

National Property Forfeiture Law

A major legislative overhaul, aimed at fighting crime and strengthening the authorities' prosecuting and asset forfeiture powers in connection with criminal conducts, was enacted last Friday through the "Decree which issues the National Property Forfeiture Law (the "Law"), and amends and adds several provisions to the Criminal Procedure Code, the Federal Law on the Administration and Transfer of Property for the Public Sector, the Insolvency Law and the Federal Administration Organic Law" (the "Decree"), published in the Federal Register, which entered into force this very Saturday.

The Decree follows a constitutional amendment, which came into effect on

March 15, 2019, whereby articles 22 and 73, section XXX, of the "Political Constitution of the United Mexican States" to set forth the core principles of the forfeiture action, which may be instituted by the Public Ministry, through a civil procedure, with respect to assets the rightful or legal origin of which could not be proved and are related to investigations in connection with corruption, concealment (of crime), crimes committed by public servants, organized crime, gasoline theft, vehicle robbery, illicit proceeds, drug and human trafficking, kidnapping and extortion and which ordered the Congress to issue a law to provide for the specific aspects of this action within 180 days.

The Law draws on the "Model Provisions"

on in rem forfeiture of the "Legal Assistance Programme for Latin America and the Caribbean of the of the United Nations Office on Drugs and Crime" as well as on the principles of, inter alia, the United Nations Conventions "Against Transnational Organized Crime, Against Corruption and Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances." The local laws on the matter (property forfeiture) have been repealed as of the date on which the Law entered into force and effect, as well as the preceding federal law in connection herewith.

The Decree provides for a twofold and independent course of action for asset forfeiture: civil (a special procedure) and

criminal; this item runs astray from the former legislations (both local and federal) concerning property forfeiture, which required that a criminal conviction was handed down with respect to the crimes referred to in the former legislations as a cause of the property forfeiture action; it is important to stress out, however, that the Law requires the existence of an "illicit activity" as a cause of action for the property forfeiture, reason for which we cannot state that both procedures have been disassociated entirely. The developments brought about by legal practice will aid on fixing this course. Nevertheless, the burden of proof is reverted, at Law, to the defendant, who will have to prove that the assets or proceeds subject to forfeiture were lawfully acquired (non-conviction forfeiture).

The "property forfeiture" action shall be instituted in specialized courts. In this particular respect, the Decree orders the Administrative Bodies of Judiciary (both federal and local) to create specialized courts within 6 months. In the meantime, the ordinary civil courts shall have jurisdiction in connection therewith.

What is property forfeiture at law? Property forfeiture, in favour of both Federal and local governments, is the extinction or surrender of the rights of a person with respect to the ownership or property to assets (in particular of those which are proceeds of "illicit activities"), following the decision of a judicial authority, without consideration or compensation of any kind.

The property forfeiture action has no statute of limitations with respect to illicit proceeds and there is a 20-year statute of limitations for this action with respect to assets destined for illicit activities. Additionally, the defences to which the inheritor or the legatee who received property from an estate subject to property forfeiture have been removed (in short, property is not legitimized over the dead of its owner).

The cause of action can be stated, whenever: (i) an illicit activity has taken place, (ii) property that is either a proceed of illegal activities or the instrument of illegal activities, (iii) there is a cause-effect relationship between the two preceding items and (iv) whenever the owner was

knowledgeable to items (i) or (ii).

The Decree further amended other provisions of bodies of law such as the "Criminal Procedure Code", the "Federal Law on the Administration and Transfer of Property for the Public Sector", the "Insolvency Law" and the "Federal Administration Organic Law", the analysis of which exceeds the scope of the foregoing; nevertheless not all seem, at first glance, related the subject-matter of Law; e.g., the "Insolvency Law" amendment enables a state-owned (majority) company (which could be formerly declared in "concurso" insofar as such entity was a commercial entity) to be declared in "concurso" only when such measure was ordered by a dissolution or extinction agreement and when such entity was being managed by the "Institute for the Administration of Property and Assets", which will be, in principle the entity in charge of managing the assets subject to forfeiture under the Law.

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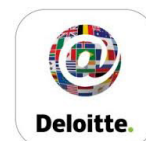
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