

Asset Recovery

OECD Latin America Academy for Tax and Financial Crime
Investigation

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Presentation outline

Part I

1. Recovery of illicit assets: an overview.
2. Main stages of the asset recovery process.
3. Main challenges affecting recovery efforts.
4. Strategic asset recovery planning.

Part II

5. Tools and mechanisms for national and international cooperation.
6. Precautionary measures: types and strategic use.
7. Mutual Legal Assistance Treaties (MLATs): what they are and how they are used.
8. Emerging challenges: virtual assets and new technologies.

1. General concepts

What is asset recovery?

- The State confiscates money, property or other assets
- Used in the commission of crimes or obtained from criminal activity
- Other assets intended to cover the payment of fines, to compensate victims or fulfill other economic fines

Regulations and recommendations

- International conventions
 - Palermo Convention (United Nations Convention Against Transnational Organized Crime)
 - Inter-American Convention Against Terrorism
 - United Nations Convention against Corruption
 - Inter-American Convention Against Corruption
 - Vienna Convention against Narcotics Trafficking

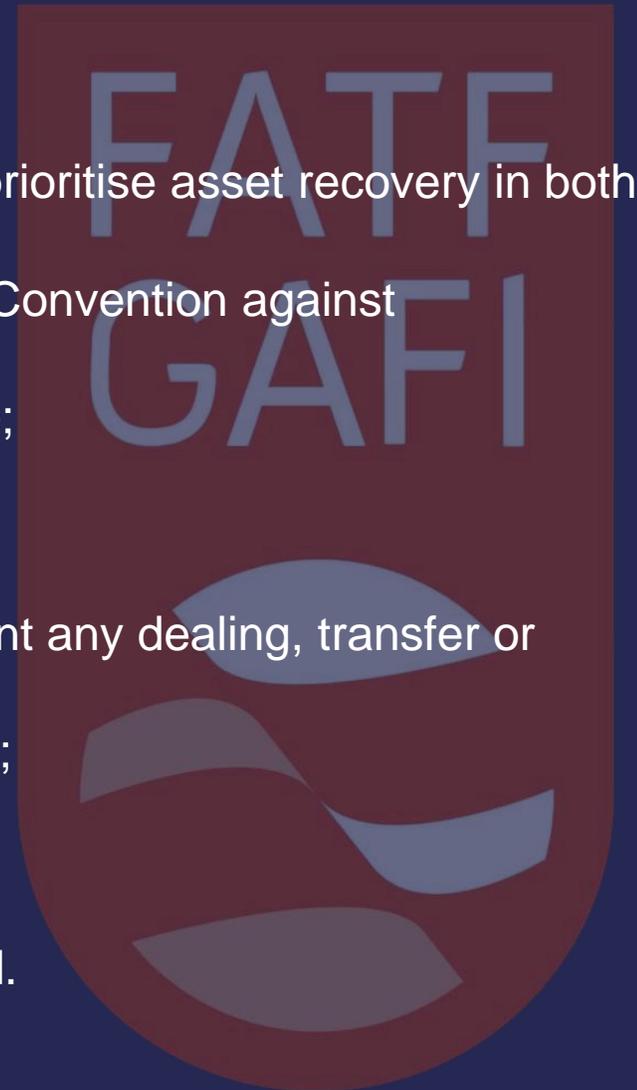


FATF - Recommendation 4

Countries should ensure that they have policies and operational frameworks that prioritise asset recovery in both the domestic and international context.

Considering the Vienna Convention, the Palermo Convention, the United Nations Convention against Corruption, and the Terrorist Financing Convention,

- a) identify, trace and evaluate criminal property and property of equivalent value;
- b) suspend or withhold consent to a transaction;
- c) take any appropriate investigative measures;
- d) swiftly carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of criminal property and property of corresponding value;
- e) confiscates assets of criminal origin without the need for a criminal conviction;
- f) confiscate criminal property through non-conviction-based confiscation;
- g) enforce a resulting confiscation order;
- h) ensure effective management of property that is frozen, seized or confiscated.



What assets?

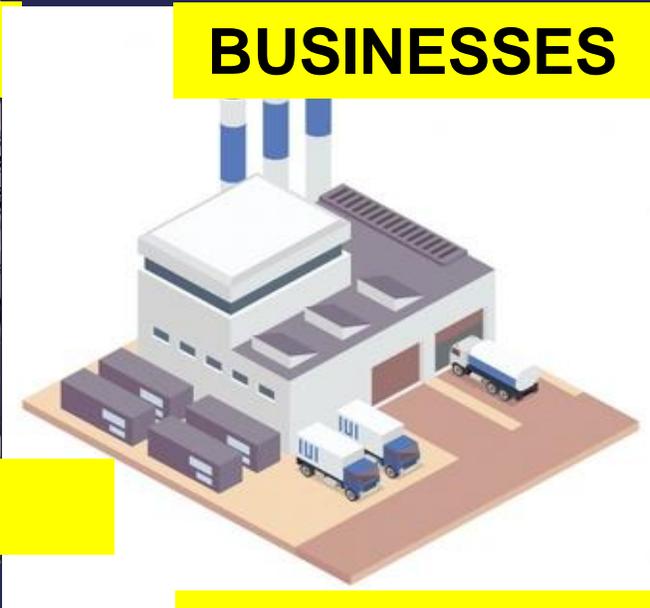
PROPERTIES



DIGITAL ASSETS



BUSINESSES



MOBILE PROPERTY



FINANCIAL ASSETS

MONEY



2. Main stages of the asset recovery process

1. Identification and location of assets



Complementary investigations



2. Asset care



3. Forfeiture, seizure, confiscation, etc.



Value substitution



País	¿Existe herramienta?	Nombre legal de la figura	Año promul.	Estado actual	Naturaleza jurídica
México	Sí	Ley Nacional de Extinción de Dominio	2019	En vigor	Constitucional (civil in rem)
Belice	Sí (parcial)	Drug Trafficking Offences Act	1990 (aprox.)	En vigor	Civil (limitado a narcotráfico)
Guatemala	Sí	Ley de Extinción de Dominio	2010	En vigor	Civil (autónoma in rem)
El Salvador	Sí	Ley Especial de Extinción de Dominio	2013	En vigor	Civil (autónoma especial)
Honduras	Sí	Ley sobre Privación del Dominio	2010	En vigor	Civil (autónoma)
Nicaragua	Sí	Reforma Ley 735 (Crimen de Extinción de Dominio)	2024	En vigor	Penal (ley especial)
Costa Rica	No	Proyecto de Ley (Exp. 19)	-	En debate	N/A
Panamá	No	Proyecto de Ley 625	-	Archivado	N/A
Cuba	No	Decr. Ley 149/1994 y 232	-	No vigente como ED	Administrativa tradicional
Rep. Dominicana	Sí	Ley Nº 340-22	2022	En vigor	Constitucional (civil autónoma)
Haití	No	-	-	N/A	N/A
Bahamas	Sí	Proceeds of Crime Act	2018	En vigor	Civil (in rem)
Barbados	Sí	Proceeds of Crime Act 20	2019	En vigor	Civil
Jamaica	Sí	Proceeds of Crime Act	2007 (2013)	En vigor	Civil
Trinidad y Tobago	Sí	Civil Asset Recovery Act	2019	En vigor	Civil (y riqueza injustificada)
Antigua y Barbuda	Sí	Proceeds of Crime Act	2017	En vigor	Civil
Dominica	Sí	Money Laundering (Prevention) Act	2013/2016	En vigor	Civil
Granada	Sí	Proceeds of Crime Act	2012	En vigor	Civil
San Cristóbal y Nieves	Sí	Proceeds of Crime Act	2014	En vigor	Civil
Santa Lucía	Sí	Proceeds of Crime Act	2013	En vigor	Civil
San Vicente y G.	Sí	Proceeds of Crime Act	2013	En vigor	Civil
Argentina	Sí	DNU 62/2019	2019	En vigor	Civil (federal in rem)
Bolivia	Sí	Ley 913 (Pérdida de Dominio)	2017	En vigor	Civil (in rem, drogas)
Brasil	Sí (parcial)	Ley de Improbidad Adm.	1992 (2021)	En vigor	Administrativa/Civil
Chile	Sí	Ley 21.577 (reforma CP/CC)	2023	En vigor	Penal
Colombia	Sí	Ley 1708/2014	2014	En vigor	Constitucional (in rem)
Ecuador	Sí	Ley Orgánica de ED	2021	En vigor	Constitucional (civil autónoma)
Guyana	Sí	State Assets Recovery Act	2017	En vigor	Civil
Paraguay	No	-	-	N/A	N/A
Perú	Sí	Decreto Leg. Nº 1373	2018	En vigor	Civil (in rem)
Uruguay	No	-	-	N/A	N/A
Venezuela	Sí	Ley Orgánica de ED	2022	En vigor	Constitucional (jurisd. autónoma)
Surinam	No	-	-	N/A	N/A



4. Asset management



Auctions and use of seized assets



JORGE MIQUELARENA
PROCURADOR GENERAL - CHUBUT

CAUSA "EMBRUJO": DARÁN USO A LOS VEHÍCULOS RECUPERADOS DE LA CORRUPCIÓN

3. Main challenges affecting recovery efforts

Our own bureaucratic practices

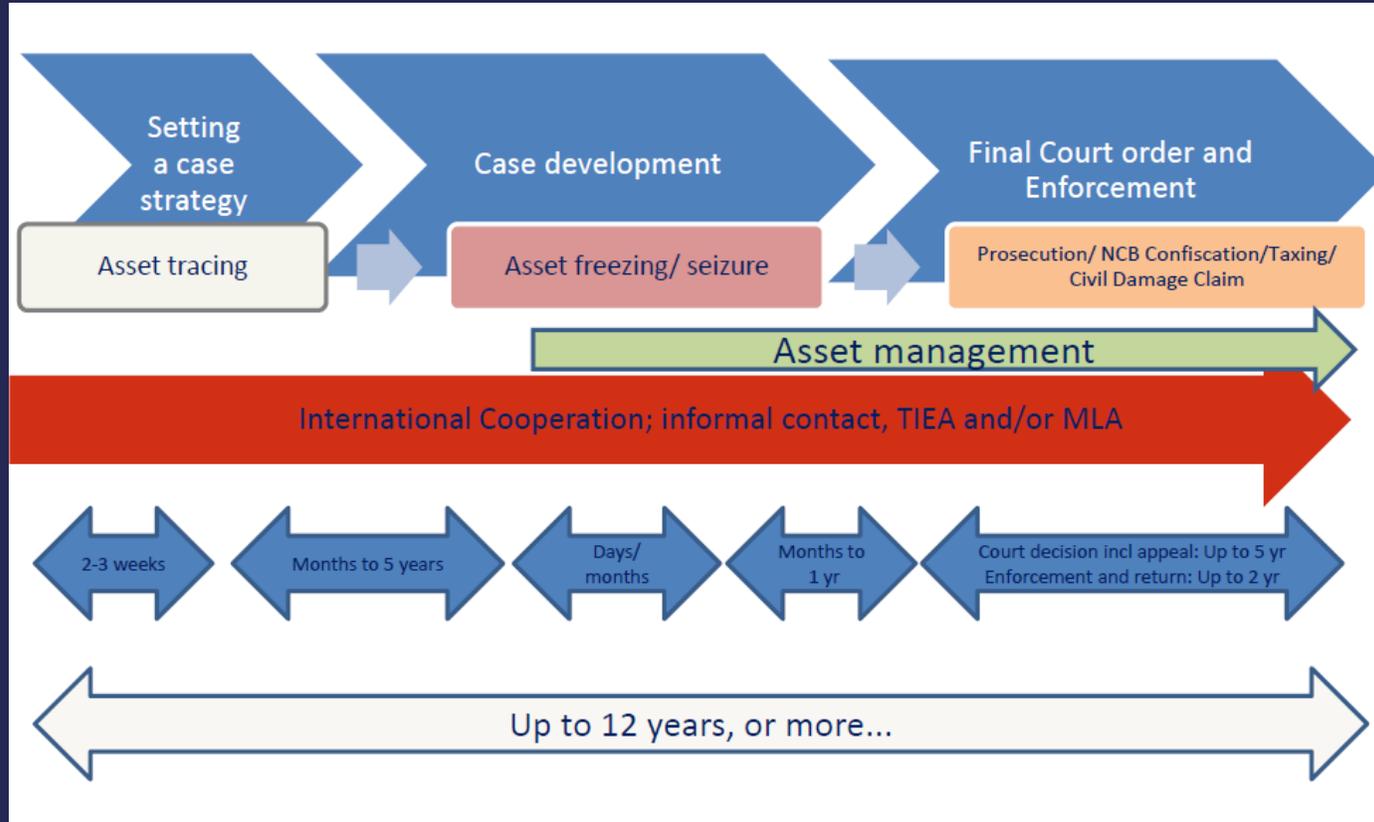
- **Coordination problems**
- **Lack of strategic vision**
- **Lack of knowledge**
- **Lack of specialised offices and staff**



Opacity and transnationality



Time in justice systems



Disparate regulatory frameworks



Diplomacy and bureaucratic barriers



4. Strategic asset recovery planning

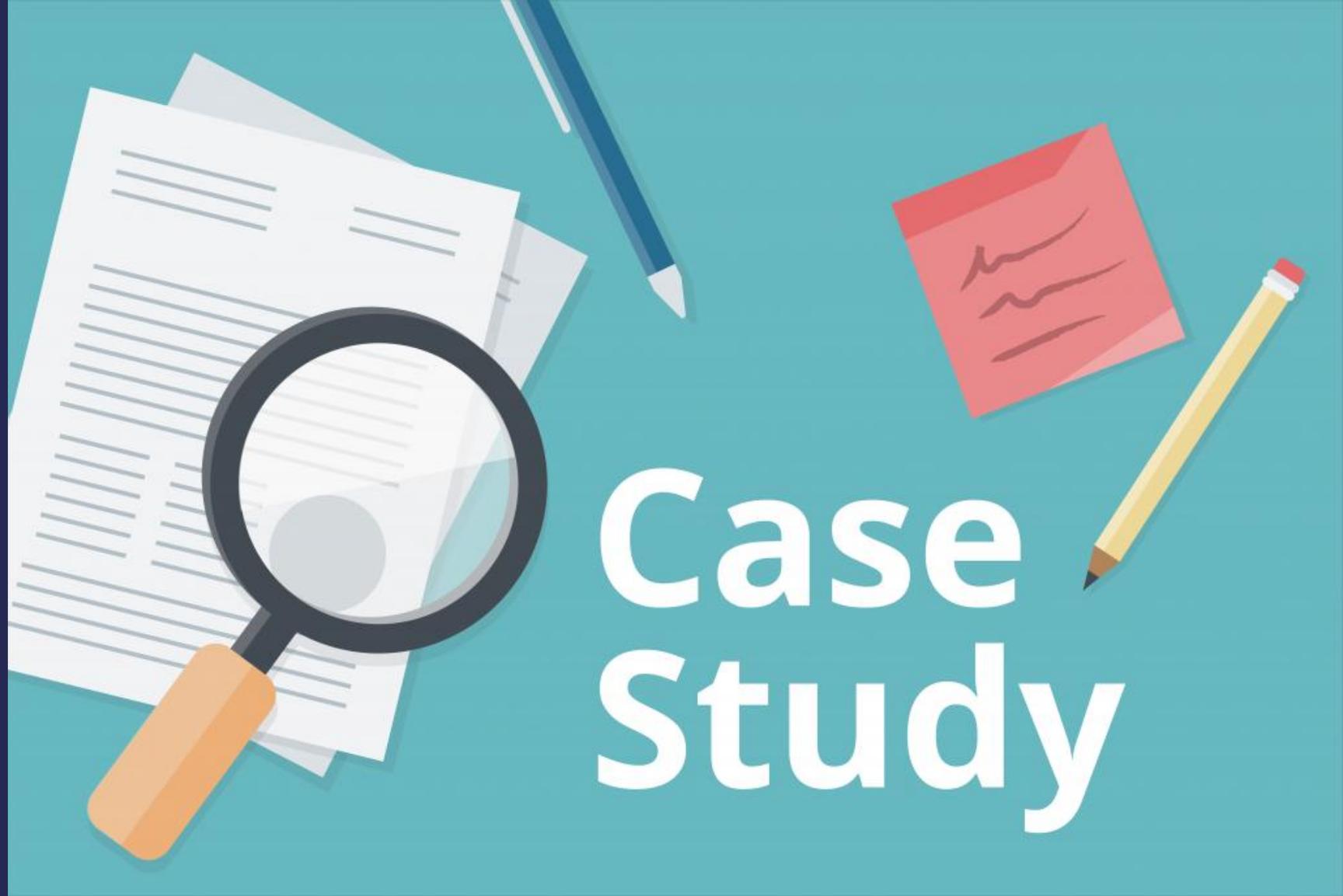
Institutional strength and specialisation



Prioritisation and case selection



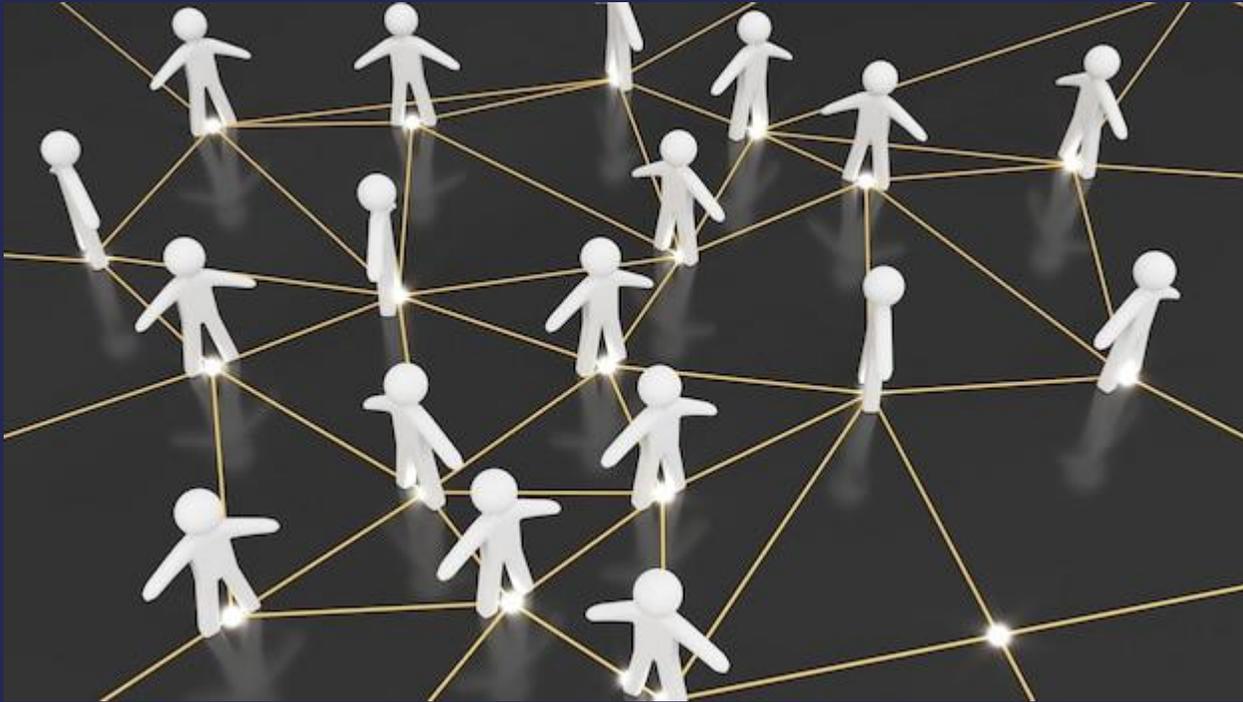
Case Study



Case Study

5. Internal and international cooperation: tools and mechanisms

Internal networks and integrated working groups



Specialised networks



6. Precautionary measures: types and strategic use

1. Criminal Law?
2. Civil law?
3. Tax law?



Main precautionary measures and their use?

1. How to freeze or seize cash?



2. How to freeze or seize real estate?



3. How to freeze or seize vehicles?



4. How to freeze or seize boats or aircrafts?



5. How to freeze or seize bank accounts?



6. How to freeze or seize financial assets?



7. How to freeze or seize company shares?



8. How to freeze or seize shares in offshore companies?



9. How to freeze or seize crypto assets?



Custodial & Non Custodial Crypto Assets

CUSTODIAL

Search

Binance: Buy Bitcoin Securely
Trade Bitcoin & Cryptocurr...

219K RATINGS AGE CHART
4.6 17+ No.24
★★★★★ Years Old Finance

What's New Version His

Version 2.59.3

- Lite version adds ETH 2.0
- P2P adds term tab on placing order
- P2P adds merchant background design

Preview

Total Balance
\$0.00

Buy, sell & tra
+600 cryptocu

Today Games Apps Arcade Search



NON CUSTODIAL



Best cold wallet
for crypto

GODEX

TRADE ON
GODEX.IO



7. Mutual Legal Assistance Treaties (MLAT):

Overview: Approaches

1. Formal sources:
 1. Diplomatic rules
2. Informal sources
 1. Police – Police
 2. Prosecutor's Office – Prosecutor's Office

Overview: Sources

1. Bilateral Cooperation Agreements
(MLAT)

2. Multilateral Cooperation Agreements

3. International courtesy and reciprocity



Example Argentina MLAT

(<http://www.cooperacion-penal.gov.ar/tratados-internacionales>)

- ▶ Australia
- ▶ Canada
- ▶ China
- ▶ Colombia
- ▶ El Salvador
- ▶ Spain
- ▶ USA
- ▶ France
- ▶ Mexico
- ▶ Peru
- ▶ Portugal
- ▶ United Kingdom
- ▶ Republic of Korea
- ▶ Russia
- ▶ South Africa
- ▶ Switzerland



Example Argentina Multilateral Agreements

(<http://www.cooperacion-penal.gov.ar/tratados-internacionales>)

- ▶ Agreement on Mutual Assistance in Criminal Matters between MERCOSUR, Bolivia and Chile.
- ▶ Vienna Convention against Narcotics Trafficking
- ▶ United Nations Convention Against Transnational Organized Crime
- ▶ United Nations Convention against Corruption
- ▶ Inter-American Convention Against Corruption
- ▶ Inter-American Convention on Mutual Assistance in Criminal Matters
- ▶ Convention on Combating Bribery of Foreign Public Officials
- ▶ MERCOSUR MLAT Protocols

INFORMACION GENERAL DEL TRATADO: A-55

PAISES SIGNATARIOS	FIRMA	RATIFICACION/ADHESION	DEPOSITO	INFORMACION*
Antigua y Barbuda	-	07/14/2004	01/05/2005 RA	-
Argentina	06/06/2004	10/09/2006	12/12/2006 AD	Si
Bahamas	04/26/2001	04/22/2009	04/30/2009 RA	Si
Barbados	-	-	-	-
Belize	-	-	-	-
Bolivia	-	11/28/2006	12/14/2006 AD	-
Brasil	01/07/1994	10/10/2007	11/12/2007 RA	-
Canada	06/03/1996	05/29/1996	06/03/1996 RA	-
Chile	04/24/1997	06/05/2003	04/28/2004 RA	Si
Colombia	-	12/04/2002	01/13/2003 RA	Si
Costa Rica	03/08/2002	-	-	-
Dominica	-	09/14/2004	10/20/2004 AD	-
Ecuador	10/15/1992	12/26/2001	03/08/2002 RA	Si
El Salvador	07/02/2002	04/21/2004	07/16/2004 RA	Si
Estados Unidos	01/10/1995	01/05/2001	05/25/2001 RA	Si
Grenada	03/10/1993	11/29/2001	01/16/2002 RA	-
Guatemala	12/19/2002	01/24/2003	05/05/2003 RA	Si
Guyana	02/28/2006	04/07/2008	06/09/2008 RA	Si
Haití	-	-	-	-
Honduras	-	09/25/2006	11/10/2006 AD	-
Jamaica	-	07/14/2004	08/12/2004 AD	Si
México	06/05/2001	01/07/2003	02/11/2003 RA	Si
Nicaragua	03/04/1993	09/24/2002	11/25/2002 RA	Si
Panamá	11/13/2000	10/28/2001	01/29/2002 RA	Si
Paraguay	06/02/1998	07/30/2004	10/22/2004 RA	Si
Perú	10/28/1994	04/03/1995	04/26/1995 RA	Si
República Dominicana	-	-	-	-
San Kitts y Nevis	-	-	-	-
Santa Lucía	-	-	-	-
St. Vicente & Grenadines	-	-	-	-
Suriname	05/16/1995	02/28/2008	03/31/2008 RA	-
Trinidad & Tobago	-	06/01/2004	06/08/2004 RA	-
Uruguay	01/22/1993	-	-	-
Venezuela	08/27/1992	03/11/1995	03/14/1996 RA	Si

MPA

 MINISTERIO
PÚBLICO DE LA
>ACUSACIÓN




Example Argentina

International courtesy and reciprocity

▶ LAW ON INTERNATIONAL COOPERATION IN CRIMINAL MATTERS Law 24.767

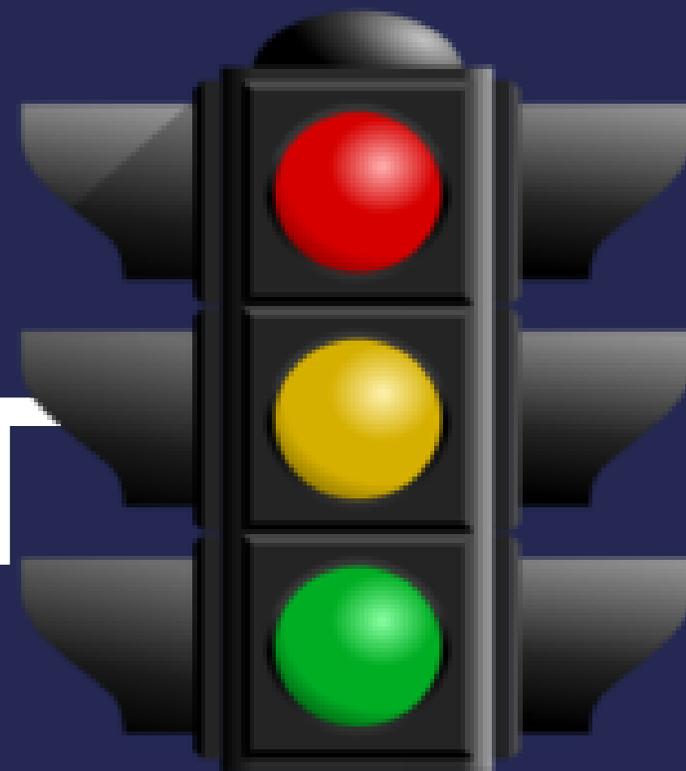
▶ Principles:

▶ Wide-rang and prompt cooperation: Art. 1: *"The Argentine Republic shall render to any State that so requires the widest possible assistance in connection with the investigation, prosecution and punishment of offenses within its jurisdiction. The intervening authorities shall act with the utmost diligence to ensure that requests are processed as quickly as possible so as not to alter the assistance"*

▶ Subsidiarity

▶ Reciprocity

Criteria that apply to MLAT matters



"Fishing operations" and coercive measures

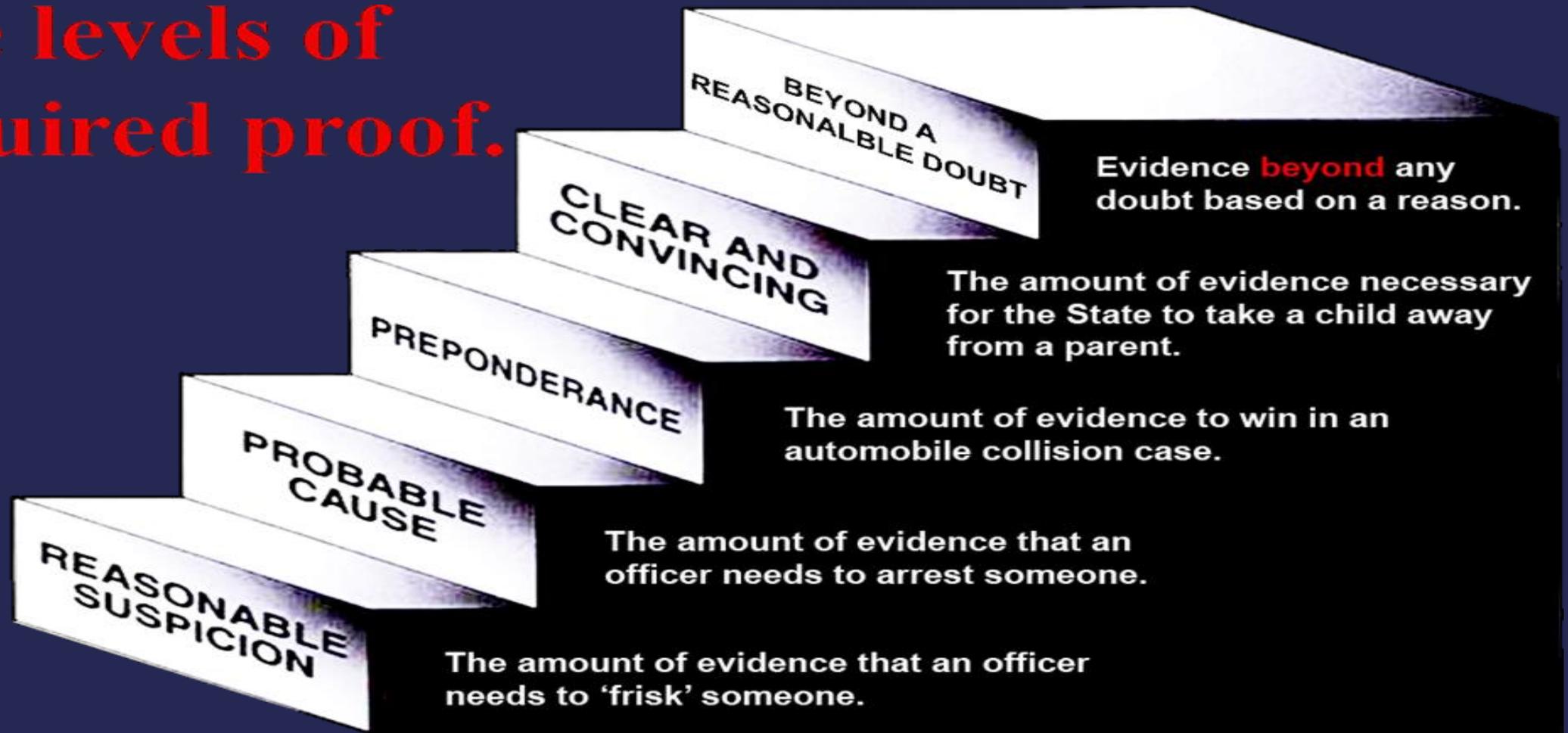


Principle of specialty

Preliminary investigations: proceedings and depletion



The levels of required proof.

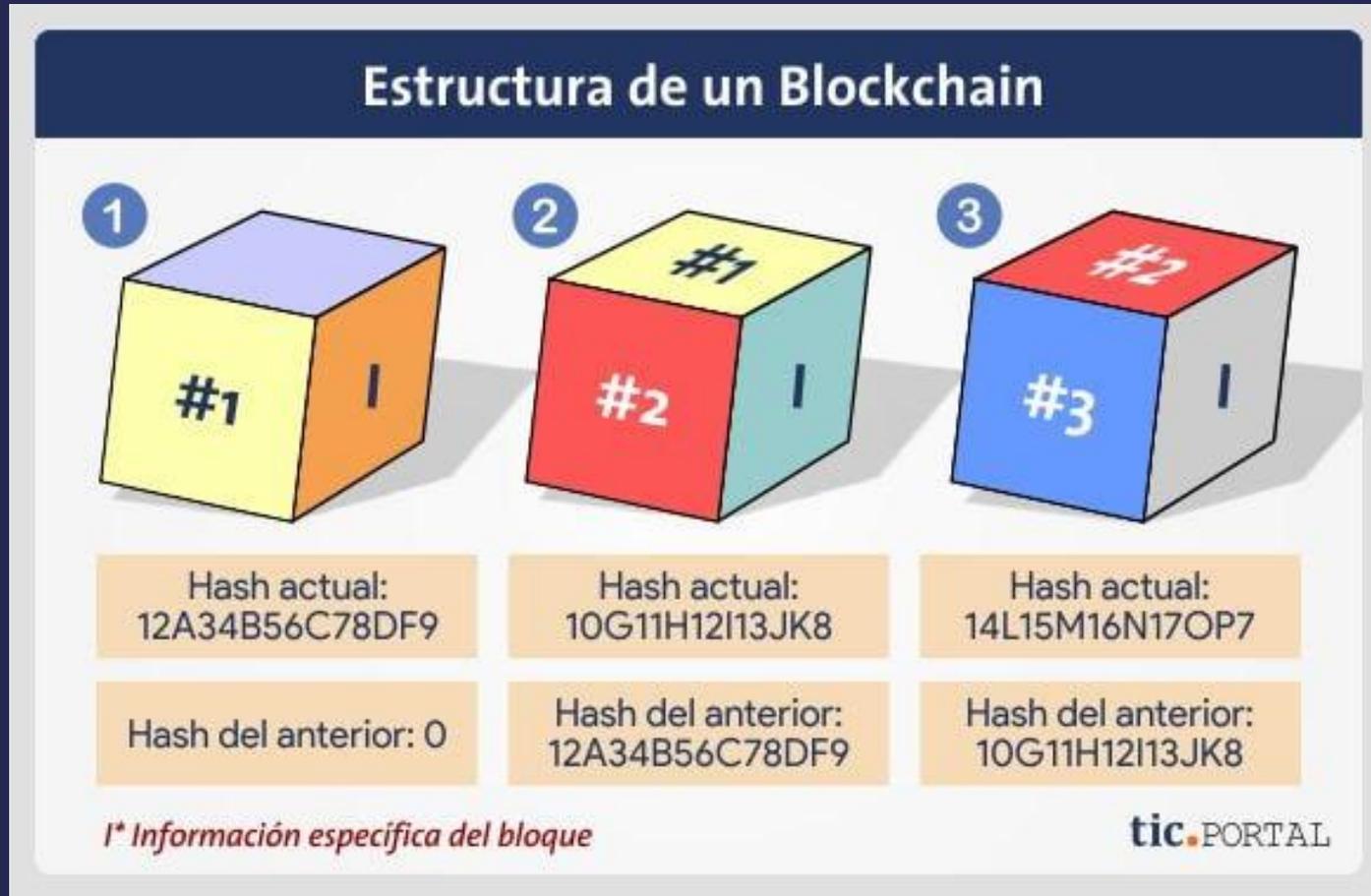


Recommendations when preparing an MLAT request

1. Consult with the Central Authority or Request Authority in advance.
2. Specify the applicable legal instrument (MLAT, treaty, etc.).
3. Identify the authority in charge of the investigation or prosecution.
4. Summarise the case: include an evidence summary and justification for the request.
5. Include any applicable criminal and procedural rules.
6. Include a clear summary of the request; comply with formal requirements (certification, attestation, translation).
7. Indicate whether confidentiality is required; provide reasons for confidentiality.
8. Justify the urgency, if any, explicitly; do not claim urgency without reason.
9. Include the details of contacts with their name, role, email and telephone number.
10. Translate the request into the language required by the receiving authority.
11. Clarify that the information will be used only for the purpose indicated (principle of specialty).

8. Emerging challenges: virtual assets and new technologies

Blockchain



Mixers



New regulations



Specialisation



Thank you
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