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Secretariat for Multidimensional Security

**XLV MEETING OF THE GROUP OF EXPERTS
FOR THE CONTROL OF MONEY LAUNDERING
October 4 and 5, 2018
Santa Cruz, Bolivia**

**OEA/Ser.L/XIV. 4.45
DDOT/LAVEX/doc.1/18
October 4, 2018
Original: Spanish**

QUESTIONNAIRE ON ASSET RECOVERY (ARIN-CARIB)



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Washington, D.C. 20006
United States of America

Organization of American States

P. 202.458.3000
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**XLV MEETING OF THE GROUP OF EXPERTS
FOR THE CONTROL OF MONEY LAUNDERING
September 26-27, 2018
Santa Cruz de la Sierra, Bolivia**

**OEA/Ser.L/XIV. 4.45
DDOT/LAVEX/doc.3/18
July 20, 2018
Original: English**

ASSET RECOVERY QUESTIONNAIRE¹

Name of Respondent:

Jurisdiction:

Position:

E-mail:

Telephone:

Date:

¹ This questionnaire was designed by the Asset Recovery Inter-Agency Network of the Caribbean (ARIN-CARIB).



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1. Legislation

- (a) Please list your jurisdiction's relevant legislation that deals with asset recovery:
- (b) Please list the legislation/Treaty/Convention under which Mutual Legal Assistance (MLA) requests should be sent:

2. Language of the request

- (a) In which language or languages can an MLA request be sent to you?

3. Asset tracing

- (a) Do you have an Asset Recovery Office (ARO)?

If yes, please provide the contact details:

- (b) When asked by a foreign jurisdiction, what information can your jurisdiction provide? (See attachment **Form B1** and complete)
- (c) Aside from criminal, in which other investigations or proceedings can your jurisdiction trace assets, for the purpose of asset forfeiture/confiscation (e.g. do you have non- conviction based forfeiture)?
- (d) If your country only has conviction-base forfeiture/confiscation laws, is non-conviction based forfeiture/confiscation legislation currently being drafted or under consideration in your legislature?

Comments:



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- (e) Should your jurisdiction have non-conviction based forfeiture/confiscation legislation, what type of assets does this apply to? (e.g. cash or all assets)

Comments:

4. Freezing/restraint/seizure

- (a) Can you freeze assets or restrain an individual from dealing with assets when a criminal investigation has commenced?

Yes: ☐ No: ☐

If no, please comment:

- (b) Are there any other circumstances which enable you to freeze assets outside of a criminal investigation and proceedings? (e.g. an administrative freeze)

Yes: ☐ No: ☐

If no, please comment:

- (c) What kind of assets can you freeze or make the subject of a restraint order?

- ☐ Assets that have been transferred to a 3rd party
- ☐ Instrumentalities
- ☐ Equivalent value
- ☐ Other property belonging to or connected to the accused person

Comments:

- (d) At what stage of proceedings can you apply for a freeze/restraint order?



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- ☐ Pre-charge
- ☐ Pre-trial
- ☐ During the trial
- ☐ Post-trial

Comments:

(e) Do you have the possibility for preliminary freezing prior to the receipt of an MLA request?

Yes: ☐ No: ☐

If yes, please provide details:

(f) Is it necessary for the requesting state to send the freezing/restraint order together with the MLA request or does the MLA request suffice?

- ☐ Yes, the freezing/restraint order must be sent with the MLA.
- ☐ No, the assets can be frozen or made subject to a restraint order by sending the MLA only.

Comments:

(g) Is there a time limit for which an asset can be frozen or made the subject of a restraint order?

Yes: ☐ No: ☐

If yes, what is the time limit?

Can the time limit be extended and if so, how?

(h) Can the freeze/restraint order be lifted by the accused or property owner for any purpose (e.g. living or legal expenses)?

Yes: ☐ No: ☐

Please provide comments:



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- (i) Can the freeze/restraint order be varied or lifted prior to final judgement?

Yes: ☐ No: ☐

Comments:

- (j) Do you have the option or ability to sell assets prior to final judgement? If yes, under which circumstances?

Yes: ☐ No: ☐

Comments:

- (k) What information do you require from a requesting state in order to register and enforce a foreign forfeiture/confiscation order?

- (l) Please provide information as to the average time-period it takes for the Competent Authority upon request of MLA or Legal instrument by another jurisdiction to trace or identify assets.

Comment:

- (m) Please provide information as to the average time-period taken by Competent Authority to enforce a confiscation order or a non-conviction based asset recovery order.

Comment:

5. Registration of Assets

- (a) Are the seized assets registered in a national database? If yes, who is responsible for the registration and update of the database? If not, is there any mechanism in place to register the assets that are seized?

Yes: ☐ No: ☐



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Comments:

6. Management of seized and Forfeited/Confiscated assets

(a) Do you have the power to manage assets that are subject to a freeze/restraint order?

Yes: ☐ No: ☐

Comments:

(b) Do you have an Asset Management Office (AMO)?

Yes: ☐ No: ☐

If yes, does the office have rules to guarantee transparency and accountability in the management of seized and confiscated assets? Which ones?

Yes: ☐ No: ☐

Comments:

Also, please indicate:

Contact details of the AMO:

Responsibilities of the AMO:

(c) Are there any practical obstacles or issues complicating your management of the following assets which may be subject to a freezing/restraint order?

Trusts: Yes: ☐ No: ☐

Vehicles: Yes: ☐ No: ☐



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Animals: Yes: ☐ No: ☐

Businesses: Yes: ☐ No: ☐

Comments:

(d) Do you have the ability to sell assets prior to final judgement following a request from a foreign jurisdiction?

Yes: ☐ No: ☐

Comment

(e) Is there a restriction on what assets can be sold prior to final judgement?

Yes: ☐ No: ☐

Comments:

(f) Can assets subject to a freezing/restraint order be sold based upon the receipt of a MLA request from a foreign jurisdiction?

Yes: ☐ No: ☐

Comments:

(g) Do you have the capacity to continually monitor the changing value of the assets that are being managed?

Yes: ☐ No: ☐

Comments:

7. Confiscation/Forfeiture



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- (a) What kind of assets can be sold to pay a confiscation order, or can be forfeited to satisfy the requirements of a forfeiture order?

Direct Yes: ☐ No: ☐

Indirect Yes: ☐ No: ☐

Assets that have been transferred to a third party Yes: ☐ No: ☐

Instrumentalities Yes: ☐ No: ☐

Equivalent value Yes: ☐ No: ☐

Other property belonging to or connected to the accused person Yes: ☐ No: ☐

Comments:

- (b) Does the confiscation/forfeiture order need to be final before you can execute it?

Yes: ☐ No: ☐

Comments:

- (c) At the request of a foreign jurisdiction, can you trace assets for the purpose of executing a confiscation/forfeiture order?

Yes: ☐ No: ☐

Comments:

- (d) Is there any particular information you require from a requesting country in order to execute a foreign confiscation/forfeiture order?

Yes: ☐ No: ☐



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Comments:

- (e) Is it necessary for the requesting state to send the confiscation/forfeiture order together with the MLA request, or is the MLA request enough?

Yes, the order must be sent with the MLA: ☐

No, assets can be confiscated/forfeited by sending the MLA only: ☐

Comments:

8. Distribution & Sharing of Forfeited/Confiscated assets

- (a) Does your jurisdiction share assets that you have confiscated/forfeited on behalf of a foreign jurisdiction? If yes, are there any mechanisms in place to determine how the distribution should be made (e.g. 50% for each participating jurisdiction)?

Yes: ☐ No: ☐

Comments:

- (b) If yes, do you share assets based on an international treaty or ad hoc agreement?

International treaty: Yes: ☐ No: ☐

Reciprocity: Yes: ☐ No: ☐

Ad hoc agreement: Yes: ☐ No: ☐

Please explain:

- (c) Are there certain conditions that a requesting State must meet in order to share assets with your jurisdiction?

Please explain:



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9. Returning Assets to Victims

Once victims have been identified, does your jurisdiction allow:

- (a) Return assets that you have frozen/restrained or seized on behalf of another jurisdiction to the victims?

Yes: ☐ No: ☐

Comments:

- (b) Compensate their loss by returning an equivalent value to them?

Yes: ☐ No: ☐

Comments:

- (c) If the assets are not returned to the victims (e.g. in cases in which the victims cannot be identified), what are the disposal mechanisms that your jurisdiction has in place? (E.g. sale of assets in auctions, donation to governmental institutions).

10. Assets with nexus to Public Corruption

- (a) Where the proceeds of crime are linked to corruption, particularly public corruption (i.e. stolen assets) is there provision to return same to the legitimate owner(s) in accordance with the fundamental principles of the United Nations Convention against Corruption 2003 (Merida Convention, Chapter 5)

Yes: ☐ No: ☐

Comments:



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11. Any other information (comments)

[illegible]