

DEPARTMENT AGAINST TRANSNATIONAL ORGANIZED CRIME (DTOC)
ORGANIZATION OF AMERICAN STATES (OAS)

LII (VIRTUAL) MEETING OF THE GROUP OF EXPERTS
FOR THE CONTROL OF MONEY LAUNDERING
November 16, 2022
Washington DC – United States of America

OEA/Ser.L/LIII.4.53
DDOT/LAVEX/DOC.7/22
Original: Spanish
Textual

Guide on Identification and Investigation Techniques on Cases of Money
Laundering originating from Political Corruption

SECRETARIAT OF MULTIDIMENSIONAL SECURITY

Guide on Identification and Investigation Techniques on Cases of Money Laundering originating from Political Corruption

Sub-Working Group on Confiscation and International Cooperation

2022

INTRODUCTION

The Group of Experts for the Control of Money Laundering (GELAVEX), at its XXIV plenary meeting held from November 7 to 9, 2007, in the city of Santiago, Chile, defined as its action areas: confiscation, extinction or loss of ownership, asset recovery agencies, coordination and integration between financial intelligence units (FIU) and national prosecution and investigative bodies, and terrorist financing.

GELAVEX prepared the Strategic Plan for the Triennium 2021-2023 of the Group at the XLIX Meeting held virtually from Asunción Paraguay on November 10, 2020.¹

The 2020-2023 Strategic Plan constitutes the guidelines for how activities should be developed by the Group in this triennium. In accordance with the approved 2020-2023 Strategic Plan, the Sub-Working Group on Confiscation and International Cooperation works on:

- Promote the creation of the Illicit Assets Administration Network at the hemispheric or subregional level, with support from the Technical Secretariat (DTOC);
- Promote the creation of a model for the distribution of assets as a reference document for OAS member states;
- Establish a work plan for the identification and analysis of the tools available for agencies dedicated to the management of assets subject to confiscation, such as databases or software that maintain inventories, in order to create a conceptual model that has a minimum common denominator of reference for States at the hemispheric level, including guidelines for sharing information externally;
- Develop a study on the usefulness of electronic processing advances when requesting information in the field of money laundering in order to increase international legal cooperation.
- Develop a work plan to promote International Cooperation and Confiscation of Assets linked to new criminal trends associated with money laundering;
- Develop tools to facilitate cooperation on the management of assets subject to confiscation.

For the 2021-2022 period, based on the above, the Sub-Working Group on Confiscation and International Cooperation must develop, among others:

¹ Organization of American States, Group of Experts for the Control of Money Laundering (GELAVEX), "Strategic Plan 2020-2023", *on. Cit.*

1. Guide on identification and investigation techniques on cases of money laundering originating from political corruption.

The maturation and independence of money laundering, progressing beyond drug trafficking crimes and transcending beyond the latter being its only source of illicit wealth, has generated the need to understand it in all its dimensions.

Undoubtedly, a large part of why criminals commit crimes is due to financial considerations. These profits, illicitly gained, cannot be left in the hands of criminals.

GENERAL OBJECTIVE

The objective of the study is to create a guide that allows for the identification and comprehensive investigation of money laundering cases emanating from political corruption that is useful for the region, with a view to it being an effective instrument to consider when engaged in investigations; who and what processes were used to hide illicit proceeds and determining the economic scope of this corruption, of which this tool hopes to reverse.

METHODOLOGY

In accordance with the plan proposed by the GELAVEX Presidency, meetings were held. Initially, with the Presidency and Vice Presidency of GELAVEX and the Technical Secretariat, to present observations and considerations in relation to the subject matter at hand.

After the meeting, the Technical Secretariat extended a cordial invitation to the countries of the region and to the group of experts. Those that responded are the following: Panama, Uruguay, Colombia, Mexico, Argentina, Peru, Dominican Republic, Paraguay, INTERPOL and COPOLAD.

Having received these responses, an initial working meeting was convened to define the parameters and scope of the work. It was not possible to have the presence of all the delegations

that expressed their willingness to participate, but they will be integrating during the preparatory phases of the guide.

As a result of the meetings and online review, it was possible to determine that existence of documents and guides in some regional countries or ones created by specialized international organizations, which have sought to outline the way in which investigations into money laundering are to be conducted so that they are effective.

Through prevailing instruments, the Sub-Working Group on Confiscation and International Cooperation will carry out its review in order to determine the applicability of how these documents could be applied for specific cases in which the preceding crime is corruption. Based on revisions, the mandated general guide will be prepared.

The instruments that will initially be reviewed are:

- FATF-Guide to Financial Research.
- Panama-Investigative Guide on Money Laundering Crimes.
- Chile-Guide for asset investigation within investigations of money laundering and previous crimes.
- Argentina-Asset Research Manual
- Guatemala-Guide for the Investigation of Corruption
- Colombia-Investigation guide for crimes associated with corruption.
- Costa Rica-Action guide for financial and asset research in the investigation of money laundering.
- Costa Rica-Manual of good practices for the investigation of corruption, economic and tax crimes (Program for Social Cohesion in Latin America EUROsocial).
- OAS-DTOC- Protocol of action for the development of financial investigations.
- UNODC-Anti-Corruption Modules; Module 6: Detection and investigation of corruption

Although, the aforementioned instruments are not specific to corruption cases, their analysis and review will be precisely framed in the disposition on what needs to be created or adjusted to suit cases in which money laundering originates from corruption. The analysis will be

carried out with respect to the United Nations Convention against Transnational Organized Crime (UNCDT) and the United Nations Convention against Corruption (UNCAC).

The delegations and agencies that are working together to create this document will discuss our national experiences and international knowledge but will not exclude probable requests by some delegations regarding important aspects of this document under preparation.

PROPOSED STRUCTURE

The guide currently has the following initial table of contents:

1. Justification
2. Initial approach to the research process:
 - Direction and coordination of the investigation and participation of judicial authorities (specialized section on corruption) and financial intelligence units
 - Setting targets according to the crime in question
 - Defining the scope of the investigation
 - Work plan
3. Methods of investigation: review those used in the most common crimes and define extension (telephone tapping)
4. Basic diligences for collection and verification of information and case development:
 - Information of interest that can be provided by public and private entities (Offices of the Comptroller, Treasuries or Ministries of Finance)
 - Open and confidential source consultation
 - Other aspects: information shared in the press or through social networks
5. Analysis of existing information: organize it and determine the criminal act
6. Identification of socioeconomic profile
7. Asset identification techniques:
 - Asset investigation to recover the assets and deprive the criminal group's enjoyment of the proceeds of the crime.
8. Precautionary measures and protection of assets
9. Possibilities in the administration and provision of property (restitution)
10. International cooperation for asset recovery in other countries and for restitution processes

11. Preparation of the research report

GUIDE ON IDENTIFICATION AND INVESTIGATION TECHNIQUES ON CASES OF MONEY LAUNDERING ORIGINATING FROM POLITICAL CORRUPTION

1. Justification

"The more efficient the fight against money laundering is, the more productive the fight against corruption will be."

The crime of corruption cannot erase its financial undertones. As such, it is clear that it has become a serious problem of great magnitude for the States, with the consequent social repercussions. It is precisely this social impact that makes it urgent that these types of investigations are effective, of which comprehensive and orderly work is required. In addition, its expansion is a consequence of its undeniable links to financial and organized crimes.

It is these financial allusions that link the crime of corruption with the laundering of money, due to the need to give a legitimate appearance to the benefits that have been obtained with the commission of illicit activities. The change in profile of crimes of corruption to those belonging to organized crime has led countries to include corruption as a crime preceding money laundering. The distortion or socioeconomic mirage created by the enjoyment of ill-gotten proceeds obtained from corruption make this inclusion—of a crime preceding that of money laundering—legitimate.

Due to the nature of the crime of corruption, States must be firm in their position that the investigation, prosecution and judicial processing must be free from political and financial pressures or corrupting influences that may irregularly impact the final result. That is why there should be a strong commitment to provide the necessary resources for the prosecution of these crimes. Along these lines, States should consider, in accordance with their domestic laws, the possibility of granting incentives to citizens who cooperate in the investigation of these crimes or establishing adequate measures to guarantee the protection of witnesses to encourage them to testify.

In addition, money laundering proceeding from corruption and other forms of corruption, as it exists independently, weakens state institutions and generates a loss of confidence by the citizenry in the rule of law, fundamentally damaging the economic and democratic foundations of society.

Although it cannot be forgotten that money-laundering schemes are independent crimes, it must be understood that the illicit origin of the proceeds that seek to be legitimized must be investigated to be able to effectively detain the perpetrator. But since corruption is the precedent crime, domestic legislation must introduce or revise its mechanisms for the reintegration of assets.

UNODC (the United Nations Office on Drugs and Crime) categorically stated that corruption and money laundering are interconnected: "There are important links between corruption and money laundering. The ability to transfer and obscure funds is critical for perpetrators of corruption, especially for large-scale acts of corruption. Money laundering statutes can contribute significantly to the detection of corruption and related crimes by providing the basis for financial investigations. Therefore, it is essential to establish corruption as the predicate crime of money laundering.

Luis Lamas Puccio, in his article *Corruption of Officials and Money Laundering*, points out:

"Currently, officials and citizens involved in acts of corruption are forced to launder the proceeds of their illicit activities mainly for two reasons: The first is that the money trail can become more than enough evidence of a crime but that ultimately betrays the underlying criminal activity, and the second is that the money itself can be subject to seizure and investigation. Whatever the reason for resorting to any money-laundering mechanism, the principles of operation in the case of money or funds that originate from acts of corruption are basically the same (...)"

Finally, the essence of money laundering emanating from corruption remains the same. But changes in technology, and in financial systems, complicate proper investigation.

2. Initial approach to the research process:

It cannot be ignored that corruption is a difficult crime to investigate and that it is a necessity to have adequate methods of investigation, without neglecting prevention from a comprehensive basis. As in any case of money laundering, forensic accountants play an integral role in unraveling the actions with which criminals attempt and introduce their illicit profits into the financial system.

Therefore, the expectation of success increases with proper planning and strategy. In accordance to the definition of competences in each law, it is necessary to clarify the body in charge of the investigation and of its trajectory and coordination. This competence generally falls into the hands of the Public Prosecutor's Office.

As defined above, the channels of communication must be clearly specified in order to have the effective, efficient and active participation of the judiciary.

- Direction and coordination of the investigation and participation of the judiciary (specialized section on corruption) and financial intelligence units

Generally, although it is the investigative police of each country who effectively conducts the investigation, they do so under the functional direction of the Public Prosecutor's Office or similar entity. This functional director is responsible for directing and coordinating the research and investigation, which includes both the Financial Intelligence Unit and the intervention of judicial investigative officials, especially if a section specialized in the investigation of money-laundering and corruption crimes exists, each within its legal and professional competences as understood by law, whether they pertain to investigations and/or financial intelligence.

- Setting objectives for asset research

It must be articulated if it comes from the persons involved or from the goods themselves. In the case of persons, it must be defined whether they are natural or legal.

In the case of natural or physical persons, their identification number must be available; criminal records, including previous infractions, the location of their workplace address, and their business or commercial activities must be consulted.

In the case of these natural persons, in addition to the suspect, it must be determined to what degree of kinship or affinity the investigation will be carried out in, predisposed not to omit possible front men or "lend names".

With regard to legal persons, in addition to the registration data required in their provision, such as legal domicile, their economic activity, actions and partners-in cases of transparency regarding the registration of the final beneficiary-and assets, the breadth of the investigation must be assessed in relation to the other partners or other companies that constitute it.

In the case of assets, investigative actions must be aimed at identifying the material objects of the crime. For this, the owners or proprietors must be identified, the real possessors of the goods as opposed to the front men.

Because these are cases of money laundering from corruption, it must be known if there are previous criminal proceedings for that crime. Or if, failing that, to know if there is any investigation or active process for corruption crimes. This in order to coordinate the exchange of information regarding the criminal organization under investigation. Similarly, the verification of judicial cases or investigations for other crimes, in which there may be manipulation of assets, must be conducted.

And because the preceding crime is corruption, one of the objectives must be to be exact about whether restitution can be applied, and in favor of which instances or persons it may correspond.

The product or proceeds of the preceding crime should also be analyzed in reference to corruption for the case at hand in this guide.

- Definition of the scope of the investigation

Establish a timeline of reverse chronological order on which the investigation should be based on. That is, to set the time limits with respect to which the investigation must be adjusted, which will allow the information to be organized and the economic profile of the accused to be depicted, aimed at observing at what moment asset variation or discrepancy occurs.

That scope will be tied to the complexity of the criminal organization suspected of laundering assets, as that will define the type of expertise needed, as well as the precise knowledge and experience that will be required of the experts.

- Work plan

Work team: baseline of actions. Initially it will include:

- Socio-economic profiling of suspects, including verification of lawful activities justifying unusual increases in assets or wealth, unusual property transfers or suspected possession of large amounts of cash.
- Analysis of any increases of assets linked to the preceding crime, in this case, corruption.
- Identification of money laundering typologies, taking into account that it does not mean that their identification will necessarily demonstrate laundering. However,

these alerts should draw attention to the investigation, on which deeper research should be carried out, and depending on the typology, certain types of information should be sought out or particular sources used.

- Determination if national or international restitution should be obligated in the return of proceeds relating to a crime.

3. Investigative methods: review of those used in the most common crimes and define extension (telephone tapping)

In accordance with national legislation, the use of special investigative techniques may be defined as:

- **Controlled delivery:** requires authorization, which in some laws can be granted by the Prosecutor's Office, and in others, can only be executed with the authorization of a judge. Your request must be substantiated, indicating what are the objectives that are intended to be achieved with its use. Once this due diligence has been conducted, the corresponding report must be submitted to the Prosecutor's Office with defined results.
- **Telephone interceptions:** it is a technique that has a restrictive use in national legislatures, for which the requirements and procedures for requesting authorization from the judicial authority must be met, indicating objectives to be achieved, deadlines for the measure, scope, etc.
- **Undercover agents:** similar to the above, their use is limited in many national legislatures and tied to specific crimes, but in most cases money laundering is an instance in which authorization can be requested.

4. Basic procedures for collection and verification of information and development of cases:

- Consultation of open and closed information sources:

Through the consultation of these sources, it is expected to form a general idea of the assets of the accused; to focus the investigation on natural and legal persons and assets of relevance.

The sources of information can be classified as:

- Open: are those that can be accessed by anyone.
- Closed: those that can be accessed only with judicial authorization.
- Mixed: those that can be accessed by those that have a legitimate interest.

These sources are of mandatory consultation, in order to absorb and evaluate the information that each can provide. An assessment of which one could have relevant information must be made in advance, in order to make the investigation more effective and efficient. Additionally, it must be detailed what kind of information will be requested from each of the sources.

- Information of interest that can be requested from public and private entities (Comptrollers-General, Ministries of Finance)

This information can be held by customs or taxation entities; sworn declarations of assets that are submitted to the Comptroller General or Ministries of Finance, which are held by the Municipalities, supervisors and operators of insurance and pensions, migration agencies, contained in records of certain livestock animals, certain horse breeds, harbor master's offices, etc. For this, the corresponding court order will be requested according to the appropriate regulations or formal and/or specific procedures that are in existence.

We cannot forget the valuable information provided by the Financial Intelligence Unit in relation to ROS and ROE that is an initial and integral part of the investigation team. More so in

those countries where it can displace banking secrecy, as in the case of Costa Rica, or when it has the power to temporarily immobilize or freeze assets.

- Other aspects: information shared in the press or through social networks.

This type of information can shed light on the suspect's social orbit, and in many cases, their most valuable assets and lifestyle, such as vacations or trips, mansions, purebred animals, properties used for recreation, etc.

The search for this information will potentially yield, and seeks to achieve, who will be charged, and who are only front men or "lend names" as the investigation ensues. In this line of effort, the information will provide an overview of the declared income and liabilities of the potentially accused, the way in which they pay for their goods, all aimed at determining, whether or not, the assets initially detected can be justified. The information received will raise alerts when there is no congruence between what is legally received and the property or assets possessed by the suspects.

In this phase of information collection, banking is fundamental. Therefore, all banking/financial products owned by suspicious natural and legal persons must be identified, since it is through these that their assets can effectively be known. In accordance with national laws, an initial lifting of bank secrecy may be carried out through the Financial Intelligence Unit. Or, it can be through the public prosecutor's office whereby the corresponding judge must be requested to lift it.

5. Identification of socioeconomic profile

To this end, the following must be assessed, among others:

- The overall financial activity of each suspect and the criminal organization.
- The banking movements and lifestyle of each suspect.
- The financial activities of the suspects' relatives.
- Criminal records or ongoing investigations.
- Level of schooling of each suspect.

- Work history of each suspect and their current economic activity.
- History of asset acquisition in relation to the fixed timeline chosen and in relation to the lawful sources of money that have been reported.
- Business, tax and customs links.
- The debts or liabilities of each suspect.

Alerts will be considered in those situations in which suspects possess and use goods registered in the name of third parties, such as high-end vehicles; when many of their transactions are made using cash; the presence of atypical migratory patterns; atypical acquisition of goods, as well as the unjustified increase in wealth, to list the most general. It can also generate alerts pertaining to unusual banking activities that could be subject to some ROS, the association with those in charge of assigning state contracts, to the improper use of leasing contracts, trust funds or the use of multiple cell lines.

6. Asset identification techniques:

- Asset investigation to recover assets and deprive the criminal group of the enjoyment of the proceeds of crime.

Its objective is to identify the gains and instruments of the crime, demonstrate its origin and ensure proper custody and seizure until a final sentence ordering its confiscation is issued. However, precisely making an evidentiary connection between assets with the preceding crime of corruption entails a great challenge, which can be overcome thanks to the expertise, knowledge and experience of the investigative team, but also through specialized units that have been constituted for this purpose.

In this phase, an analysis is carried out between the official income reported by the suspects, the assets in their possession and the imbalance this may entail against the reality of the facts. It must seek to relate financial movements to the crime and seek to identify the ploys used for money laundering. Evidentiary difficulty is not unusual when indirect evidence is used.

The sources of information are consulted to determine which assets are registered under suspicious natural or legal persons, their date of acquisition in relation to the period being

investigated, as well as their economic value. Under the United Nations Convention against Corruption, it should be borne in mind that foreign assets that are proceeds of a crime may also be identified, seized and confiscated through the mechanisms that exist for that purpose in the area of mutual legal assistance.

At this point, in those countries where there are bodies or institutions that administer seized goods, these should be contacted to jointly make a prior analysis of the possible assets to be seized, discarding in advance those that are not of economic interest, by virtue of their market value and maintenance costs.

It is worth emphasizing that in cases where the previous crime of money laundering is corruption, this identification of assets must include an assessment of restoration rights or reparation to the victims.

In practice, information is usually analyzed by grouping it in relation to a good or asset. In this manner, the data is collected in relation to its date of purchase, form of payment and verification of the movement of money, notary documents in cases required for the transfer of property ownership, the information of that act of ownership transfer, among others. Once the information has been grouped, it can be linked to the natural or legal person that is a suspect, to analyze possible illegality as related to their assets.

At this point, and according to possible actions as enumerated in the investigation, it is important to photograph the goods or assets in their fixed locations. There are cases in which the goods are documented in undervalued sites and tend to be underestimated in the investigation, but at the time of their discovery, they are observed to be luxurious and of high value, independent of the site. This photographic technique is also particularly useful in relation to movable property, because through it, it can be demonstrated who in reality uses and relishes them as the possessor, regardless of who appears as the owner, which facilitates the discovery of suspected front men.

7. Analysis of existing information: structure it and determine the appropriate criminal act

Once all the information has been collected, an evaluation of it should be followed to find only the most relevant components to the investigation. For this, at first instance and before the information is analyzed, how these components will be defined for the investigation must be considered to avoid wasting time.

It must not be forgotten that the documentation collected will in the future serve as proof of the crime of laundering assets derived from corruption. And it will also serve to support the corresponding restitution actions, precisely because of this type of crime outline above.

The structure of the information can be realized:

- In relation to a specific asset or good
- By suspect
- Special structuring when specific aspects of the criminal scheme must be seen.

8. Precautionary measures and security of assets.

National laws provide for the possibility of requesting the criminal judge to seize assets, products, instruments or property, as well as the retention and immobilization of financial products to guarantee the eventual confiscation in investigations for money laundering, regardless of the previous crime.

The intervention of the Financial Intelligence Unit is of vital importance in the underwriting phase, since some laws allow them to freeze or immobilize financial products and assets, on a temporary basis. In order to maintain the measures, it is important to attend to the deadline, so that it is promptly requested before the corresponding judge.

Immediately after the seizure of property, they must be safeguarded and secured. To this end, they may be delivered to a judicial deposit in the Office of Property Administration and/or proceed with registration immobilization, as appropriate.

9. International cooperation with other countries for asset recovery and restitution procedures

These actions will be evaluated jointly by the Prosecutor's Office and the investigating judicial bodies. If required – through the international conventions in force as it pertains to international cooperation and criminal assistance, bilateral or multilateral treaties or arrangements based on the principle of reciprocity – the execution of these, through compliance with the procedures established in the United Nations Convention against Corruption, shall be attended to. In most countries of the region, formal processes are not necessarily expeditious, so prior to executing them, some actions must be conducted through informal procedures. This exploratory action makes it possible to determine the opportunity and need to resort to formal international cooperation, but already channeled at more defined and clear actions.

Existing channels of international cooperation should be exploited. To this end: liaison officials of multinational agencies, central authorities designated for the attention and processing of requests for mutual legal assistance to other countries are available; as well as police forces such as INTERPOL, Europol, RRAG, etc.

In order for such international cooperation to serve as evidence in court, the procedure for obtaining it must be fully followed and complied with.

10. Preparation of the research report

Once the sufficient data is obtained from the sources of information defined by the research team, they must be analyzed. It must be assessed within the parameters of information collected, which is relevant from an asset point of view, that is, that it relates these assets with

the crime and the suspects, in order to classify them according to the criteria defined at the beginning of the investigation (by person, by assets or by specific aspects).

Each of the conclusions of the report should refer to the documentation by which it was arrived at. These conclusions can be structured by persons or by property/assets.

The report should detail the assets identified in comparison with the lawful sources of money, indicating with granular detail the information collected of the crime of corruption that generated the illicit profits.

It must also evidence the inconsistencies detected and the actions or techniques used by the suspect for concealment or dissimulation.

11. Possibilities of administration and disposition of property (restitution)

Once assets resulting from a successful investigation have been confiscated, countries must contact a competent institution or office for the custody, administration and possibly for advance disposal of them. That office must meet at least the following characteristics:

- Framework for the administration or control of immobilized and seized property/assets.
- Have sufficient resources for the efficient and effective administration of seized and confiscated assets.
- Provide for the planning of how these goods will be received prior to their seizure.
- Have arranged measures for the custody and management/maintenance of the goods, their disposal, registration, as well as the mechanisms to act legally before third parties of good faith, and, lastly, to assume responsibility in cases of damage, loss or deterioration of the assets or goods.

The Convention states that each State Party shall take the necessary measures, in accordance with its domestic laws, to regulate the administration of seized, frozen or confiscated property/assets.

But the convention also establishes that the restitution of assets is a fundamental governing principle, so that the administration and custody of assets by the specialized agencies of each country must be executed with respect and protected by this principle and must even provide extensive cooperation and assistance. The purpose is to enable the proper restitution of property/assets so as to function effectively.