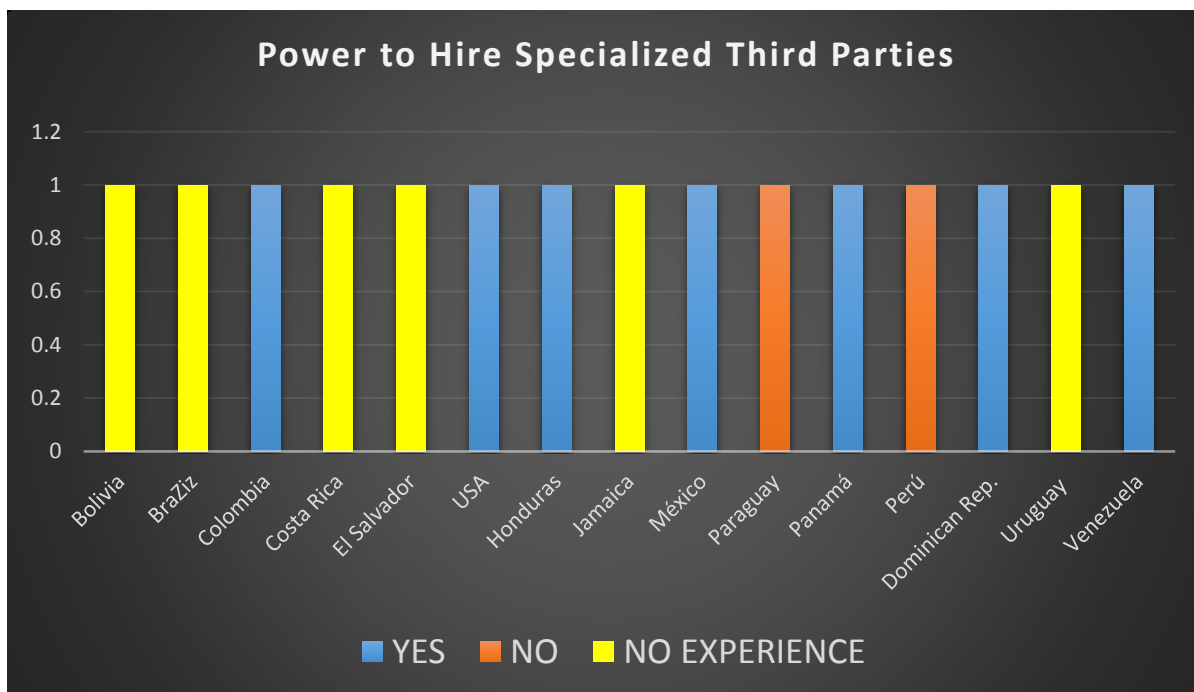
Although it is true that various laws in the countries which authorize early sales do not make a distinction between real and personal property, in the case of the former, this decision may seem much riskier, since real property usually increases in value or appreciates with the passing of time. This does not happen with personal property, and therefore, an early sale shall be very well founded, because if an order compels to return the property it may not be possible to reimburse the current value of the asset.

There were cases in which the decision regarding the early sale was made through a duly reasoned and grounded administrative resolution issued by the managing agency itself. In other more protective countries, the decision is made by a competent judge at the request of the specialized agency or the Public Prosecutor's Office.

VII. Contracting Specialized Third Parties

Most agencies have the power to hire specialized third parties to assist in and support the task of managing the assets seized through forfeiture. However, we noted that in spite of these powers, such third parties do not have practical experience.

This may be due to problems regarding the identification of the funding source and the proper procuring process. As the table shows, the funds used to pay for the specialized third parties are derived from the proceeds of the assets. This gives rise to some concerns. Since these are "private funds" the public agencies should decide which process to apply. Should they be governed by the Public Procurement Law or the Commercial Code? Shall the company or the productive asset be subject to public contracting procedures? or Should the government adjust to the manner in which the company or the productive asset has been operating?



This is why in some countries such as Honduras and El Salvador, the law expressly states that said specialized agencies⁹ are not subject to the Procurement Law¹⁰ and government budget process. Therefore, the procurement of goods and services for the management of the assets seized through forfeiture may be governed by regulations and superseding contracting processes containing the same principles as public procurement but not the same terms and amounts, thus resolving the above mentioned concerns.

⁹ Administrative Office of Forfeited Assets (Oficina Administradora de Bienes Incautados, OABI) of Honduras and the National Bureau for Asset Management (Consejo Nacional de Administración de Bienes, CONAB) of El Salvador.

¹⁰ Article 70 of Executive Order 51-2014, Honduras, "...Forfeited assets, personal and real property, shall be managed according with the Regulations on the Management of Seized and Forfeited Assets, which shall be exempt from the government Procurement Law and which shall be replaced by an effective special procurement expedited procedure which will be authorized by the Public Procurement Policy Office (Oficina Normativa de Contratación y Adquisiciones del Estado (ONCAE) and approved by the President of the Republic through the Secretary of State of the President."

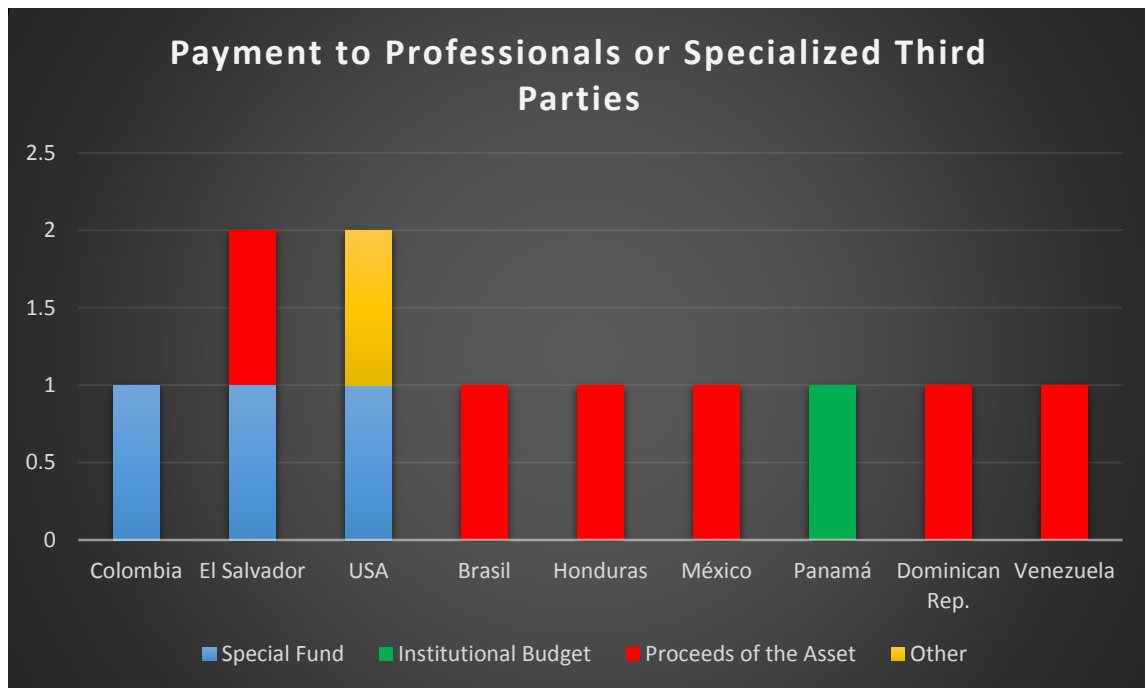
Article 79, Forfeiture Act, El Salvador "The CONAB may enter into a lease agreement, commodatum, administration, trust, intervention and any other agreement to ensure fulfillment of its goals, it may also approve special or substitute contracting processes for the management and preservation of assets."

In this regard, the Superseding Procurement Regulations of Honduras states as follows:

“Article 4.- Scope of Application.- *The OABI may enter into agreements to hire professionals or third parties, as well as to procure goods and services by means of the methods set forth in these regulations. They shall be funded by the so-called Corporate Equity and any resources derived from or generated by the productive assets, which shall be governed by these regulations.*

The contracts regarding professional services, construction works, and provision of goods and services entered into by OABI during the performance of its duties which are funded through the General Budget of Revenue and Expenditure of the Republic, shall be subject to the Government Contract Law and the Law on Efficient and Transparent Acquisitions through Electronic Means and its Regulations.

Article 5.-Exceptions.- *Those companies which have been forfeited under OABI's administration shall not be subject to the provisions of these regulations with regard to the procurement of goods and services or the construction of works, provided such expenditures are operational or investments, and such payments are made with funds derived from the company's corporate equity.”*



The delegation of the United States described another manner to pay the professionals or specialized third parties. *The response varies depending on the peculiarities of the case. There are various scenarios:*

- *El USMS reviews compliance with a restrictive/protection order. The USMS decides to allow the current manager to continue with his management responsibilities under the existing work agreement. In this scenario, the manager is paid using the company's funds.*
- *The USMS receives a restriction/protection order. The USMS decides to replace the employees in certain job positions due to their involvement in criminal activities. The USMS and the company work together to hire substitute workers. In this scenario, the new contracts are paid with the company's funds.*
- *The USMS in compliance with a restriction/protection order decides that it needs to hire a third party to be in charge of the commercial operations. In this scenario, the USMS follows the corresponding procedures and awards the contract to a third party who is paid with the money of the Asset Forfeiture Funds (AFF).*

- *The USAO and the Court appoint an administrator/receiver to manage the business. In this scenario, the receiver may be paid in three different ways (for example, retention + commissions, or by the hour), through the corporate equity (if any), or through government funds (that means, AFF)."*



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VIII. Chart showing the weaknesses and strengths regarding the management of forfeited companies by country.

COUNTRY	STRENGTHS	WEAKNESSES
Colombia	<ul style="list-style-type: none">• Monitoring and control of the company's assets• Provisional qualified asset management bailee (specialized third party)• Government support in asset management• Collection and unification of corporate assets to ensure appropriate management.	<ul style="list-style-type: none">• Delays in the resolution of in rem forfeiture proceedings.• Limitations of the law. It is considered more convenient to manage monetary resources instead of physical resources.• Contradictory messages issued by the Attorney General's Office.• A stigma about the origin of the assets, which makes third parties reject them (providers, banks, etc.)• The affected party insists on managing the asset.• No money available to continue with the business.• Insufficient information.
United States	The first challenge upon conclusion of the criminal proceedings is to identify the factors which may make the business financially viable.	

In many cases, the success which made a business grow was due to the particular way in which an owner carried out certain operations (such as an illegal cashflow). If the government removes the owner from the management of the business on the grounds of having committed criminal acts, then the government perhaps will be changing the business for the worse. Furthermore, it is very likely that the criminal used illegal means to increase his business (such as fraudulent behavior), and, therefore, when the business is normalized it will no longer be viable.

To operate a company that generates income is very hard and requires people who are strongly motivated to reach that goal. It is often difficult to find motivated employees who will commit to make the business grow over a long period of time.

In addition, even those individuals who were not involved in the criminal acts that led to the seizure and forfeiture of the business may be predisposed to carry out wrongful acts (steal money from the cash register, take shortcuts...). This is why the government should get involved in the business for the least amount of time possible.

	<p>The USMS usually recommends the participation of an official negotiator to allow the government to sell the business before all formal requirements have been met to prevent a larger loss in the value of the company.</p> <p>Over time all companies require their owners to spend money in order to improve the company's operations and continue being competitive. If the government is not committed to spend its own funds to support the business, the time during which the business is under government control should be reduced to the minimum. Once more, the USMS strongly recommends interlocutory judgments if the case is likely to take too long to be closed.</p>	
Honduras	Some of the strengths are: the creation of jobs and reactivation of economic activities generated, directly and indirectly, by these companies and businesses. This sends a positive message to civil society in the sense that the government will not always close down all companies. It cannot be denied that organized crime can create jobs.	Some of the weaknesses are: the poor quality of the information (regarding patrimonial assets and financial position) available to investigation agencies, and the need to improve the identification of all the assets of the company for its proper operation, as well as securing and freezing the company's bank accounts. All of these are essential factors that shall be taken into account when making a viability analysis in order to manage a company or business.
Dominican Republic	By virtue of Law 72-02, Art. 14 and Executive Order 19-03, Art. 4, the OCABID does not have to submit accounting reports or reports of any other nature to any third parties who file	The public entity which is responsible for the management of those companies or businesses has insufficient resources to ensure that they are cared for and preserved. As a result, it is not possible to prevent them from deteriorating due to

	<p>complaints about the proceeds or profits derived from the operations of the forfeited company, because these entities are covered by the phrase "just like any type of business", as set forth in the second paragraph of said Art. 4, which expressly states that such proceeds or profits shall be distributed in the proportion set forth in Art. 33, letter A of Law 72-02 dated June 7, 2016.</p>	<p>the passing of time, which causes an unfortunate depreciation of the assets.</p> <p>In other cases, there is a lack of qualified personnel with training in various fields as required by the great number and variety of the forfeited assets. Therefore, they have to be managed during long periods of time by the responsible agency. The biggest weakness is not having a forfeiture law that allows seizing the assets in an autonomous manner, which means, independently from the criminal process. This causes the seizure and forfeiture process to protract, sometimes for more than a decade, due to the characteristics of classical criminal proceedings. However, it should be noted that a law on this matter is currently being discussed in the Congress of the Dominican Republic.</p>
Panama	Did not respond.	Some difficulties identified were lack of surveillance and custody of the assets. Also maintenance of the assets is quite costly due to the size of the forfeited properties.
Venezuela	If it is not possible to ensure the continuity of the company, the asset is either managed or rented.	Due to the fact that these are forfeited assets, it is difficult to process the paperwork before the SENIAT, commercial registries and banks in order to ensure the continuing operation of the companies.

IX. Chart showing the weaknesses and strengths regarding the management of forfeited complex assets by country.

COUNTRY	STRENGTHS	WEAKNESSES
BOLIVIA	<p>Potentialities</p> <ol style="list-style-type: none"> 1. Bringing new ideas and projects to strengthen DIRCABI's management capabilities, taking advantage of cooperating agencies in the relevant areas (for example, Functions Manual and Internal Regulations). 2. Possibility of financing the construction of warehouses for the storage of personal property. 3. Possibility of getting financial support to acquire equipment for the handling, identification, and inventory of controlled substances from the VDS-SC and other 	<p>Limitations</p> <ol style="list-style-type: none"> 1. The capability to generate projects and carry out activities in coordination or in support of other agencies is limited by the lack of definitions regarding the functions and operations within DIRCABI. 2. Although government institutions share political and strategic ideas and the same ideology, it is necessary to create a new structure and to increase the number of qualified employees who are trained to conduct the proper registration, control and management of forfeited assets. <p>The sluggishness of the bureaucracy, the slow</p>

	<p>agencies.</p> <p>4. Use knowledge and channels wisely to establish relationships with other agencies, taking advantage of inter-agency relations and enter into agreements to support the DIRCABI.</p> <p>Preparation of an Amendment to Supreme Executive Decree No. 26143.</p>	<p>management and operation, and the lack of definition of responsibilities (manuals) deepen the gaps in the operations, legal proceedings, systems management (SIREBII), and monitoring mechanisms.</p>
Brazil	<p>The presence of specialized agencies, such as FUNAD y FUNPEN, and the national legislation to allocate forfeited assets could be considered a positive aspect in Brazil. FUNAD in particular is responsible for the sale and auctioning of forfeited assets and for allocating them in accordance with the national legislation. The proceeds are mainly allocated to fund professional education programs on the education, prevention, treatment, recovery, suppression, control, and surveillance of drug consumption. The sale of the assets also cover the modernization and funding of the monitoring, control and repression of the use and trafficking of drugs and related products; the expenses incurred in carrying out the tasks and actions of the Council for the Control of Financial Activities (Consejo de Control de Actividades Financieras, COAF) in the fight against money laundering; and they also make a small contribution (20 % to 45 %) to the Federal Police and the State and Federal District Police, who are in charge of seizing the assets.</p> <p>On the other hand, the registration of all the transfers and distributions of the funds derived from the forfeited assets, which are previously</p>	<p>The limitations identified during the investigation on the sale and auction of forfeited assets derived from drug related crimes could give rise to an adequate forfeiture integrated system. In drug related activities there are large amounts of highly valued financial assets which may serve as funding sources for law enforcement agencies, but also to strengthen the forfeited asset management system through the creation of a special fund composed, in part, by the funds from the forfeited assets. Such fund has not even been contemplated in the current law on drugs.</p> <p>The registration of all the transfers or distributions of the funds derived from the forfeited assets which were previously incorporated into the Law on Budget Estimate and its execution schedule shall be registered as extra/budgetary expenses with a specific allocation so that the resources are not diluted into the general expenditures of each agency's budget.</p> <p>We will make a thorough analysis with the GTI to propose a method so that the agencies can use the resources effectively and also to allow supervision and accounting. The efficiency in the selling and auctioning of the assets to add flexibility and improve organizing times seems to be a limiting factor when it comes to preserving the value</p>

	<p>incorporated into the Law on Budget Estimate and its execution schedule, that is, the multi-annual plan, the budget guidelines, and the annual budget, make it possible to carry out the supervision and accounting before the controlling bodies.</p> <p>The existence of adequate procedures to register property, both personal and real, which are exempt from taxes and duties, guarantee an efficient disposition of the forfeited assets in order to allocate them in accordance with the laws of the country. Brazil has made significant progress in international cooperation due to the existence of multiple mechanisms, both formal and informal, for the tracking, localization, and identification of the assets and money derived from illicit activities, which have been the responsibility of the Department of Asset Recovery and International Judicial Cooperation (Departamento de Recuperación de Activos y Cooperación Jurídica Internacional, DRCI) of the Ministry of Justice, the central authority in this matter.</p>	<p>of the assets. Therefore, we will consider creating another more transparent, efficient, and differentiated sale and auction system in compliance with the principles of the regular public procurement system. Not having an agency specialized in the management of assets seized through forfeiture limits the possibility of supporting other countries by preserving assets at their request, and in the same manner by selling and auctioning the forfeited assets to repatriate the proceeds.</p>
Colombia	<ul style="list-style-type: none"> • The technical knowledge in the management process of these types of assets. • Definition of clear processes and procedures which speed up and guide the operations of the entity. • Contracts executed with storage centers for each type of asset. 	<ul style="list-style-type: none"> • Loss of purchasing value due to the type of asset. • Some seized assets are located in high-risk areas making them hard to manage. • The FRISCO administrator is not sure of when he will receive and manage the forfeited assets. • Some perishable assets are hard to care for and manage (such as livestock and substances)

	<ul style="list-style-type: none"> • Support of the Armed Forces and the National Police in the custody of the assets. • It is possible to destroy or conduct the early sale of assets which are hard to manage, as defined by the law. • Real property may be used, temporarily or permanently, in state programs or social programs. • The law includes payments other than taxes which suspend enforceable collections procedures and penalty interests. 	<ul style="list-style-type: none"> • Storage and administration costs have to be covered. • Interaction with external entities which are responsible, in part, of the forfeiture process and those in charge of asset management (for example, the Department of Motor Vehicles, Civil Aeronautics, Port Authority, companies for the maintenance of means of transport, etc.). • Failure to unify some concepts in the changes introduced to the Forfeiture Law regarding assets in connection with criminal proceedings due to drug trafficking and related offenses and the assets which are subject to forfeiture proceedings. • Unification of some concepts used by the General Prosecutor's Office and the judicial branch in authorizations in connection with the management of assets. • It is necessary to reduce the time to adjudicate a forfeiture. • The prosecutor who is in charge of the seizure does not have the power to evict illegal occupants during the seizure of the property. • There are no unified concepts regarding the payment of debts from non-productive assets.
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Costa Rica	<ol style="list-style-type: none"> 1. The legislation regarding the management of complex assets has improved providing the managers with new necessary tools. 2. Forfeited assets in the cases against organized crime do not generate costs for the government. 3. The resources generated by management decisions such as the sale of an asset, may be used to combat organized crime, if so provided by the law. 4. It prevents the assets from deteriorating. 	<ol style="list-style-type: none"> 1. No prior investigation of the patrimonial assets. 2. No information in order to make better management decisions and allocation of the assets due to lack of prior coordination. 3. In the case of real property, maintenance is necessary to prevent deterioration. 4. No special fund to immediately address any unforeseen events in accordance with the nature of the assets. 5. Small amount, approximately 40 dollars, allocated for these situations. 6. The stigma attached to the assets has a negative impact on the chances to sell them. 7. No sufficient personnel to coordinate and execute any projected actions. 8. The fact that the forfeited assets have to be appraised according to market value makes it difficult to compete and offer good prices.
El Salvador		<p>Some weaknesses are:</p> <p>There is little information about the delivery and receipt of assets. This may delay the decision of the way assets will be managed. Also, the area where assets are located may be dangerous or unsafe. The value of an asset may be less than the administrative costs.</p>

		<p>Some strengths are:</p> <p>The CONAB has specialized technical employees who are directly in charge of the management of diverse assets. There are internal regulations regarding the procedures and various activities carried out by the CONAB in the management of assets.</p>
United States	Strengths: The USMS has well organized contracts that are capable of transporting, storing, maintaining and disposing of aircraft, boats and livestock/animals.	The process for adjudicating a forfeiture is extremely long and protracted. In many cases the costs of maintaining and disposing of depreciating assets does not justify the recovery. We need to focus on recovery of liquid assets or significantly reduce the hold period on non-cash assets.
Honduras	There is less risk that the goods will depreciate, get lost or destroyed if the management decisions protect the rights of the affected party or the government when an asset is seized or forfeited.	As mentioned before, some weaknesses are the custody of complex assets and the term or time that passes between the receipt of the asset and its final destination when the assets do not generate an income that may be used for their own maintenance. This is why decisions have to be made quickly.
Jamaica		We have to date not undertaken such seizures but are poised to put measures in place in the near future. As such, we have no experience in that area to date.
Panama		The difficulties identified are lack of surveillance and custody of the assets. In some cases maintenance is very costly due to the size of the forfeited assets.
Peru		<ul style="list-style-type: none"> • Insufficient and inadequate spaces for the storage and custody of the assets. • The assets received do not have the proper legal clearing or the corresponding registration which makes it difficult to carry out the administration

		<p>and disposal of the property.</p> <ul style="list-style-type: none"> • High costs of maintenance and administration until adjudication of forfeiture. • It is worth noting that the current legislation does not make it possible to obtain quick profits from these assets, this is why no strengths can be identified.
Dominican Republic	<p>Law 72-02, Art. 14, and Executive Decree 19-03, establish the faculties of the agencies (CONCLA and OCABID) to make decisions and carry out activities with regard to the sale of perishable assets or assets which may be depreciated, or livestock; as well as to the of hiring of third parties or private companies, national or foreign, to manage the forfeited assets; and also with regard to the operation and administration of ranches and farms, with the prior expert report, in compliance with Art. Six of the above mentioned Executive Decree.</p>	<p>In the case of real property, specifically condominiums, the law requires the payment of fixed monthly maintenance payments which may accrue and amount to millions in some cases due to the extended judicial proceedings to which said assets are subject. This prevents their sale in public auctions. The consortium of the condominium and their attorneys take advantage of these situations and demand the payment of huge amounts of accrued money under the threat of selling the asset(s) in question in a public auction. This results in having to pay huge amounts of money both to cover said payments and also the attorneys' fees. These funds could be used, for example, in activities for the prevention of drug addiction.</p>
Venezuela	<p>Obtain an income by renting the property as set forth in Art. 12 of the Executive Decree which created the SNB, G.O. N°39.602 dated January 26, 2011. Promote plans and projects for the Nation by allocating these types of assets to government agencies, in accordance with their specific functions.</p>	<p>It is difficult to have access to the entities which issue certificates and permits for the commercial use and operation of boats and aircraft. Breeding and keeping cattle depends on many factors such as the climate, food, etc. This is why almost in all cases these types of assets are requested to be sold early. There is not enough technical personnel specialized in handling assets such as boats, aircraft, and livestock.</p>