

National Law of Asset Forfeiture

On August 9, 2019, the new National Law of Asset Forfeiture (“**NLAF**”) was published, replacing all previous laws in that subject matter.¹ The reform entered into force on August 12, 2019.

The NLAF regulates asset forfeiture in favor of the Mexican State regarding property with an illicit origin, use or purpose, as well as the administration and disposal of such property.

Property shall only be subject to asset forfeiture if related to criminal investigations or criminal proceedings regarding the crimes relating to: (i) corruption acts, (ii) concealment (iii) perpetrated by Public Officials, (iv) organized crime, (v) vehicle robbery; (vi) operations with resources of illicit origin, (vii) against public health, (viii) kidnapping, (ix) extortion, (x) human trafficking, and (xi) hydrocarbons, petroleum products, and petrochemicals.

The asset forfeiture action is a civil action – independent of any criminal proceeding – and its purpose will be to forfeit assets in cases where the defendant may not prove legitimate ownership of such assets. Two controversial aspects: *first*, the NLAF allows an exception to the “innocent-until-proven-guilty” principle, given that the defendant is obliged to prove the legitimate origin, use or purpose of the property; *second*, the Public Prosecutor may retroactively file the asset forfeiture action, *i.e.*, even if the facts relating to the action occurred prior to the publication of the law. This shall not relieve the Public Prosecutor from proving the existence of the illicit action and the relation between the illicit action and the alleged illegitimate origin of the property (causal link).²

We would like to highlight the following aspects of the NLAF:

- The defendant (owner or affected person) needs to prove the legitimate origin, use or purpose of the property.
- The Public Prosecutor may file the asset forfeiture civil action even when no criminal liability has been determined, if in the Prosecutor’s opinion there are solid and reasonable arguments to infer the existence of property of which its origin, use or purpose are illicit.

¹ Additionally, several provisions were amended or added in the National Code of Criminal Proceedings, the Federal Law for the Administration and Transfer of property from the Public Sector, the Commercial Insolvency Law, and the Organic Law of the Public Federal Administration.

² The proceeding has two stages: (i) a preparatory stage, in charge of the Public Prosecutor to investigate and demonstrate the elements of the action ((a) illicit action; (b) illegitimate origin, use or purpose of the property, (c) causal link; (d) knowledge of the owner of the illicit origin, use or purpose of the property); and (ii) a judicial stage, which consists in a special oral civil proceeding. The jurisdiction will be chosen by the Public Prosecutor from the place of the illicit actions, the location of the property, and lacking a location, the domicile of the defendant.

- The asset forfeiture actions shall not be subject to a statute of limitations regarding property with an illegal origin. The statute of limitations regarding property for an illegal use or purpose will be of 20 years (from the moment in which the property was used illicitly).
- The judge and in exceptional cases the Public Prosecutor, shall grant injunctions for the seizure of assets, before or during the proceeding. If the injunction is granted before the proceeding, the defendant will be notified after such injunction is executed. The NLAJ presumes the need to grant such injunctions and does not admit any guarantee to lift the injunctions.
- The Institute for the Administration of Goods and Assets (authority that manages the property subject to asset forfeiture) in certain cases shall be able to dispose in advance of the property (*i.e.*, before a court enters a final judgement). If the proceeding is considered ungrounded, the owner of the disposed property shall be paid from the proceeds of the sale, minus the expenses for the management of the property.
- The property obtained under the NLAJ shall be used to retribute the damage caused to the victims and for social programs to prevent crime, for public security institutions, and justice procurement in accordance with the National Development Plan.

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Sincerely,

Von Wobeser & Sierra, S.C.

Mexico City, August 14, 2019.