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**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.8/18  
October 4, 2018  
Original: Spanish**

**STUDY  
LIQUIDATION OR SALE OF SEIZED ASSETS FOR ITS PROPER DESTINATION**

**2018**



## INTRODUCTION

The Group of Experts for the Control of Money Laundering (GELAVEX) prepared the Strategic Plan for the 2018-2020 Triennium of the Group at the XLIV Meeting held in Asunción Paraguay from September 25 to 26, 2017, which was approved in its Sixtieth Session Second Regular Period of Sessions of CICAD.

Within the lines of action included in the Strategic Plan 2018-2020, the topic of “Settlement or sale of seized assets: valuation for its due destination is included”.

Along these lines, both the BIDAL Project and the GELAVEX Confiscation Subgroup, with the support of the Executive Secretariat of CICAD/OAS, have continued to carry out studies and reference documents on, not only on the creation of specialized agencies in the administration of seized and in rem forfeited assets, also on the development and progress of these in relation to the project of their creation.

As well as the document created in 2015 by the BIDAL Project and the Confiscation Subgroup of GELAVEX<sup>1</sup>, “they conclude, among other aspects, on the importance of having figures for the alienation of seized assets and the sale of confiscated assets.

This study is based on the conclusion that these figures are essential instruments in order to guarantee that specialized agencies in the administration of seized and in rem forfeited assets can execute their tasks more efficiently.

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<sup>1</sup> See “Analysis of Applicability and Effectiveness of Modern Legal Instruments for the Disposal of Seized and in rem Forfeited Assets”,



## **GENERAL OBJECTIVE**

The general objective of this study was carried out through the Confiscation Subgroup of GELAVEX and the BIDAL Project in accordance with the different studies carried out years ago and compiling the practical experience of the countries in the implementation of figures such as the alienation and the sale of confiscated assets.

This study is based on an analysis of comparative legislation of countries that have the status of early disposition of seized and the sale of confiscated assets, as well as the procedures for assessing them and the sales processes used, with the purpose of to identify good practices in the application of these figures that allow for the efficient management assets, aiming to reduce administrative expenses and thereby guarantee the value of assets to avoid their deterioration and decrease of resources to execute the final judicial decision, be it its return or destination according to the domestic legal system.

## **METHODOLOGY**

The Coordination of the Subgroup of in rem Forfeiture and International Cooperation, in coordination and collaboration of the Director of the BIDAL Project, reviewed the facilitated reference legislation of the countries that responded to it and that have modern legal instruments for the alienation of seized and in rem forfeited assets: light of the answers obtained in a questionnaire circulated to obtain information on the application of these procedures.



## **BACKGROUND**

“The creation of entities specializing in the recovery of assets can be the cornerstone in the effort to deprive perpetrators of their benefits and illegal assets, by whatever legal means available under criminal and or civil law.

In addition, this document of good practices also indicates in relation to the powers of sale and auction on assets seized in advance:

“According to its domestic legislation, each State could adopt legal measures so that the asset management entity has the possibility of disposing of or auctioning seized, perishable or seized property in advance of the judicial or final decision.

The legal authorization should be made through the competent authority and supported by the argument of preserving the value of the assets to avoid their deterioration during the course of criminal proceedings and the significant loss of their commercial value, or because there is the possibility delivered in custody for excessive or onerous administration.

In both cases, the proceeds of the sale or public auction should be deposited in the seizure fund until the competent authority orders their return or confiscation.”



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The importance of understanding this premise leads not only to the importance of creating specialized agencies in the management of seized and in rem forfeited assets, but also to having instruments of efficient administration that allow the reduction of the value of the assets to the administration within the framework of respect for the right to property in cases of extinction of ownership over the owner of the property, which obliges them to keep them in the state in which they were insured, to return them under the same conditions, with the only exception of the normal deterioration that they may suffer due to the passage of time or due to unforeseeable circumstances or force majeure.

The importance of conservation of the assets throughout the process must be analyzed by virtue not only the high costs that such conservation can mean, when the judicial processes are so extensive; It could also lead to the insured assets being devalued, destroyed or deteriorated and, otherwise, if their confiscation or extinction of ownership is ordered, they can proceed with their sale, taking into consideration that the product of this will not cover the total cost of its custody, conservation and maintenance while it was seized.



## COMPARATIVE LEGISLATION. DISPOSAL OF SEIZED ASSETS.

Starting from the premise that the specialized agencies in the administration of seized and in rem forfeited assets must guarantee the conservation of these, we cannot ignore that exceptionally and under the assumption of being lawful their trade, the sale of the seized can be authorized.

This possibility exists in some legislations, such as those of Argentina, Bolivia, Brazil, Costa Rica, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela.

In the case of **Argentina**, Law 26,348 enacted in January 2008, establishes the regulatory framework for abandoned, lost, confiscated or hijacked aircraft and motor vehicles. In addition, the term for its sale or advance sale will vary. Article 3 establishes the possibility of the sale of aircraft that, in the period of 6 months after their seizure, have not been claimed. The same term applies to motor vehicles, which may be extended by the intervening magistrate through a well-founded decision justifying this extension. It is striking that the Argentine legislation indicates this law the following:

“ARTICLE 5 —When the national or federal judges in whose charge they are dealing with cases related to vehicles that have remained kidnapped for a period of more than FIVE (5) years counted from their effective kidnapping, consider that by virtue of the status of the proceedings they do not apply the procedure of reduction, they must notify the authority in charge of the custody and deposit of the vehicles within THIRTY (30) days counted from the effective date of this.



Likewise, they must record the period during which the impossibility will apply, which may not exceed the NINETY (90) days counted from the issuance of the order that orders it.

The aforementioned period may be extended for identical terms as long as the procedural situation that determined the first communication is maintained, and the competent magistrate, before its expiration, must inform the depositary authority of such extension, which will be valid for the term that the judge dispose of and with the time limitation established in the second paragraph of this article.

The provisions of the first paragraph shall apply to motor vehicles that have been deposited in custody for a shorter period, when the term of FIVE (5) years previously indicated is fulfilled”.

For its part, the legislation of Bolivia establishes for the Directorate of Registration, Control and Administration of Seized Assets the possibility of the direct sale or public auction of movable consumable or perishable goods, the public auction sale of the semovientes and goods furniture susceptible to decrease in value due to technological outdated, without the need of the consent of the owner.

The Regulation for the Administration of Seized, Forfeited and Confiscated Assets, regulates these cases in its article 36. In addition, it indicates for the purposes of transfer or transfer:

“**IV.** The transfer of movable assets subject to registration shall be signed by the Director General of DIRCABI, prior authorization of the Judge who is



aware of the case; except those stipulated in the New Code of Criminal Procedure. "

For the case of direct sale of consumable or perishable personal property, without the owner's consent, Articles 45 and 46 of that Regulation establish the cases that authorize it, as well as its procedure (open bid).

For the sale of other assets at public auction, Law No. 1970 requires the express and written consent of its owner<sup>2</sup>.

In that order of ideas, its regulation states that "whenever the administration requires an act of disposition involving transfer or lease of seized property must communicate to the owner." In the same way, the owner of the property may, at any moment of the case, expressly consent in writing to sell his seized assets through the Management; excepting those that are necessary for test purposes or that fall on them right of use and enjoyment, the latter may be sold until those rights are extinguished.

In **Brazil**, the legislation is quite guaranteed in relation to the property right of the owner of the seized property and the principle of due process, in accordance with article 5, LIV and XXII of the Federal Constitution; articles 144-A and 120, § 5º of the CPP, articles 4º, § 1º and 4-A of Law nº 9.613, of 1998, and article 62 of Law nº 11,343, of 2006. The latter states:

"§ 4º After the instituting of the competent criminal action, the Public Prosecution Service, by means of an autonomous petition, shall request the competent court to proceed, on a precautionary basis, to dispose of the

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<sup>2</sup> Article 258, subsection 6, Law No. 1970, Code of Criminal Procedure of Bolivia.





seized property, except those that the Union, through SENAD, indicate to be placed under the use and custody of the judicial police authority, of intelligence or military bodies involved in actions to prevent drug misuse and operations to repress unauthorized production and illicit drug trafficking solely in the interest of such activities”.

However, the alienation or sale of seized property is authorized, which is only judicial since only a judge can determine it ex officio or in response to a request presented by the prosecution, the police or by the interested party (owner), if It deals with perishable goods, livestock, goods that can be depreciated, destroyed, deteriorated, that are costly to maintain or difficult to administer. Being a judicially based process, paragraph 7 of article 62 of Law No. 11,343, obliges the affected party to be notified about the transfer decision, which must be heard according to the provisions of article 62, § 7 of the Law nº 11.343, of 2006 and in the article 120, § 2º of the CPP.

Brazil's legislation allows creditors, both mortgages and liens, to oppose early sale, as regulated in articles 129 of the CPP and article 1,047, II of the Code of Civil Procedure. The cancellation of these mortgages must comply with the requirements of articles 250 and 251 of Law No. 6.015, of 1973 and of articles 1500 and 1501 of the Civil Code, or if, in the case of movable property, the provisions of the Articles 1,436 and 1,437 of the Civil Code.

The transfer or transfer of goods sold in advance is done by document by the judicial authority authorizing the auction, which is signed in conjunction with the auctioneer. (Articles 685-B, 693, p., And 694 of the Code of Civil Procedure, and article 167, I, 26 of Law No. 6,015, of 1973).



In article 21 of Decree 51-2014, published on July 21, 2014, the Administrative Office of Seized Assets of **Honduras** is empowered to sell the seized goods, either at public auction or through a specialized third party. The norm indicates:

“ARTICLE 21. - SUSCEPTIBLE GOODS OF DETERIORATION OR COSTLY ADMINISTRATION.

When the precautionary or precautionary measure falls on assets at risk of perishing, lost, depreciated, devalued, that its administration entails damage, disproportionate cost to the State at the time of returning it if appropriate, or that are projected useless when the judgment is handed down of merit, these may be alienated, auctioned or sold in advance by the Administrative Office of Seized Assets, intending to maintain their productivity. The same shall apply when dealing with semovientes or other animals. (..)”

The transfer or transfer of the assets of seized and alienated furniture or sold in advance, will be carried out in Honduras through the award of the asset. When it comes to real estate property, your Civil Code establishes that they must be registered, being that the awardee contracts and bears the expenses of the deed. It will be until the competent judge recognizes the right of the third party in good faith that the OABI can proceed with the payment of this recognition, which normally happens until the judgment is handed down.

In **Mexico** this alienation is permitted, through public bidding and auction, as of the amendment to the Federal Code of Criminal Procedures on December 19, 2002, both for movable and immovable property. It is applicable when dealing with perishable goods, livestock, goods that



can deteriorate and expensive maintenance goods, procedure that is in charge of the Service of Administration and Disposal of Goods (SAE), without needing the consent of the owner of the property. The inscribable assets will be transferred or transferred by means of the adjudication of the property or by a private notary public.

In relation to the pledge and mortgage creditors, the Mexican legislation allows them to oppose the advance sale, but it will not be necessary to have their consent to execute it.

For its part, **Panama** establishes the possibility of the alienation of property seized through public auction, namely

“Article 254. Provisional apprehension of perishable goods and onerous maintenance. When the apprehension falls on perishable goods that constitute an instrument of crime, the investigating officer may donate them to public institutions, charities and to the churches. When the apprehension falls on goods that may be damaged or deteriorate, the investigating officer, prior appraisal, will proceed to its sale as soon as possible, and the proceeds of said sale will be deposited in the Custody Fund account of the Attorney General of the Nation in the National Bank of Panama, which will inform the Judge of the cause.

(...)³”.

This same code also authorizes the sale, in case of assets seized or kidnapped, usable or of onerous maintenance and custody, with the intervention of the Office of the Prosecutor and the

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<sup>3</sup> Law 63 of August 28, 2008, Criminal Procedure Code of Panama.



parties that may be affected by the decision. And it will be precisely through the award act, which the transfer of the ownership of the assets sold in advance will be carried out.

As regards the pledge and mortgage creditors, article 317 CPP provides for the objection before the Judge of Guarantees of the measures adopted in exercise of the powers recognized in the law, and this will resolve in oral hearing what corresponds<sup>4</sup>.

Regarding the credits, the Panamanian standard indicates:

“When the monies, securities and goods referred to in this article are in a bank or savings and loan entity, guaranteeing a loan with said institution, it may compensate your claim even if the obligations are not due, except in case of bad faith, as soon as he receives the provisional arrest warrant from the investigating officer. In this case, the assets that the syndicate would have obtained as a result of the transaction that originated the compensated claim will be considered to come from the investigated crime.

After the aforementioned compensation has been made, if surplus is present, these will be kept under the orders of the competent Public Prosecutor's Office, which will deposit them in the Custody Fund of the Attorney General's Office of the National Bank of Panama”<sup>5</sup>.

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<sup>4</sup> Article 317. Control. The Prosecutor must submit to the control of the Judge of Guarantees the measures dealt with in this Chapter, within a period not exceeding ten days.

The parties may object to the Judge of Guarantees the measures adopted by the Prosecutors, their assistants or police officers in the exercise of the powers recognized in this Chapter. The Judge in oral hearing will resolve what corresponds.

<sup>5</sup> Article 253, paragraphs 2 and 3, Law 63 of August 28, 2008, Criminal Procedure Code of Panama.



In addition, Law 41 of October 2, 2000, which reforms the Panamanian CPP, provides for compensation of the obligation borne by the bank or other creditor entities, upon declaration of expired debt term and request of judicial auction of the assets.<sup>6</sup>

The National Secretariat for the Administration of Assets Seized and Commanded (SENABICO), **Paraguay**, an institution created by Law 5876, enacted in September 2017, has the powers indicated in Article 13, subsection a):

“a) The assets will be managed with the lowest costs, without detriment to the state of conservation.

(..)

c) If the assets result from difficult or expensive maintenance, the competent authority will be asked to apply the advance sale”.

This is how Article 23 of Law No. 5876 states:

“Article 23. Advance sale. When seized assets are at risk of perishing, deteriorating, devalued or whose conservation occasions damage or

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<sup>6</sup> Law 41 of October 2, 2000, amending Law 63 of August 2, 2008, Code of Criminal Procedure, Article 31. In the case of other assets that are not money or securities, the bank or the creditor entity may declare the debt of expired term and request the judicial auction of the goods, in order to compensate the obligation. From these processes, the investigating officer will be personally notified and, if it is not done, the respective process will be annulled. Surpluses, if any, will be maintained at the orders of the competent prosecutor's office. Both the actions of ownership, as well as the requests to lift the provisional apprehension of the instruments and other property provisionally apprehended by the competent prosecutor's office, will be resolved by the competent court, which will decide on the temporary possession or administration of the goods, with the prior opinion of the education officer.



disproportionate to their value or administration, may be sold in advance to pretend to maintain the productivity thereof.

In this case, the National Secretariat for the Administration of Seized and Commissioned Property (SENABICO) will request from the competent judge, through a reasoned resolution, the application of the measure so that it authorizes the anticipated sale.

Once the competent judge receives the request, he will transfer the right to the owner of the property for a period of 10 (ten) days to enforce his rights and may oppose the measure. In case of opposition, the judge will analyze the reasons given by the parties and issue the corresponding resolution.

If the aforementioned deadline expires, without the owner expressing his opposition, the competent judge will issue the respective resolution of early sale. (..)".

Regarding the transfer, the same law informs that a public deed issued by a notary designated by SENABICO will be drawn up.

**Peru** allows the sale of movable and immovable property seized, by decree of Legislative Decree No. 1104, of April 19, 2012, through the National Seized Goods Commission (CONABI), a self-sustaining institution. The final complementary provisions of Legislative Decree 1104:



**“Sixth. - Powers of CONABI for auction and liquidation of objects, instruments, effects and profits generated by the commission of crimes against the State**

(...)

6.2. Said entity is also authorized to auction before the conclusion of the process, the objects, instruments, effects and proceeds of the crime seized or forfeited that by their nature or characteristics may be subject to loss or deterioration, as well as when the value of their custody or conservation is very expensive.

(...)”.

The transfer or transfer will be made by means of minutes signed by the Presidency of the Board of Directors and the public deed. By disposition of the Regulation of the Legislative Decree No. 1104 Regulation of the Legislative Decree No. 1104, the debts in which the assets have the condition of pledge or mortgage guarantee can be paid.

Regarding the restriction of being registered in a special register to participate in the sales of seized goods, Bolivia only requests it in the case of anticipated sale of controlled substances; Costa Rica and Honduras demand it and it is general for all sales; Panama, Peru and Venezuela create a registry for each.

**RESULTS OF THE SALE OF SEIZED ASSETS.**



In the case of Argentina, Brazil, Honduras, Panama, Peru, Uruguay and Venezuela, the proceeds of the sale of seized assets, until the appropriate procedural moment. In Mexico, they will be allocated as indicated by domestic legislation.

Article 7 of Law No. 1970, Code of Criminal Procedure of **Bolivia** indicates:

“The proceeds of the administration of seized assets will be charged to the administration and conservation expenses, for this purpose, the Director of Control, Registration and Administration of Seized Goods, will expressly authorize the settlement of corresponding expenses, obligating those who were in charge of the direct administration of these goods, to make the discharges of law in accordance with the respective fiscal control standards”.

Article 4 of the Regulations for the Administration of Seized, Forfeited and Confiscated Assets establishes:

“ARTICLE 4. (RESULTS). -

- II. The results or yields of the assets generated during the time of the seizure will be given the same treatment as the seized goods from which they come.
- III. In any case, the resources obtained from the administration of the seized assets will be used to compensate the cost of maintenance and administration of the same and the remainder will be deposited in an account in the name of the Directorate until such time as the judgment determines your final destiny”.





Similarly, it establishes the return of money and interest from the sale of the seized property, when a final judgment is ordered the return of these<sup>7</sup>.

In the same sense, **Honduras** in its regulations establishes that if the return of seized assets that have been sold or sold in advance is ordered, OABI will return the amount obtained from the sale and its interests. In turn, the final paragraph of Article 21, Decree 21-2014, states that the proceeds of the auction or advance sale will be deposited in the special fund of money seized.

In the case of **Paraguay**, its Law N ° 5876 indicates in article 23, in the following:

“The proceeds of the sale will be deposited in the bank accounts of seized monies administered by the Secretariat of Administration of Seized and Commissioned Property (SENABICO) and will send a copy of the deposit made to the competent judge for the record of the process and will remain under administration until its return is determined to the affected or ordered his confiscation”

#### **COMPARATIVE LEGISLATION. SALE OF FORFEITED ASSETS.**

In Argentina there is no centralized regime for the sale of confiscated assets.

As for **Bolivia**, its legislation indicates that the judge or court that issues the judgment must resolve the fate of the seized assets that were not subject to return, in which case the Directorate of

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<sup>7</sup> Article 260, subsection II.1, Law No. 1970, and Code of Criminal Procedure of Bolivia.



Registration, Control and Administration of Seized Assets must comply with what is determined in the judgment when it acquires the status of *res judicata*. The term of 30 days will be counted after the execution, to initiate the corresponding processes of sale in public auction.

The proceeds of the sale must be deposited in favor of the National Council for the Fight against Illicit Drug Trafficking, so that the same Code of Criminal Procedure.

**Brazil** authorizes the sale of confiscated goods, in accordance with articles 123 and 133 of the CPP, as well as articles 4-A, paragraphs 10 and 11 of Law No. 9.613, of 1998, and in article 63, §2 of the Law nº 11,343, of 2006, which indicates that it must be carried out through public auction. As in the case of those seized, it is the judge who determines the sale, and the National Secretariat for Drug Policies of the Ministry of Justice must execute it, in the case of goods related to Law No. 11,343, the Drug Law. In the case of the sale of confiscated goods, it is possible to cancel the mortgages and garments that weigh on the goods, complying with the requirements established by its regulations in articles 250 and 251 of Law No. 6.015, of 1973 and articles 1500, 1501, 1436 and 1437 of the Civil Code.

In **Honduras**, the sale of confiscated goods is permitted, which can be made directly by the Seized Property Management Office, or through a specialized third party. Article 76 of Decree 51-2014, as appropriate:

“ARTICLE 76. AUCTION OR DONATION OF ASSETS DECLARED IN COMMISSION OR CONFISCATION.

The goods, products, instruments or profits, on which declarative judgment of definitive deprivation of ownership, confiscation or forfeiture rests, prior



resolution of the National Defense and Security Council (CNDS), will be auctioned or may be donated to the following institutions, in this last case, prior consideration of the needs of the same and the plan of use that they present for the purpose:

- a) To the OABI for the achievement of its purposes; (...)"

As indicated in the case of the alienation of seized assets, in the case of sale of the seized assets, the pledges or mortgages may be paid, provided that the competent judicial authority has recognized the creditors as third parties in good faith. Likewise, transfers or transfers of the ownership of inscribable assets will be made under the same terms as indicated for the case of advance sale.

The Federal Law for the Administration and Disposal of Public Sector Assets of **Mexico**, authorizes the sale of confiscated assets, which is carried out by the Service of Administration and Disposal of Assets (SAE), as an organization specialized in the administration of assets. In the case of this type of property, the transfer of the ownership of inscribable assets is done by means of the adjudication of these.

**Paraguay**, through the National Secretariat for the Administration of Seized and Commissioned Goods (SENABICO), can sell by auction, the commissioned assets<sup>8</sup>.

Pursuant to Article 17 of Supreme Decree 093-2012, Peru can sell confiscated property. Likewise, Legislative Decree 1104, in its Final Complementary Provisions, provides.

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<sup>8</sup> Article 49, Law No. 5876, On Administration of Seized and Closed Property, Paraguay.



**“Sixth. - Powers of CONABI for auction and liquidation of objects, instruments, effects and profits generated by the commission of crimes against the State**

6.1. Determined the criminal responsibility of the defendant by condemned or enforceable sentence according to the ordinary regulations of the matter and, where appropriate, the loss of ownership of the objects, instruments, effects and profits of the crime under this Legislative Decree, the CONABI proceed to the public auction of the assets, reporting to the Judge”.

Both Article 28 of Supreme Decree No. 093-2012-PCM, and its regulations allow payment to pledge and mortgage creditors. Regarding the transfer of assets, the Presidency of the Board of Directors, once the total price of the asset has been canceled, subscribes the memorandum and make it public.

Regarding the restrictions for the participation in these sales, in the case of Bolivia, the participation of the convicted person or a third party who participates in it is forbidden, the rest of the persons may participate while making the deposit of 10% of the base price. In Brazil the participation of the auctioneer, the judge, the prosecutor and other servants of justice is prohibited; Honduras conducts a criminal background check, Costa Rica requires registration in a register of participants that prohibits the inclusion of those convicted for violation of Law No. 8204 or processes processed in accordance with the organized crime procedure described in Law No. 8754. In the case of Mexico, Panama, Peru and Venezuela establish the obligation to fulfill requirements for those who wish to participate in the sale of confiscated property, which may include filing the criminal record.



Since everything related to compliance with requirements is so varied, only Costa Rica requires having a general register of participants. In the case of public auctions held by SENAD of Brazil, registration is not mandatory. Panama, Peru and Venezuela create a registry that feeds for each sale of confiscated assets.

#### **RESULTS OF THE SALE OF FORFEITED ASSETS.**

The Code of Criminal Procedure of **Bolivia** establishes that, with the proceeds of the sale in public auction of the confiscated or confiscated property, the creditors must be paid with real security over them, provided that these credits are registered prior to the seizure resolution and judicially recognized<sup>9</sup>.

The money from the sale of confiscated and confiscated property will be used, in accordance with article 260, subsection III of Law No. 1970:

1. The fulfillment of the aims of prevention, interdiction, rehabilitation and prison regime established in the Law of the Regime of Coca and Controlled Substances; y,
2. Cover administration expenses.

For its part, **Brazil** will allocate the proceeds of the sale of confiscated goods, will be allocated to the prevention of crime and drug consumption, to programs for the rehabilitation of drug consumption, to social programs, to the strengthening of institutions for the application of law

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<sup>9</sup> Article 260, subsection II.4, Law No. 1970, Code of Criminal Procedure of Bolivia.



and projects of national interest. The same fate will have in the case of Honduras, Mexico, Panama and Uruguay

### **COMPARATIVE LEGISLATION. VALUATION OF ASSETS FOR YOUR DISPOSAL**

**Bolivia** establishes that the value of the seized assets projected for sale or those seized for sale may be fixed by a specialized third party or by market value. This is what its Regulations for the Administration of Seized, Forfeited and Confiscated Assets:

“ARTICLE 48. (BASE PRICE). The base price of the real estate will be its cadastral value and the furniture price established by an expert or a person of evident suitability, as well as its market value”.

On the other hand, **Brazil** carries out the assessment by means of a judicial evaluator or evaluator chosen within the judicial process to which the assets are related. But if the sale is of goods related to the Drug Law, that is, when the auction is carried out by the SENAD, who makes the assessment is the Public Administration (Articles 19 and 53, § 1 of Law No. 8.666, of 1993).

In **Honduras**, it is established that the appraisal will "be carried out by the General Directorate of National Assets or any other competent entity depending on the property to be auctioned". In Mexico, this valuation can be carried out by the State, by market value or by a specialized third part.

The **mexican** legislation indicates:



“When appraisals are required, they will be practiced by the Institute for Administration and Appraisals of National Assets or by experts, credit institutions, specialized agents or public brokers and must include at least the commercial value and the immediate realization, in the terms that determine the Government Board”<sup>10</sup>.

Also in the Panamanian legislation it is established that the value of the goods will be assigned through valuation made by the State. Likewise, it regulates matters related to mortgage and pledgee creditors in the same sense as in the anticipated sale and its ownership will be transferred or transferred by means of the adjudication of the asset.

For its part, Law No. 5976 in Paraguay indicates:

“Article 46. Destination of the goods. The financial products, the cash and the proceeds of the auction of goods declared in confiscation shall be allocated as follows:

- a) 25% (twenty-five percent) to the order of the National Secretariat for the Administration of Seized and Commissioned Property (SENABICO), to cover the operation and maintenance expenses and, preservation of the seized and confiscated property through the Fund Special.
- b) 25% (twenty-five percent) will be distributed equally between the Judicial Branch, the Public Ministry or the institution that made the first

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<sup>10</sup> Article 36, third paragraph, Federal Law for the Administration and Disposal of Public Sector Assets.



intervention, depending on whether it is the National Anti-Drug Secretariat or the National Police.

- c) 50% (fifty percent) to the order of the National Secretariat for the Administration of Seized and Commissioned Property (SENABICO), to finance projects for the prevention of punishable acts, rehabilitation of addicts and social. (...)"

In **Peru**, the valuation of said goods for advance sale will be made by a specialized third party. In Article 30 of Supreme Decree No. 093-2012-PAM, it is indicated that in the case of confiscated property, the valuation must be made at commercial value, by a natural or legal person specialized in the matter with proven experience.

**Paraguayan** legislation allows SENABICO to request support from any of the State institutions, so that its experts can assess the assets they are responsible for. It also allows the hiring of specialized third parties for the valuation of said assets. SENABICO is warned that for such contracting they should consider the most competitive rate within the market and the type of suitable service in relation to the valuation that is required.

#### **THE CASE OF COSTA RICA.**

Law No. 8204, Law on Narcotic Drugs, Psychotropic Substances, Drugs of Unauthorized Use, Related Activities, Legitimization of Capital and Financing of Terrorism, establishes in relation to the powers granted to the Costa Rican Institute on Drugs (ICD):





“(…)

The Institute may sell, auction, auction or dispose of the assets assumed in judicial deposit in advance.

(…)”<sup>11</sup>

In the case of the Psychotropic Law, there are no conditioning conditions to authorize this sale.

In the case of Law N ° 8754, Law against Organized Crime, the prior disposition of seized goods that the ICD can carry out, is authorized in the case of goods that may deteriorate, be damaged and be costly to maintain<sup>12</sup>.

In the same order of ideas, Regulation DE-36948-MP-SP-JP-H-S, establishes:

“Article 82 - Advance disposition of goods. The UAB may dispose in advance of the assets assumed in judicial deposit, through sale, auction, auction, donation or destruction. The procedures of sale, auction or auction will be established according to the substitution procedure approved by the Comptroller General of the Republic”.

For its part, Law No. 7494, Law on Administrative Procurement stipulates:

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<sup>11</sup> Article 84 bis, third paragraph, Law No. 8204.

<sup>12</sup> Law No. 8754, Article 31. - Prior disposition of assets. The goods that may deteriorate damaged and that are expensive maintenance may be sold, auctioned or auctioned before the final judgment. For this, the Unit of Administration of Forfeited and Commissioned Property must issue a well-founded resolution that motivates the act, in which the market value of said assets must be included. The money generated will be deposited in the current accounts of the ICD, until the end of the process. (...)”



“Article 2 bis.- Authorizations. (\*)

Exclude from the competition procedures established in this Law, the following cases authorized by the Comptroller General of the Republic:

(...)

c) Other activities or specific cases in which sufficient reasons are credited to consider that it is the only way to achieve the satisfaction of the general interest or to avoid damage or injury to public interests.

The request that directs the administration must contain a detailed justification of the circumstances that motivate the application of the exceptions established in this article, as well as the detail of the form that has been foreseen to select the contractor.

The Comptroller General will resolve the request within ten working days and may establish substitute procedures to the ordinary ones. Likewise, it will specify the recursive way that proceeds in these cases, as well as the applicable terms for the respective procedure.

The authorizations contemplated in this article do not exonerate the requesting administration for the results of the contracting, nor for the erroneous qualification of the circumstances that, eventually, can serve as justification for the request of exception of the ordinary contracting procedures”.



Based on these legal assumptions, the ICD requests the General Comptroller of the Republic authorization for the creation of such substitute procedure, which was authorized in its latest version by DCA-0436, effective until 2019.

This procedure applies both to seized and forfeited assets and is subject to the general principles, regime of prohibitions and nullities established in the Law for Administrative Contracting and its regulations.

This is the same procedure for sale and sale, which is carried out by the Asset Recovery Unit (URA) of the Costa Rican Institute on Drugs. Initiates with the resolution sent by the head of the URA, informing the sale decision and that must contain certain information<sup>13</sup>.

Within the information that must contain, is the value of the goods projected for sale. Costa Rican legislation indicates that when the goods to be sold are movable property, the valuation may be carried out by personnel of the Asset Recovery Unit (URA) of the Costa Rican Institute on Drugs. For this, the unit has the corresponding procedure, duly included in the institutional manual, as well as with the competent.

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<sup>13</sup> Substitute Procedure of Contracting for the Administration and Disposal of Seized and Commissioned Property of the Costa Rican Institute on Drugs, "Article 11 - Communication of disposal of assets. (...) The resolution issued by the URA will contain, at least, the following:

- a) Data of the judicial file, such as the name of the accused, file number and office processing the case.
- b) Identification of the property to be disposed of.
- c) Identification of the process by which the asset will be disposed.
- d) Market value of the property established in accordance with the Procedures Manual of the URA, which will be determined by the competent official of that Unit, by the General Taxation Office, the competent official of the Public Administration or, failing that, by the person hired for such purposes.
- e) Name of the official in charge of the disposition of the assets. (...)"



If it is a question of real estate, for an aspect of specialty and competence, said valuation must be made by a professional duly registered before the Federated College of Engineers and Architects of Costa Rica, being that, in these cases, the collaboration for said Fixing of the base price to the Tax Administration of the country, which has duly collegiate and authorized engineers to perform this task.

The sale procedure, generally, is executed by means of the presentation of offers in closed envelope, but the sale by means of public bid or the online sale can be implemented.

Notification is required to the owner of the property or affected, since his authorization is not necessary. When it comes to the alienation of seized assets, the URA must inform the judicial office that processes the case, that the property was sold and the amount for which it was sold. In the same way, you must inform about the deposit of the amount of the sale in the account destined for monies seized. That amount will remain there until the process is resolved, and must be delivered in case the competent judicial authority orders the asset. The interests resulting from the sale or liquidation of seized goods are not delivered at the time the return is ordered, they have been distributed among preventive and repressive drug trafficking entities, as well as a percentage for the insurance and maintenance of the seized assets. In the case of the proceeds of the sale of assets, the capital is distributed among the same dependencies, but no longer the interests only, now the capital is.

Regarding the goods subject to registration in the National Registry of Costa Rica, the change of owner can be done in two ways:



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The Asset Recovery Unit may transfer them by presenting the respective adjudication resolution, with the corresponding security ticket assigned to their attorneys, along with the documentation requested from the buyer, depending on whether the property is not registered, inscribed or if they are real estate.

The Asset Recovery Unit can deliver the award certificate to be duly notarized by the notary that has chosen for this purpose the successful bidder. To that act will attach a certified copy of the act of judicial deposit, in the case of sale of seized assets, or the order of registration / transfer when it comes to sale of confiscated assets.

The authorized procedure in Costa Rica has an exception that is a summary process, for when what is required to liquidate or sell in advance are perishable goods seized perishable.



## CONCLUSIONS

Since 2008, this same Group of Experts of the GLAVEX after an analysis and study, reached the unequivocal conclusion that the specialized agencies in the management of the assets should have the figure of the sale or advance sale of seized assets to avoid the loss or diminution of their value, when their administration is costly or difficult to administer. This reduces the incidents and costs of its administration and maximizes its recovery value. This has been identified as a very useful tool in the responsible and efficient management of the assets under its charge, since the assets according to their nature lose value with only the passage of time, if we take into account the depreciation of the fixed assets according to the following detail:

### TABLA DE VIDA ÚTIL O DEPRECIACIÓN DE LOS ACTIVOS FIJOS

La ley establece el tiempo de vida útil de cada activo indicando un porcentaje (%) de depreciación anual.

Vida útil de activos fijos y/o % de depreciación anual.

#### TABLA DE DEPRECIACIÓN DE ACTIVOS

Bienes	(%) Depreciación	Vida Útil
Ganado de trabajo y reproducción.	25%	4 años
Vehículos de transporte	20%	5 años
Maquinaria y equipo	20%	5 años
Equipos de procesamiento de datos.	25%	4 años
Otros activos	10%	10 años

Resumen de la tabla:

- Ganado de trabajo y reproducción. Vida útil: 4 años
- Vehículos de transporte (excepto embarcaciones): Vida útil: 5 años
- Maquinaria y equipo (para explotación minera): Vida útil: 5 años
- Equipos de procesamiento de información (computadora, laptop): Vida útil: 4 años
- Otros activos: Vida útil: 10 años



Due to the above, some of the member countries of the organization took the opportunity to incorporate this legal tool into their domestic legislation, which allows guaranteeing the value of the assets to any of the parties during the seizure phase. In this regard, the countries developed two ways to apply the sale or advance sale: the first one, through the request issued by the administrative body to the judge who knows the process, in which a hearing is held to hear the position of the right holder with respect to the request for sale or early, of alienation or early sale approves or denies the request, being this form more guarantee but less efficient since while the parties are notified and the hearing is executed they can spend considerable time leading to the maintenance and sometimes the risk of loss of the goods, especially in the case of livestock. The second, which is more effective but less guaranteed, when autonomously and independently the administrative body itself, through a well-founded resolution, reaches the decision to dispose of or sell in advance the assets under this charge.

However, in both cases, it is necessary to have a sales procedure that allows for efficient execution, which is why, according to the studies and experience of the countries, sales of seized and forfeited assets have been carried out in a preferential manner. public auction, however, this method of sale has some forms, types or classes, which allow to generate transparency and maximize the processes to generate competitiveness among buyers for the benefit of the managing body, constituting as an integral and indispensable part of the process, the form and methods to establish the base price of sale or exit of the asset.

This base sale price is normally established through a valuation or appraisal carried out by state entities or specialized third parties according to the comparative legislation study carried out and in this sense a small difference must be made between these two terms; being that the valuation, is the act by which the price is determined using the comparative method of the object in



a subjective way either by appreciation or market study, however the valuation is established by an expert through an objective assessment of the asset based on knowledge.

Despite this, it is important to point out that both tools are important as long as the opportune moment in which one or the other is applicable is clearly established, since the valuation or appraisal must fulfill a purpose or purpose, be these for sale, donation, or estimate of the value for accounting or insurance purposes or any other, especially in the case of appraisals for the costs of professional fees they entail.

Taking into account all the above and in order to arrive at an objective approximation of the value of the object, it is essential and necessary that the information on the property subject to valuation or assessment, is correct, clear, reliable, complete, timely and in force, since the quality of the information directly affects the value of the asset and therefore its recovery value, the loyalty of the buyers, the success of the auction and therefore the credibility and institutional seriousness, therefore, it is recommended that the information will be:

- Reliable, useful, timely and valid for assessment, destination and decision making.
- Specific and clear complete description of the property.
- Technical data and correct specifications.
- Recent photographs (eg. Físico, brands, damages).
- Situation and legal problem (registration situation, encumbrances, pledges, pending rights and obligations, possession, deeds, easements).

For its part, it is important to analyze that value is not an inherent characteristic of a good, but depends on the needs and desires of the buyer to acquire it, so that a good cannot have value if it





has no use, understanding this as the quality of promoting the desire of someone to own it, that is why PUBLIO SIRO (85 - 43 BC) said "ONE THING IS WHAT PEOPLE ARE WILLING TO PAY FOR IT."

In spite of everything, in the matter of alienation or sale of seized and forfeited assets, it cannot be denied that said assets bring a stigmatization of their criminal origin and that it directly influences their price, according to the buyer's assessment or potential client, so many management bodies fail to achieve the goal of selling them, since to be attractive to the buyer there must be a "business opportunity", which is why some countries have incorporated different processes or forms of auction with very good results, so the method used for selling is equal or more important than the asset itself, since it must contribute to transparency and impartiality and protect the institutional credibility.

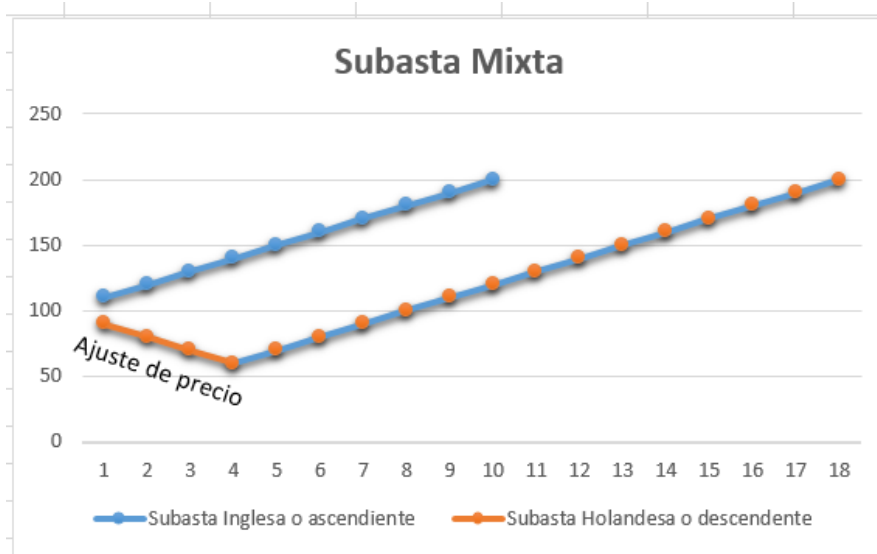
Thus, the criteria must be practical, reasonable and clear, they must contribute to the effectiveness and efficiency of the process, to transparency, impartiality and accountability, considering among others:

- Function of the good within the criminal process and vocation of the asset per se.
- Edo. Physical, conservation, deterioration, depreciation or obsolescence
- Cost of maintenance, custody or administration.
- Risks to health, safety or the environment
- Situation and legal problems.

A methodology of efficient adjustment on the price, can be made when after starting with an English auction or ascending on the starting price, but there are no offers, at this moment it becomes a Dutch or descending auction, so the price goes down up to a previously established percentage of "offer or reduction" of the exit price. With this, it is intended to regulate precisely



that stigmatization parameter on the good so that its sale is attractive and once an interested party makes his offer, the auction is converted back into an English or ascending auction and in this way it promotes the potential buyers Competitiveness, however, we make the observation that this procedure must be regulated and developed in the auction regulations and in the previously published sales bases.



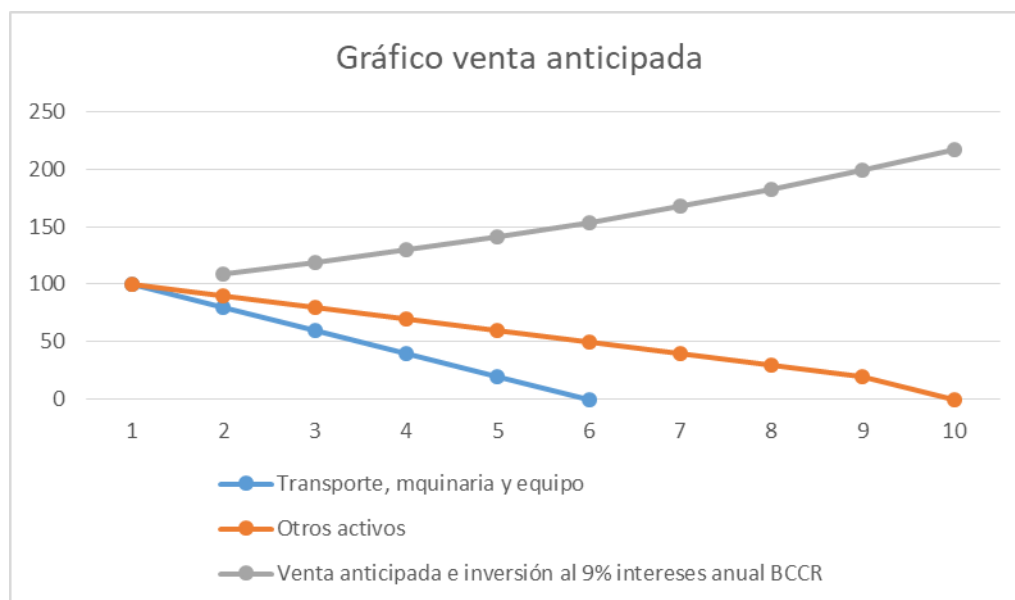
Another practical experience that we can contribute to the present study is related to the importance of identifying the target public or potential buyers who attend the sale or disposal procedures of seized and forfeited assets, the aforementioned because the marketing procedures and marketing should be directed mainly to the so-called "**intermediaries**" being these the most important buyers and not the final recipients, since they are what they see in this as a true "business opportunity" and do not take as much importance to the damages on the criminal origin of the



assets, therefore, it is essential for the asset management agency to focus its strategy of marketing to this “target or public target”, mainly because these costumers will be the ones who return and continue to participate in the following sales procedures, so the managing body must become a competitive company within the sales market, so they must develop their own special sales processes through the development of internal regulations for the sale and sale of seized and forfeited assets.

Once the assets are monetized through the product of the sale and when the internal legislation allows it, it is recommended to make investments through the so-called certificates or term deposits, which generate a higher return than the interest generated by the savings account. and also have the security and soundness in the banking market, the above will have as a purpose, additionally to stop the depreciation of earning additional resources to raise the value of the monetized good, reason for ordering the return of the good the capital will be delivered, plus the interest generated by the investments and otherwise sensu if judicially ordered the loss in favor of the State of the asset subject to the process, it could be used to achieve the purposes according to domestic law, translated into synthesis in a concept "Win-win", where all parties benefit from one or the other final result.

The previous example can be seen in the following graph, which has been taken as a basis of investment 9% annual interest for certificates or annual term deposits established by the Central Bank of Costa Rica and related to the aforementioned depreciation table.



The above chart shows that the longer we take the decision to sell or early disposal, the cost of recovery or appreciation will become slower and more difficult, so it is recommended to subject them to the monetization procedure, once it is determined that they are the same. They are not productive and on the contrary represent an expense in their maintenance and preservation.

Thus, the present study returns categorically conclude that the implementation of the figure of the sale and advance sale in the internal order of the countries contributes effectively to the efficient administration of seized and forfeited assets, as long as these procedures are find developed and that allow the transparency and objectivity in valuation or evaluation of them and identify the most suitable forms or sales processes.