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Proposal for a Guide on Asset Investigation

Sub- working group for coordination and integration between FIU/LEA

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I. Background

In order to facilitate the asset investigations derived from money laundering offenses and organized crime, it is necessary to develop a general document that collects the main aspects to be considered when conducting an asset investigation.

This document is for guidance only and aims to identify those activities that, in most cases, and especially in the early stages, are carried out by those conducting such investigations.

For its preparation, the experiences of several countries have been taken into consideration. This includes gathering as much information as possible, while recognizing the differences within each system, and collecting the experiences that may be transversal to any kind of judicial system.

It is important to mention that for efficiency in generating and collecting information, it is essential to carry out a detailed analysis of the results showed by the investigation. This being essential to give solid basis and probative value to the evidence, which is the most common way to prove the existence of such crimes in trial.

As will be introduced below, this document gives special priority to one aspect of asset investigation; the stage of identifying assets. The other stages of the investigation will only be mentioned in passing as these subjects will be addressed in documents developed in the future.

In recent years the importance associated with "asset investigation" has been highlighted in the case of inquests concerning offenses involving certain degrees or forms of organized crime.

The term is recurrent in the statements of several international organizations, as well as in the plans and objectives set for Law Enforcement Agencies (LEA) and Financial Intelligence Units (FIU).

This term is generally associated with the investigation process which takes the assets of criminals (confiscation) that have been obtained through the commission of a crime. In this context, we can note that this investigation is linked to a chain of events that will identify, secure and ultimately transfer to the State illegally obtained property¹.

¹ In fact, in several international conventions related with this subjects (Palermo / 2000) is usually highlights this investigative technique, emphasizing his proper use would led to stablish and punish the illicit wealth generated from diverse forms of crime. On this context, the asset investigation is the first stage on a chain of events which have as final objective transferring definitively to the State illicit assets.

Nevertheless, even when there is this general notion, it is important to note that various operators in the system of prevention and prosecution of money laundering, including financial intelligence units, police, and prosecutors, assign their own perspectives, objectives, and structure to these kinds of investigations. This can be an issue that complicates and hinders the dialogue that should be produced among them.

In this line of thought, it was suggested in the Group of Experts for Money Laundering Control (GELAVEX), and then approved by CICAD, the possibility of generating a conceptualization regarding such investigations and a methodology for a more standardized treatment.

In order to develop this study a survey model was sent to the delegations in order to provide background information on how these kind of investigations are understood, and the steps usually followed for their implementation. Subsequently, the results were supplemented with other work done by the group in previous years and investigation guides that have been developed in different countries to deal with these investigations.

II. Conceptualization

1. General Considerations

This work focused on the process of identification of common denominators, in order to build a concept that would eventually be used for all countries without mayor complications².

Conceptually, this investigation technique is structured on the basis of proving or establishing a relationship between persons and assets or patrimonial rights, which would address both the question of who actually owns the property or right and what goods or rights does this person have? This leads us to the first common denominator, that such investigations can be approached from the property or person, i.e., it may conclude that a person in particular owns a certain number of assets as part of their wealth.

Similarly, we could point that this kind of investigation is usually raised from a retrospective point of view, since it is very difficult to establish possible links between assets and people materialized in the future³.

On the other hand, they are a kind of qualitative investigation, given that they are specifically based on a particular case of analysis, which examines in depth the background that establish or rejects the relationship between people, and property or rights.

Finally, other features that are often mentioned refer to the highly documentary⁴ characteristics they possess, and the frequent use of principles or rules of heuristic analysis⁵. In this context, it is usual to search for particular devices or applications that allow us to organize and present visually the large amount of information that was collected.

² It should be noted that some countries have legal definitions of the term "asset investigation" aspect that clearly complicates the possibilities of a standardization.

³ Generally, the relationship between people and assets that occur in the future will be treated as a right (e.g. a call option) which can also be part of the wealth and its value usually depends on certain degrees of probability as their production possibilities.

⁴ "Financial investigations are by nature intense with respect to the required documentation, involving for example, bank account records or archives of real estate, which point to money movement. Or any document used to reflect the sequence of events that point to important movements of money. The primary goal in this type of investigation is to identify and documents showing the movement of money over the course of a crime. The link between the source of the money, who gets it, when it is received, and where it is stored or deposited, can provide evidence of criminal activity." <http://www.irs.gov/compliance/enforcement/article/0,,id=107515,00.html>.

⁵ As a principle of heuristic analysis we could mention analogy and reduction. In terms of rules we find the possibility of making figures of analysis (tables, diagrams, and presentations), use numbers instead of data, etc.

2. Identification of Common Denominators

- a. Investigation technique. Several delegations support the idea that asset investigation is an investigative technique that can be used by any of the Financial Intelligence Units and Law Enforcement Agencies. It seems highly relevant to consider this idea directly related to the need of having a methodology to understand this process as an investigative technique. This means it is necessary to establish a minimum number of stages or phases that can be met to reach goals we have set.
- b. Information Analysis. This investigation technique consists of the analysis that can be performed on a series of information obtained from various predefined sources of information. At this point it is important to consider that each country should conduct an internal study referred to information sources that provide relevant information on the financial perspective and allow for the identification of relationships between assets and people.

Subsequent to identify all sources of information that provide relevant information, it is advisable to classify and assess the level of certainty of the information being delivered. In this line of thought, it should favor the sources of information regarding institutions that are in charge of public records in which certain processes of registry must be done.

Once classified the relevant sources of information for the type of property (movable / immovable), or person (natural / legal) performing the analysis may use those sources that are essential for the persecuted purposes and may be efficient in the amount of resources used in the search process.

- c. It is a process made up of a chain of events. Much of delegations stress that financial investigation is a process or group of activities that generate the relationship between people and assets. At this point it stands out, that this process is in large part documentary, but it also requires other activities that allow for a factual confirmation.
- d. Identification of assets with economic value. At this point, the majority of delegations highlighted the importance of being efficient in finding assets. While from an abstract perspective we want to identify all the relationships between people and assets that can be detected in practice, it will only assets of a particular economic significance are relevant.

This is not to say that other relationships (non-significant from an economic perspective) are worthless, since many times they establish an element of the criminal offense, but they have no relevance for the purposes of asset investigation to identify assets to be forfeited to the State, dismantling criminal organizations in that possess.

- e. It is associated with a period of time. As a general rule, asset investigations are linked directly to the objectives of criminal investigation or forfeiture processes. Then, whenever the asset investigation shall cover a period of time, either one limited or extended depending on the objectives of the investigation.

At this point some argue that while far of the present time is the period of time analyzed, the possibilities of establishing this relationship between goods and people on a reliable way is difficult, or even being it established, is complicated to find the way in which is related with the current investigation.

- f. One of its objectives is to understand the patrimonial situation of the subject and his environment. This is one of the points raised from the responses of various delegations, as it shows the need to expand or set as an object of analysis not only to a subject in particular, but necessarily to their near family circle.
- g. It is crosscutting. While it tends to be associated with certain types of crime (drug trafficking / money laundering / Corruption) its usability is wide. In this regard, it is common to see this kind of investigation in certain cases of violent crimes, allowing for the possibility of stablishing a mobile or modus operandi.

In this context, the possibilities of having a predefined methodology for performing this kind of research, allows its use and adaptation to any kind of criminal investigation.

3. Concept

Considering what is stated above, we note that asset investigation will be conceptualized as "an investigative technique used by different Criminal Investigation agencies such as Financial Intelligence Units, which allows through a process of analysis, to contrast the records obtained from various sources of information in order to establish a relationship between assets and people, identifying the assets that make up a particular wealth."

The definition is quite understandable, although it seems important to emphasize that the fundamental purpose of an asset investigation will be to withdraw or to award the goods that have been acquired in an illicit way, for which every State will be able to use any judicial tool in its internal juridical arranging (forfeiture, extinction of domain, forfeiture without condemnation, abandonment declaration, among others) that allows them to dismantle criminal organizations, reducing their economic power.

On other hand, we can indicate that asset investigations have different standards according to the stage of the penal process, of which it is part. For example, the first step is to identify the relevant assets, then the idea is to ensure that the penalty of confiscation is decreed by the judge for the property identified. The same logic is understood by international agencies who have also generated regulations on the matter⁶.

⁶ A 'financial investigation' means an enquiry into the financial affairs related to a criminal activity, with a view to: identifying the extent of criminal networks and/or the scale of criminality; identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and developing evidence which can be used in criminal proceedings.

A 'parallel financial investigation' refers to conducting a financial investigation alongside, or in the context of, a (traditional) criminal investigation into money laundering, terrorist financing and/or predicate offence(s). Law enforcement investigators of predicate offences should either be authorized to pursue the investigation of any related money laundering and terrorist financing offences during a parallel investigation, or be able to refer the case to another agency to follow up with such investigations. From: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

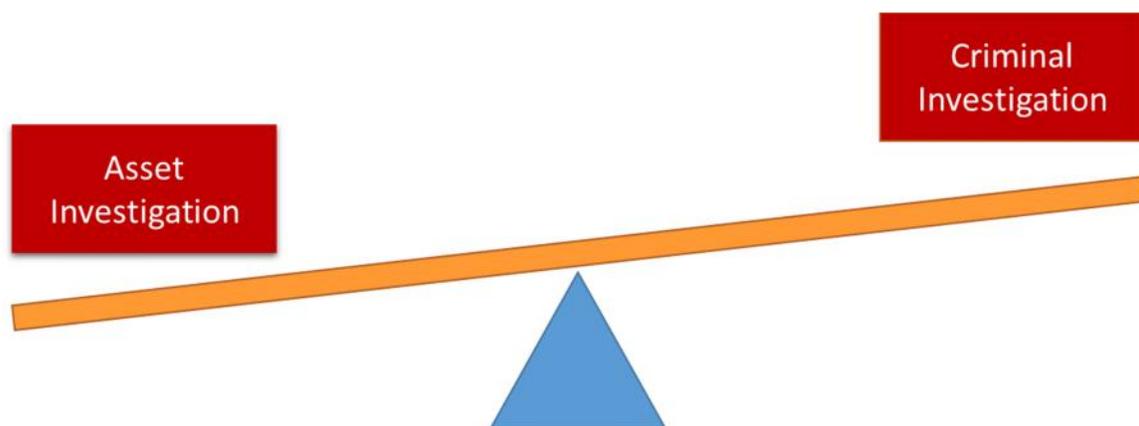
III. Structure and Stages of the Asset investigation

Today it is reasonable to start from the premise that an important part of the crimes committed are economic purpose, the reasons why these people commit crimes have been explained from different perspectives (psychological, sociological, economic theory of law, etc.). In any case, what is relevant in the criminological analysis of the causes of criminal phenomenon lies in the fact that they are essentially the assets or increasing the personal wealth the motivational determinants of crime, for several reasons which analysis are not the case (poverty, inequality, economic policy, etc.)

What is relevant is that, even when we have this information, analysis processes have not favored a substantive look⁷ into the wealth. This has directly influenced the resources and efforts aimed to tackle this kind of analysis.

In this context, if we want to get different results we should not always do the same thing, which is why there is a paradigm shift proposed in the analysis process to consider substantively the patrimonial perspective.

The new approach needs to assign the same or very similar weight to the analysis of illicit behaviors of the subjects, as well as the analysis of the assets linked to the case or set of cases. In other words, it aims to reduce the incidental nature of the asset analysis, positioning it and incorporating it directly into the process of criminal analysis.



⁷ Analysis processes have generally considered the patrimonial data secondarily, which has involved a series of consequences that will be discussed later on.

Figure 1. Balance between criminal and asset investigation

If would be possible to conduct a study of how countries have modified their laws to deal with criminal phenomena and it could be possible to see clearly how they have assigned a higher value to the processes linked to asset investigations. For example, the United Nations created a model law⁸ on asset forfeiture. With that countries are aiming to create a legal and operational structure that allows them to face the crime phenomena, this means criminals cannot exploit illegally obtained assets.

If in general, the legislative intent is that individuals who commit illegal activities cannot take advantage of the proceeds of crime, it is essential that the processes of patrimonial analysis related to prosecution authorities are integrated into the processes, methods, and tools enabling adequate asset investigations.

As for an appropriate structure of the process for Asset Investigations, we consider it to be explained as a sequenced and continuous process according to the objectives it pursues (Track / Seize / Forfeit).

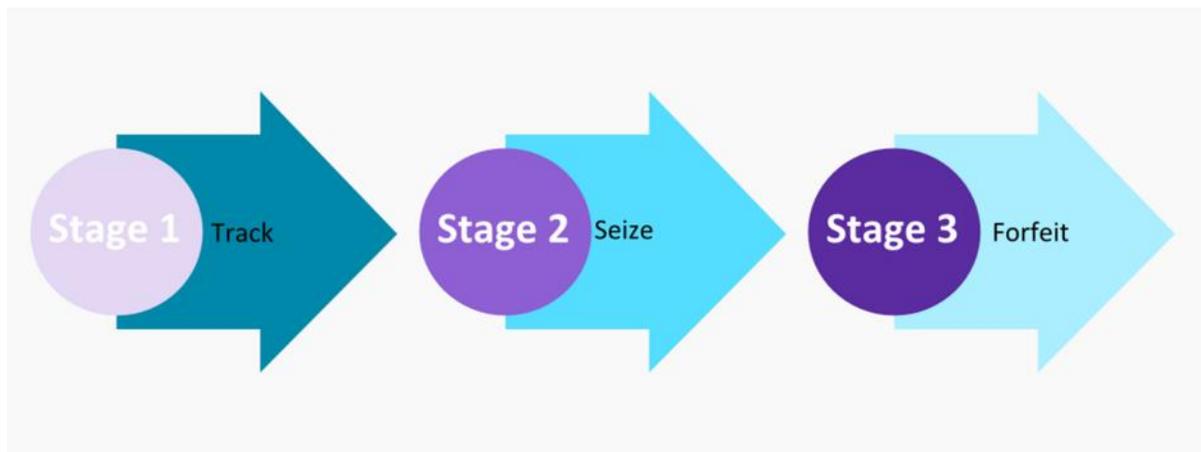


Figure 2. Main stages on the Asset Investigation.

1. The Track Stage

This is achieved by analyzing the information available from various sources. In this methodology, we propose to initially use the information sources developed by services allowed to perform asset investigations such as open WEB sources, restricted access

⁸ Model Law can be found at: http://www.unodc.org/documents/legal-tools/Ley_Modelo_Sobre_Extincion_de_Dominio.pdf

information, and police reports. This stage is usually developed by junior analysts and senior analysts in charge of the case. Generally, junior analysts will be responsible for extracting information from sources based on the indication of the senior analyst. At this stage, any clues or evidence is of value, since we are in a stage of investigation where what matters is being able to identify assets linked to illicit wealth.



Figure 3. Basic tools for Asset Tracking

a. Interconnections [remote connections]

The interconnections [remote connections] are online query applications, web services and websites, enabling researchers and their support team, access to information remotely located in a timely, reliable, accurate and secure way, facilitating and improving the collection of asset transactions primarily in the framework of a criminal investigation.

b. Web Sources

The idea is that each country could start a project on information sources, aiming to carry out a review process of all Web sites that may provide information relevant to criminal prosecution or property. In this context, it should be noted that the sub-group has worked on an information sources project with a preliminary inventory, which could eventually be used.

The guide on open sources of information could be categorized as follows:

- i. International Lists about Money Laundering and Terrorism Financing
- ii. Search engines and Meta-search engines
- iii. IP addresses and/or Web Domains

- iv. Social Networks
- v. Intellectual property
- vi. International Sources

Also, some of the above mentioned sources can be sub-categorized as:

- i. Personal Identification
- ii. Family links
- iii. Addresses and/or telephone numbers
- iv. Criminal Information
- v. Vehicles and/or boats
- vi. Information about other movable property (jewelry and works of art)
- vii. Patents and Trademarks
- viii. Commercial or Financial Information
- ix. Web domains and IP addresses
- x. Real State property

c. Closed Sources

Usually the main closed sources used in the field of criminal investigation refer to bank information, information related to electronic communications (emails), and in some countries, tax information. In these cases, to obtain this information is a prerequisite to obtain prior judicial authorization. Also, within these sources in some countries we find the tax information.

Regarding this, the development of an application model is recommended that helps operator to know everything they can request from a bank institution, as well to understand which aspects are covered by bank secrecy and which can be requested without judicial authorization. Furthermore, it is recommended to hold coordination meetings with banks with the objective of improving the applications presented and improving the response times. For example, it is usual that in some applications the requirements that need to be filled are mixed with other bank entities. It would therefore be more efficient to do different applications.

d. Police Reports

These documents are worked from the equity perspective, verifying assets that have been identified through investigations (it is advisable to indicate the type of crime). The minutes of rising equity should contain at least the following information: i) Name, ii) Marital status and children, iii) Identity document, iv) Residence, v) Commercial activity, vi) Activity declared to

the tax authority, vii) Irregular situations in tax behavior, viii) Employment history, ix) Exterior commercial activities, x) Phones, xi) Patrimonial box (summary).

Concluding this identification, the "Determination" will be achieved of how the global patrimony of the person is integrated; knowing the set of goods, properties and persons involved with any of the goods or identified properties.

2. Assurance Stage

As we saw earlier, after the identification phase of the assets, the idea is to generate useful information in order to ensure those properties through seizures or precautionary measures. Obviously, at this stage the accreditation required regarding the relationship between assets and people is much higher than in the initial phase. There should exist backgrounds that allow you to accredit the general requirements for such measures, such as *periculum in mora* and the *fumus boni iuris*, meaning that there can be a determined risk in the event of default.

For us it is important to emphasize this point, as traders must understand that at this time the requirements are different than those from the initial phase, that is, they should deepen the asset investigation in order to obtain the respective warrants.

3. Forfeiture Stage

Finally, at this stage an intense deepening of the asset investigation is needed, since it must be able to prove that the goods have been part of or are the result of crime, or are assets that should be confiscated under current regulations.

At this stage the asset investigation usually is complemented by the professional experts work. In this context we note that the working model must also deem that professional members of the AML / CFT system can perform expert report. However, this decision should be rigorously evaluated, as it could imply that the analyst should marginalize the team in order to make an objective report.

If it is determined that the report must be made by another public service analyst, the analyst handling the case will coordinate with the latter in order to work on the methodology to be used for the completion of the report and to set in jointly with the fiscal targets that are necessary for the case.

IV. Methodology

Internationally, you may notice different methodologies in the way to structure asset or asset investigation, some of which have been developed by police, specialized prosecutors, or audit institutions in the economic or financial intelligence units, having a relative coincidence in terms of phases or stages that make up these kind of investigations (determination of object of investigation / review of available sources of information / collection background / Analysis / Report about Conclusions) and to the objectives sought.

Nevertheless, to further analyze these models one may notice differences in the approach itself, which becomes evident in the emphasis that each one places on the different stages of asset investigation. Thus, in the models developed by the police or prosecutors, generally they include steps regarding the sources of information available, the way to get the information and how to establish in court that a particular asset belongs to a particular subject. On the other hand, the models created by regulatory agencies or Financial Intelligence Units refer to the analysis stage of information, mainly emphasizing the type of conclusions that can be obtained with the available information.

The structure proposed here takes some stages of the previous two models and incorporates others emerging from the products of the survey of the various delegations, including those relating to the verification of background in the field, and not to remain only with conclusions that can get the analysis of documents, but to compare them with certain operational measures.



Figure 4. Phases for the development of the asset investigation.

First phase. Fixing the object of the asset investigation

This first stage is vital as it will mark the development of all the investigation.

1. Persons / property or rights

As mentioned above we must define whether the investigation will start from the identified people or from the assets or rights. In the event that it starts from people, such investigation will be conducted and how their direct family group will be approached. In which case it should be discussed to what degree of relationship the investigations is needed (in most methodologies for money laundering investigations, it is recommended to inquiry relatives of the fourth degree of consanguinity).

A more complex case is when the inquiry starts from a legal entity, and that inquiry must specify whether it refers only to it or also to members who compose it. In the latter case it can generate a ripple effect, as many companies are in turn composed of other companies, and it being complex to cover all companies and partners who are part of the chain.⁹

On the other hand, if we start from the assets or rights, we will have to define whether our intention is only to determine who is listed as the current owner or right holder, or if it is necessary to establish those previously included, or changes in the ownership of that property (due to previous transactions).

2. Time frame

Normally, it is recommended to set a time frame regarding the asset investigation that fits the goal of research being done. Obviously, in cases where you want to know all the assets of a given subject and there is not a fixed limit of time from when initiating the investigation, as a general rule the other (how long) will be implied. .

Fixing this framework will help organize information that will be relevant and effectively allows asset investigation to be developed faster and more efficiently.

At times this time limit is not set, because you want to perform an analysis of the equity's historical performance, where it can be observed that in certain times there was an unusual increase or decrease.¹⁰

Second phase. Identification and compilation of data

1. Inquiry into the various sources of information.

Currently, the sources of information are often classified as open source (can be accessed by anyone), mixed (only directly accessed by someone who has a legitimate interest) and closed (those requiring judicial authorization to access information).

In terms of patrimonial investigations the three different types of sources of information are used interchangeably, having to evaluate the quality of information provided by each one. In

⁹ Therefore, in the case of open anonymous societies it results complex to realize the inquiry to identify shareholders.

¹⁰ It is interesting to mark that this limit will operate in both senses, meaning, to the past and to the futures. For example, in investigations in which financial fluctuations that are circulating, normal will be to fix a limit into the past and indicate that the asset investigation has to include all the operations that are found in execution.

this context, one should note the offset period of information that each source possess. For example, information that is delivered to us is updated every two months, thus, information regarding this offset period of information that is set in this time frame will have to be obtained later.

The identification of sources of relevant information will be a point of great relevance for the purpose of an efficient asset investigation, since the universe has a vast variety of information sources; we will have to carefully evaluate what sources of information are valuable to be used. One answer would be to use only those that provide equity information, but even here the possibilities are extensive, so, again the ideal is to be using those that are required for the object of the research that has been previously set. Bearing in mind that a greater number of sources will use a greater amount of time required for analysis, without its progressive use implies a proportional increase in the degree of certainty of the result sought.

In other words, on many occasions is much more efficient to consult a small number of information sources that deliver high quality information before consulting the full range of information sources, where many do not provide relevant background and only increase the history to be analyzed, generating a negative effect.

Finally, having identified the relevant sources of information it will be necessary to select the type of information requested, since some manage a huge amount of information, it is essential to specify the type of backgrounds that are required. It is desirable that the area in charge of research develops the procedures for selecting, sorting, grading, studying and the interpretation of the information gathered.

To be clear about the information that is to be obtained, it also helps that information requirements are made so they can be answered more quickly. Dividing requests according to the department (of the institution to which he officiates) that corresponds to answer to such information also gives greater flexibility to the answer. From practical experience it can be noted that the mistake of including several applications in the same request that must be answered by different departments of the same institution, which generates a delayed response because departments do not work simultaneously, it is often made.

2. Collection of backgrounds.

At this point you should take special care to check that the information gathered is the requested information, either in terms of time, people or consulted assets. Also, information will be orderly and structured classified as will be discussed later.

3. Background and documents seized

Asset investigation should be completed with documentation and records seized. Sometimes failure to treat this record is committed, since the entire financial and economic information was obtained from various public and private institutions.

On practical experience it has been noted that many records can only be obtained within the documents seized, primarily those related to powers, mandates, contracts and private deeds, of which there is no record in the respective notaries. There have also been important checkbooks in which annotations are made for certain people.

To make the most of the background information obtained at least one identification and structuring information should be made. While it is true that all the documents seized meet their respective chain of custody, it is likely that not all the documents are relevant, in this regard; since the information analysis is started there should be arbitrated measures on how the backgrounds that were considered for the asset investigation, are going to be. If this regard is not clarified it is likely that the work is not developed efficiently, since it will have to review the background to individualize it again.

On the other hand, before the identification of the background, which must have operated as a filter regarding any information that did not contribute to the asset investigation, it now corresponds to regroup the information by some kind of criteria. Generally, all information is grouped referring to a particular asset. For example, with a property, we can find domain registration, various certificates (by country), the contract of sale that reasons the registration, the contract of pledge, the check by which notarial instructions were as paid, the physic archive which contains copies of the check or checks as paid, photos of the property, etc.

Then each asset or right is going to be associated with the corresponding person, for us to form an idea about their heritage.

On special occasions structuring is required, for example, when it is necessary to identify points of coincidence between certain people, in which case the analysis of the person will be first and then the assets will be associated, allowing the investigators to plot the points of connection among them.

4. Information requested via international cooperation

This may end up being one of the key points regarding crimes involving transnational organized crime, since the assets are usually in different countries and it is sometimes quite complex to harmonize research for international cooperation.

While they have begun to improve formal and informal mechanisms for exchanging information between countries, it remains an issue. In this context, we believe that you should use the guidelines for international cooperation that has been developing by GELAVEX in order to adapt the requests and applications of the consultant country, and in this way streamline the response time.

Similarly, consider a recommendation that in these types of investigations one of the first requests that researchers should perform are those related to the backgrounds which are on the outside, and that response times will be more extensive than requests that are made internally. Furthermore, to narrow and clarify the formal requirements it is appropriate to use in the first instance informal mechanisms of information exchange, such as GAFILAT (Network Asset Recovery GAFILAT / RED Egmont) or other similar mechanisms.

Third phase. Process data analysis. Drawing preliminary conclusions.

The process of analyzing the information collected is largely what is known as asset investigation since, as we noted earlier this process seeks to draw certain conclusions from the analysis of the various documents. From our perspective, the conclusions that are achieved should specifically indicate which documents were taken into account for each of them. In the case of developing conclusions that need technical or scientists knowledge's, it will be necessary to be elaborated from a formal expert, but only as to the conclusions requiring to use such knowledge.

The conclusions of the asset investigation will be structured based on certain assets or for certain people. For example, the investigator can conclude that X asset in particular has led owners to a certain group of people, who have acquired certain dates, that at the time of acquisition these persons did not figure with lawful income that would allow to solve them, etc. On the other hand, if the conclusions regarding the persons, it could be indicated that person X, has acquired a determined number of assets in the period of time initially fixed and that in this period of time generates licit sources for a determined quantity of money, that its expenses in the same period of time have been above its income.

Finally, note that these are preliminary conclusions since it has been obtained from a purely documentary analysis, a matter which can be changed to investigate the situation on the ground. For example, it is common that some subjects are listed without any investment in their name, but in reality they have great heritage using proxies.

Fourth phase. Validation of factual findings.

This was one of the points raised in the responses of individual countries, as it did see that they should not make definitive conclusions without at least verifying in the field the information obtained via documentary. For example, cases are often cited in which subjects indicate nonexistent addresses regarding properties appraised at lower values, when it is actually a very expensive commodity. With these considerations we add it as one of the stages within the asset investigation because it allows us to establish the effectiveness of the conclusions of preliminary way. Many times the conclusions drawn from the documents are enormously far from reality; this is how the conclusions are complemented by other available information. That is, by certain measures in the field we can validate or invalidate the conclusions that we have prepared.

Fifth phase. Making definitive findings.

Subsequent to the factual validation of our preliminary findings, we are able to draw our final conclusions on which the backgrounds obtained in the proceedings in the field will be incorporated, noting how our conclusion is structured. In this regard, it should be identified that the background taken into account to prepare the conclusion and reasoning or methodology used, in order to establish the technical nature of the same.