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**XLVII MEETING OF THE GROUP OF EXPERTS  
FOR THE CONTROL OF MONEY LAUNDERING  
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**PRESENTATION  
STUDY ON SELF-SUSTAINABILITY OF SEIZED AND FORFEITED ASSETS**

# STUDY ON SELF-SUSTAINABILITY OF SEIZED AND FORFEITED ASSETS

## XLVII MEETING OF THE GROUP OF EXPERTS FOR THE CONTROL OF MONEY LAUNDERING

**Sub-Working Group for International Cooperation and Forfeiture**



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**STUDY  
SELF-SUSTAINABILITY OF  
SEIZED AND FORFEITED ASSETS**

## GENERAL OBJECTIVE



Identify the countries that have mechanisms of self-sustainable management of seized and forfeited assets, with the goal of conducting an objective analysis to determine the implementation of best practices and identify the need for changes in the institutional policies of each country for better management, to reduce maintenance costs and for preservation of assets from institutional funds; as well as identifying ways for funding the assets management program. For such purposes, it is intended to analyze the regulations that each country implemented for efficiency in self-sustainable management.



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## **METHODOLOGY**

### **Questionnaire:**

Through the observations received at the plenary meeting in June, the questionnaire was reformulated so the countries would contribute with typologies and practical cases regarding self-sustainability of assets, as well as the explanation of the application of its management figures.



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The countries that answered the questionnaire were Bolivia, Brazil, Costa Rica, El Salvador, United States, Honduras, Mexico, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, and Uruguay





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The general principle that should inspire the administration of seized assets is the conservation of these during the proceeding. Now, once an inventory has been elaborated for the assets, with exception for special cases, their disposition may be authorized, in case their commercialization is illicit, even before the existence of a sentence, only if there are a series of circumstances that have defined different legislations.



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## **TEMPORARY USE OF ASSETS**

Adhesion agreements, the benefitted entities must assume all the costs and responsibilities for the maintenance of the assets.

Option: entities do not count with their own or sufficient economic resources to cover the maintenance costs, safekeeping and conservation of the assets.

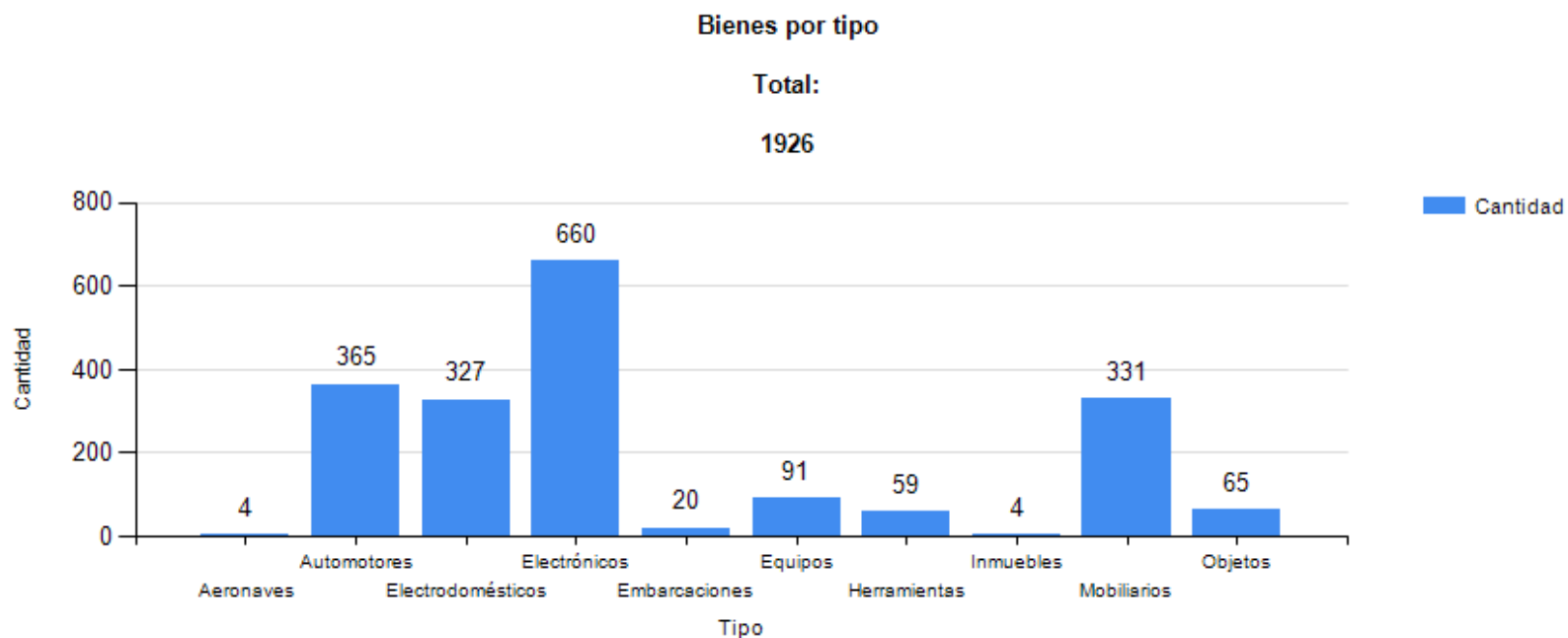




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## STUDY SELF-SUSTAINABILITY OF SEIZED AND FORFEITED ASSETS

### Assets landed/ in temporary use Costa Rica



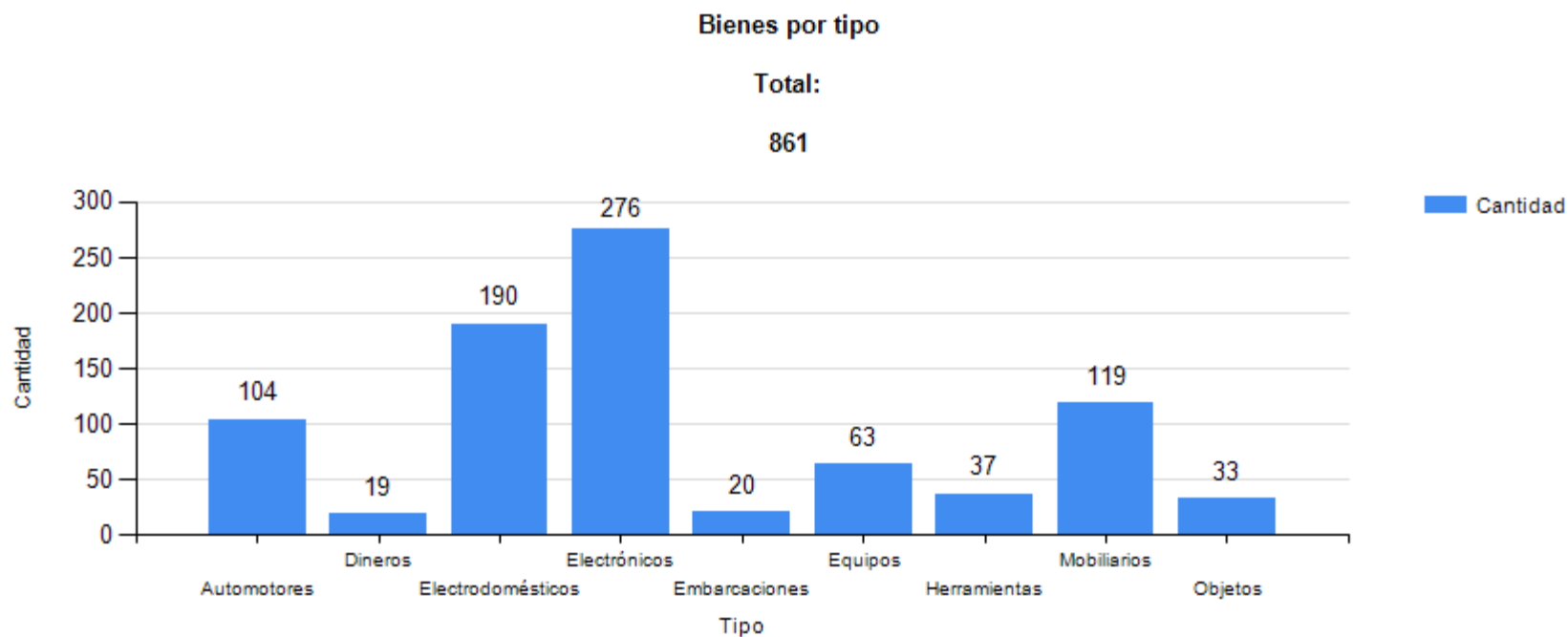




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## Assets given landed/ in temporary use Costa Rica Compensation process





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## **Adhesion agreement temporary use of assets**

- The assets cannot suffer any modification or structural, architectonic or mechanical change without authorization from the assets administration agency.
- The institution benefitted with the temporary use of the asset must assume all the necessary costs for their maintenance, conservation and repair, during the time of use; as well as the costs, civil responsibility, damages suffered, produced by the inappropriate use of the asset provided.
- They must return the assets in the same conditions of conservation and functioning, expect for the normal deterioration from its appropriate use.



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## **Adhesion agreement temporary use of assets**

- They must assume all the costs generated by the insurance policies that they hire for the protection of assets that can be insured, as well as the deductible and safeguard value, when applicable.
- They cannot sell, lease or sub-lease the assets that they are given.
- They must count with the budgetary content to pay the compensations related to the assets loaned.



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## TEMPORARY USE OF ASSETS

The temporary assignation of assets may be authorized only by public agencies. In most countries, they focus in those agencies whose objective is the repression of drugs and/or organized crime.

- Immovable properties destined to the establishment of special police stations.
- House furniture and electrical appliances to furnish police stations.
- Vehicles used for police purposes





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## SALE AND EARLY SALE



- The possibility of monetization is not available for all types of assets, only for those which special conditions are closer to destroying themselves, devaluating or perishing.
- The product of the sale of the seized assets is deposited in the accounts of the administrative body, awaiting the results of the judicial proceeding.



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## **SALE AND EARLY SALE**

### **BOLIVIA:**

There are difficulties with the Municipalities because the chain of succession is not respected, which hinders the change of name in favor of the new purchaser.





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## **SALE AND EARLY SALE**

### **Costa Rica**

Only the act of award or the documents that certifies the legal business is required for the National Registry to carry out the inscription or transfer in favor of the acquiring third party, which is emitted by the Asset Recovery Unit of the Costa Rican Institute on Drugs, responsible for the administration of these assets (Law 8204).





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## **SALE AND EARLY SALE**

### **Costa Rica**

Makes the act of judicial deposit, through which the seized assets are handed in, equivalent to the single customs document or homologated document, in relation with the vehicles with foreign license number or vehicles that are not registered in the National Registry of that country. This allows them to be effectively registered in favor of the new purchaser.







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## SALE AND EARLY SALE

### Brazil example

- Auction, auctioneer hired by SENAD
- Seized and forfeited assets.
- Auctioneer establishes that they will collect the assets, regularize them, with prior evaluation, and then auction them.





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## **SALE AND EARLY SALE**

### **Brazil example, advantages:**

- Guarantee greater movement and less costs for the Public Administration, since the previous model required constant travelling to carry out part of these tasks.
- They point out that the hiring model establishes that the auctioneer will assume all these tasks and will be paid only by the offeror, limited to the legally established minimum (5% of the value of the offer), so that there are no costs generated for the offeror.



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## SALE AND EARLY SALE



### Execution

- Application of the Administrative Contracting Law of each country or the substitutive process permitted by the Administrative Contracting Law.
- Auction with public bid, sealed bid or electronic bid.



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## **INVESTMENT OF INTERESTS FROM SEIZED MONEY**

Transferred to a fund destined to covering its costs of maintenance and preservation.





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## **INVESTMENT OF INTERESTS FROM SEIZED MONEY**

### **United States.**

Since the seized funds have not yet been forfeited, they are not considered property of the government and cannot be used for governmental purposes (for example, maintenance and conservation of assets).



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## **INVESTMENT OF INTERESTS FROM SEIZED MONEY**

### **Costa Rica**

- 60% destined to the compliance of preventive programs: from this percentage, at least half will be for programs for drug consumption prevention, treatment and rehabilitation which the Institute on Alcoholism and Drug Dependence (IAFA) develops.
- 30% to repressive programs.
- 10% to the insurance and maintenance of forfeited assets, whose destination is that found in article 84 of this law.



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## **SPECIALIZED THIRD PARTIES**

- Authorized in the legislations of Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Honduras; Panama, Paraguay, Peru, Saint Vincent and the Grenadines y Uruguay.
- Costa Rica only when the administration of the seized assets requires the participation of specialized professionals in certain areas.



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## **SPECIALIZED THIRD PARTIES**

### **Mexico**

- SAE will name an administrator for the companies, businesses or establishments.
- The administrator will have the necessary faculties to keep them operational and in good shape, but will not be able to dispose nor tax the assets that constitute the fixed assets of the company, business or establishment.







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## **SPECIALIZED THIRD PARTIES**

### **Mexico**

The Governing Board may authorize the administrator to proceed with the suspension or definite shut down of the companies, businesses or establishments, when the activities of these entail impossible costs and as a consequence they will proceed to the dissolution, liquidation, insolvency, bankrupt, merger, division or sale, depending on the case.





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## LEASING

- In Bolivia, Colombia, Costa Rica, El Salvador, Honduras, Panama, Paraguay, Peru and Uruguay they may sign leasing contracts in the case of movable and immovable properties and production activities.
- In Costa Rica the body responsible for administering the assets will not be subject to its national law on urban and suburban leasing.





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## LEASING

### Bolivia

- DIRCABI can conclude leasing contracts on movable and immovable properties and production activities such as commercial, industrial, agricultural and livestock, agro-industrial and similar establishments that seized or forfeited. Then, they will be deposited through public tender, the value to be paid must be established through an expert report.
- The competent Department Office will publish on the Ministry of Government's website the list of assets available for leasing, with a description of the characteristics of the asset and the value established by the expert report.
- Interested parties will present their sealed proposals, which will be open in a public act, in which the asset will be handed to the best proposal.



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## **LEASING**

### **Bolivia**

- Given the tax effects derived from the leasing contract, the corresponding receipt or fiscal note will be emitted.
- The leasing value will be deposited in a DIRCABI account in a public banking entity, discounted the corresponding taxes and will be destined to the costs of asset administration. The remains will be safeguarded until the moment in which the final destination of the asset is decided. The costs of administration will be deposited in a fiscal account of DIRCABI.



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## **LEASING**

### **Bolivia**

- In case of deciding the confiscation or forfeiture of the asset remaining of the value it will be distributed according to article 63 of the Law No. 913. In case of deciding the return of the asset, the remain will be handed to whoever is recognized rightful to it.
- When the return of the asset is decided, the contract will continue until its termination. The person holding the title must be reimbursed.
- 55% will be attributed to the a la Executive Unit in the Integrated Fight against Drug Trafficking, 20% to DIRCABI, 10% to CONALTID, 15% to the Public Ministry.



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## RECOVERY OF ADMINISTRATIVE COSTS

It is a recovery cost or percentage of the productive assets that serves as counter-payment for the service provided for the maintenance of the functioning companies.

- In Colombia, according to the current regulation the administrator of FRISCO, at the moment of making the return of the assets, is authorized, as long as it has been productive, to discount the costs and expenses encountered for the maintenance of the asset.



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## **RECOVERY OF ADMINISTRATIVE COSTS**

- Uruguay allows the recovery of a percentage to attend the payment of the ideal or specialized personnel for specific tasks of taxation, inventory, consulting, maintenance, administration or others that are considered necessary and are not part of the Forfeited Asset Fund.



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## RECOVERY OF ADMINISTRATIVE COSTS

- The United States allows the use of the profits from seized assets, once the forfeiture has been conducted and the claims of the innocent owner and/or victim have been satisfied, as well as the holder of the taxation. However, before the forfeiture, the funds cannot be used for any purpose. In the case of seized companies that are profitable, those benefits can be used by the company to continue its operations.





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## **DESTRUCTION**

Can be applied when its related to objects or substances which commercialization is illicit or cannot be disposed, so the competent authorities must do whatever is necessary for its destruction. In case the destruction of those products can be detrimental for the environment, the intervention of specialists will be necessary to intend the lowest environmental impact possible.





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## **DESTRUCTION**

- In the case of Costa Rica, given its regulatory provision, the destruction of assets must be accompanied with an act from the legal consulting branch of the administrative body and the internal auditing agent must be present. By recommendation of the latter, the destruction process must be environmentally friendly.





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## **DONATION**

It appears as a possibility when dealing with forfeited assets. However, some legislations limit it to repressive entities in the fight against organized crime, or institutions for the prevention, treatment and rehabilitation of drug addiction.





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## **DONATION**

- In Costa Rica, the Law N° 8754, Law against Organized Crime, allows, among other possibilities, the donation of perishable assets, fuel, construction materials, scrap, precursors, essential chemicals and animals.





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## TRUST FUND

The agency responsible for the administration of the assets will transfer the seized assets to the trust fund, in order to comply only with the purposes demanded in the trust fund contract, which must be only those established in its legislation regarding these assets, having the asset administration body as the trust beneficiary. This agency will receive the profits of the administration carried out by the trustee discounting the payment by the latter as remuneration for their services.





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Independently from the form of administration and/or disposition used, it is necessary that some strict controls exist over the administration of the seized assets with the objective of being the most transparent as possible. To that end, it seems appropriate that in the division of functions carried out on the basis of the administration of the assets no one has an absolute authority over the assets and their management.



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