

# FEDERAL ASSET FORFEITURE ACT REGULATING ARTICLE 22 OF THE MEXICAN CONSTITUTION

## ORIGINAL TEXT

Act published in the First Section of the Official Federation Gazette on Friday, May 29th, 2009.

National Seal at margin, stating: United Mexican States. – Presidential Decree.

FELIPE DE JESUS CALDERON HINOJOSA, President of Mexico, to its inhabitants:

The Mexican Congress has sent the following

## DECREE

"THE MEXICAN CONGRESS DECREES THAT:

THE FEDERAL ASSET FORFEITURE ACT IS ISSUED TO REGULATE ARTICLE 22 OF THE MEXICAN CONSTITUTION;

FIRST ARTICLE.- The Federal Asset Forfeiture Act is issued to Regulate Article 22 of the Mexican Constitution as follows:

FEDERAL ASSET FORFEITURE ACT REGULATING ARTICLE 22 OF THE MEXICAN CONSTITUTION.

## FIRST TITLE

### FIRST CHAPTER

#### Preliminary Provisions

Article 1. This act regulates second paragraph or article 22 of the Mexican Constitution. Its provisions are of a public nature and social interest, and are aimed to regulate the forfeiture of assets to the State, the appropriate procedure, the competent authorities' actions, the effects of the resolutions made, and the means for third parties considered affected thereof to act.

Article 2. For the purposes of this Act, the following definitions shall be understood:

I. Assets.- Any material items not excluded from trade, either movable or immovable, and any real or personal rights, objects, fruits and products subject to appropriation in the cases stated in article 8 of this Act.

II. Corpus delicti.- Illegal action referred to in paragraph a) of fraction II of article 22 of the constitution as related to paragraph second of article 168 of the Federal Code of Criminal Proceedings. For the purposes provided in article 8, fraction III, the corpus delicti shall be accredited according to provisions in article 45, fraction III.

III. Judge.- Competent court, and

IV. Attorney General.- Attorney General of the Federation.

Article 3. Asset forfeiture is losing the rights over the property referred to in articles 2 and 8 of this Act, without consideration or compensation whatsoever for its owner or for who claims or behaves as such. The judgment through which it is declared will have the purpose of having the assets be given to the State.

Article 4. Given the lack of sufficient regulation in this Act for the institutions and legal cases it regulates, the following supplementary regulations will be applied:

I. In preparing the exercise of the asset forfeiture action as provided in the Federal Code of Criminal Proceedings;

II. In the asset forfeiture trial as provided in the Federal Code of Criminal Proceedings;

III. In the administration, disposal and disposition of the assets as provided in the Federal Law of Administration and Disposal of Public Sector Assets, and

IV. In aspects related to the regulation of assets and obligations as provided in the Federal Civil Code.

All the information generated or obtained regarding this Act shall be ruled by the terms of the Federal Law of Transparency and Access to Public Government Information.

The documentation and information obtained from previous investigations will be subjects to the provisions in article 16 of the Federal Code of Criminal Proceedings.

The Mexican Attorney General will give an annual report to the Congress. The General Attorney of Mexico will give an annual report to the congress on the exercise of the faculties this Act grants.

## SECOND CHAPTER

### Regarding the action taken for Asset Forfeiture

Article 5. The asset forfeiture action is of a real nature and contains assets, and will be applicable on any property, regardless of who holds or has acquired it.

The exercise of the assets forfeiture action is for the public prosecutor.

The forfeiture action shall apply the rules of limitation for wrongful acts set out in Article 7, in accordance to the deadlines set forth in article 102 of the Federal Criminal Code, except in the case that the assets proceed from the crime, which shall not prescribe.

The Public Prosecutor may discontinue the asset forfeiture action at any moment before a final judgment is dictated, previously coming to an agreement with the Attorney General's Office. Under the same terms, he may discontinue the claim for certain property subject to the asset forfeiture action.

Article 6. To prepare the asset forfeiture action, the Attorney General may use the information from the preliminary investigation he starts under the terms of the Federal Criminal Proceedings Code and, if applicable, the Federal Law Against Organized Crime.

Article 7. The asset forfeiture action shall be taken on the property referred to in the next article, even though criminal liability has not been determined in cases of crimes provided for in fraction II of article 22 of the constitution.

The asset forfeiture action shall be based on information compiled by the Public Prosecutor when the preliminary investigation has started, or during the criminal proceeding actions, or both, when it is clear that the illegal act actually occur and the assets fall within the cases in the following article.

The death of the probable perpetrators shall not cancel the asset forfeiture action.

Article 8. The asset forfeiture action shall be taken on the assets involved or related to the crimes referred to in the previous article, in any of the cases below:

I. Those that were used as an instrument, object or product of the crime;

II. Those that were used to hide or mix assets from the crime.

Hiding shall be understood as the action taken to hide, conceal or transform assets from the crime; property mix shall be understood as the addition or application of two or more assets;

III. Any assets being used to commit crimes by a third party, if the owner was aware of it and didn't notify the authority by any means or didn't do anything to

prevent it. The Public Prosecutor shall be responsible for accrediting it, which will not be based on the confession of the crime by the accused of the crime;

IV. Those entitled on behalf of third parties and are acknowledged as a product of crimes committed according to fraction II or article 2 of the constitution, and the accused for such crimes claims or behaves as the owner thereof.

Article 9. Taking the asset forfeiture action does not exclude for the Public Prosecutor to request for such assets to be seized in order to take the criminal action, as applicable.

## TITLE TWO

### About the Asset Forfeiture Competence and Procedure

#### FIRST CHAPTER

##### About Competence

Article 10. The asset forfeiture procedure shall be autonomous from the criminal procedure and different from any other criminal procedure that has simultaneously been started or from which it has stemmed from.

In the event where there is a judgment has been made in the process and evidence is determined insufficient to prove the existence of a corpus delicti, the affected individuals shall have the right to claim for an action to repair the damage and charge the cost on the Fund referred to in article 61 of this Act.

The Federation's judiciary shall have judges specialized in asset forfeiture. The Federal Judicial Board shall determine the number, circuits and territorial competence thereof.

Article 11. The following are part of the asset forfeiture procedure:

- I. The performer, which shall be the Public Prosecutor;
- II. The defendant, who will act as the owner or holder of the property or personal rights;
- III. The individuals considered affected by the asset forfeiture action and prove to have any legal interest in the property subject to asset forfeiture;

The defendant and the affected party shall act by themselves or through their representatives or proxies under the terms of the applicable law. In any case, the legal proceedings are the same.

## SECOND CHAPTER

### About precautionary measures

Article 12. The Judge, at the Public Prosecutor's legitimate request, may impose any precautionary measures required to guarantee the preservation of the property subject of the asset forfeiture action and, as required, to proceed with such property according to the purposes referred to in article 53 of this Act.

Precautionary measures include:

I. The seizure of property;

II. Precautionary attachment;

Article 13. The judge will order for the property identified in the asset forfeiture action to be seized, or ratify the seizure carried out by the Public Prosecutor.

Article 14. The remedy of appeal will be appropriate against the resolution ordering or denying for precautionary measures to be granted, and it will only be accepted as a remand, as applicable.

Article 15. Any precautionary measure will be recorded in the corresponding public record. The Asset Administration and Alienation Service shall be notified about any precautionary measure granted or cancelled.

Article 16. The judge shall be able to order the precautionary measure as appropriate in the court order to admit the lawsuit or in any stage of the proceeding and, as applicable, he/she will order for locks to be broken or police force to be used thereto.

The property seized shall not be transferrable through inheritance or bequest as long as this measure is valid.

During the proceedings, the Public Prosecutor may request for the judge to extend the precautionary measures on the property on which the action has been taken. Precautionary measures can also be requested regarding other assets over which such measures have not been requested at first, but are included in the procedure.

Article 17. The defendant or the plaintiff shall not be able to provide any guarantee for the precautionary measure to be cancelled.

Article 18. When the property subject to the precautionary measure has previously been seized, kidnapped, alienated or secured in judicial or administrative proceedings other than the preliminary investigation that led to the asset forfeiture action, notice of the new

measure shall be given to the authorities that ordered such action, and the Asset Administration and Alienation Service if the assets have been transferred thereto. The assets may remain under the custody of who has been appointed for that purpose and shall be made available to the competent authority.

If the measures referred to in the previous paragraph are removed or modified, the precautionary measure ordered by the asset forfeiture judge will be able to amend the custody conditions giving priority to their preservation.

Article 19. The assets referred to in this Chapter shall be transferred according to the Federal Law for Administration and Alienation of Public Sector Assets in order to have such assets made available under the terms of such Law.

To that end, the Judge shall impose the precautionary measure as a transferor entity.

### THIRD CHAPTER

#### About the Proceeding Substantiation

Article 20. The asset forfeiture action shall be made through a request of the Public Prosecutor and previous agreement with the Attorney General's Office or a designee on whom he/she delegates such power, and shall meet the following requirements:

- I. The competent Court;
- II. The description of the property on which the asset forfeiture action is requested, noting its location and other location data;
- III. Certified copy of the relevant certifications of the preliminary investigation carried out to investigate the crimes related to the assets subject to forfeiture;
- IV. Where appropriate, the agreement to seize the assets ordered by the Public Prosecutor in the preliminary investigation; the certification of the inventory and its physical status; the certificate of registration in the corresponding public registry; and the certification of estate liens, as well as an estimation of the assets value and documents related to the proceeding notification to declare abandonment and, if any, the statement made by the interested individual or his/her legal representative in this regard;
- V. The name and address of the holder of the rights, the individual who acts as such, or both;
- VI. The appropriate actions resulting from other preliminary investigations, criminal proceedings still in progress, or processes already completed;

VII. The request for precautionary measures required to preserve the assets under the terms provided by this Act;

VIII. The request for asset forfeiture on all the properties and other claims, and

IX. The evidence provided – documentary evidence shall be provided at this moment, or the name of the file where it resides, specifying the elements required to substantiate and examine other evidences.

Article 21. After filing the claim with the documents accrediting the action and other evidences provided by the Public Prosecutor, the judge shall have a term of seventy-two hours to decide on the acceptance of the claim and the evidence provided, and shall provide for the preparation and examination thereof, also ordering notification to the defendant or his/her legal representative and, as applicable, the publication of the decrees referred to in fraction II of article 22 of this Act.

In the event that the claim is unclear or irregular, the judge shall warn just once the Public Prosecutor for him/her to clarify, amend or complete it, and give him/her a term of three days from the notification's effective date for that purpose.

Once the claim has been clarified, the judge shall take action or entirely discard it.

In the order of admission, the Judge shall point the assets subject to the trial and the name of the defendant(s), granting them fifteen working days from the date of which the notification to respond to the claim takes effect. In such an act, the Judge shall provide the appropriate precautionary measures, as applicable, requested by the Public Prosecutor in the claim.

If the transfer documents exceed 500 pages, the term to respond to the claim shall be extended one day for each 100 excess pages to respond to the demand, without exceeding 20 working days.

In the acceptance proceeding, the date assigned to hold the hearing to examine evidence shall be stated not exceeding thirty days; such a date shall not be extended.

The remedy of appeal shall be appropriate against the proceeding through which the claim is rejected or accepted, and shall be accepted for remand.

Article 22. Once the claim is accepted, the Judge shall order the notification as follows:

I. The defendant and the concerned individuals who have already been identified and their address is known, shall be personally notified according to the following rules:

a) Notification shall be given in the defendant or concerned person's address. In the event that the defendant is under arrest, personal notification shall be made at the place where he/she is being held under arrest;

b) The notice deliverer shall verify the address, provide a copy of the resolution being notified, the claim and the documents on which the action is based on; request for a copy of the personal data and, as applicable, the signature of the individual with whom the proceeding is made, stating the official document he/she submits for identification. In the certification of notification, the identification data of the secretary or court clerk who gives the notification shall also be stated;

c) In the event that the concerned person, or any other person, is not found or refused to receive or sign the notification, it shall be made according to the terms in articles 312 and 313 of the Federal Code of Civil Proceedings.

In any case, a detailed report of the proceeding shall be made.

The Judge may enable the court staff to make notifications even on non-working days and hours.

II. When subpoena is to be given to any person who is missing, has not fixed residence or his/her address is unknown, notification shall be made through decrees under the terms of Article 315 of the Federal Code of Civil Proceedings and the Internet. In the later case, the Attorney General's Office shall implement a place on its website to provide any concerned person with access to the notification referred to in this fraction.

When the property subject to the asset forfeiture proceedings are real estate, the certificate of notification shall also be posted in one of the following.

The Asset Administration and Alienation Service shall be notified through an official letter.

The notification will be effective starting on the next day to the date on which it was given. The decree will be effective as a personal notification on the next day to the date of its latest publication.

The only personal notification to be given in the asset forfeiture proceeding is the notification made at the beginning of the trial under the terms of this Act. Any other notifications shall be posted in a list.

Article 23. Within a period not exceeding seven working days after the accepting proceeding, the Judge shall order the measures required to ensure the appropriate notifications are made according to the terms of this Act.

Article 24. Any concerned person who is considering to have legal interest in the asset forfeiture action shall appear within ten working days from the date on which he/she

learned about the action, in order to prove his/her legal interest and make a statement according to his/her right.

The Judge shall decide within three working days from the date of the appearing about the legitimacy of the affected person who appeared and, as applicable, approve for copies of the claim transfer and the acceptance proceeding. The affected individual shall pick up such documents within three days from the date on which the proceeding ordering for such documents to be delivered is in effect.

The term to respond to the claim will be fifteen working days from the date on which the affected person or his/her representative appeared to be given the documents in the previous paragraph. This term shall be subject to the regulation provided in paragraph fifth of article 21 of this Act.

The remedy of appeal will be appropriate against the proceeding that rejects the affected person's authentication for the proceeding, and shall be accepted as a remand.

Article 25. In the response to the claim or in the first act where the defendant or the affected person appear for the asset forfeiture trial, they shall state their address to hear and be given notifications and documents at the residence of the Judge who is aware of the asset forfeiture action.

Article 26. The document to respond to the claim shall have the defendant's exceptions and defense.

Evidence shall be included in the response document; available evidence – or the name of the file where it can be found – shall be provided. In any case, evidence shall be examined in the hearing referred to in article 40 of this Act.

The defendant or any third party who so require shall be advised and represented by legal counselors of the Federal Institute of Public Defense under the terms set forth by the Federal Public Defense Law.

Article 27. When the defendant or the affected person does not appear, the Judge shall assign a defense counselor who will make all the arrangements to guarantee the hearing and the appropriate proceeding. When the victim or offended party appears, if required, it shall have the right for an appropriate defense to be guaranteed.

Article 28. In the asset forfeiture proceeding there will be no exceptions or incidents for previous or special pronouncement, except for the preferable bona fide incident, which purpose will be for the assets subject to forfeiture to be excluded from the proceeding, provided the ownership and legitimate origin of such assets are proved. This incident shall not proceed if it is proven that the petitioner was aware of the criminal facts that led to the trial and, despite that, didn't report them to the authority or do anything to prevent them.

This incident shall be resolved through an interlocutory judgment within ten days from the date on which it was submitted. Any other proceeding shall be resolved in the final judgment.

The remedy of appeal will be appropriate against the judgment that approved, discards or disregards the incident referred to in the previous paragraph, which will be accepted as a remand.

The remedy of appeal will be appropriate against the judgment that resolves it, which will be accepted as a remand.

Article 29. During the proceeding, the Judge shall issue ex- officio proceedings and orders designed for justice to act promptly and expeditiously.

The Judge will entirely dismiss any remedies, incidents or promotions that notoriously are frivolous or irrelevant.

Article 30. The judicial authority may impose disciplinary corrections or coercive measures in terms of the corresponding supplemental system.

## CHAPTER FOUR

### About Evidences, Appeals and Hearings

Article 31. Evidences may only be provided on the claim and the response and will be accepted or discarded, as appropriate, in the proceeding where they are submitted; if required, their preparation shall be ordered and they will be examined at the hearing.

The absence of any of the parties shall not prevent for the hearing to be held.

Article 32. The parties shall be able to submit all kinds of tests provided they are not against the law, under the terms of the Federal Code of Civil Proceedings, except for the confessional by the authorities, provided they are related to:

- I. The corpus delicti;
- II. The origin of the assets;
- III. The assets subject to the proceeding are not included in article 8 of this Act; or
- IV. A firm, favorable judgment was dictated regarding the assets on which the action was taken, through an Asset Forfeiture proceeding.

The Public Prosecutor shall not be able to hide any exculpatory evidence related to the facts of the forfeiture. He/she shall contribute through the Judge all the facts he knows about the defendant for his/her benefit in the proceeding. The Judge will verify for the information to be relevant for the asset forfeiture proceeding.

Article 33. In the event that certificates of the preliminary investigation are provided for any of the crimes referred to in Article 7 of this Act, he/she shall request the through the Judge.

The judge shall make sure that the certifications of the preliminary investigation, or any other process, provided by the defendant or a third party that was affected, are related to the facts in the asset forfeiture action and verify that their deployment does not jeopardize the secrecy of the investigation. The Judge may order for the certifications from the preliminary investigation he accepts as evidence are appropriately safeguarded, off the record, in order to preserve their secrecy without restricting the parties' right to have access to such certifications.

When evidence is obtained as a result of indictments made by members of organized crime to assist under the terms of Article 35 of the Federal Act Against Organized Crime, the Judge shall value such statements according to the following regulations:

a. He/she shall examine the certifications of statements the contributing witness made, as they are certified in the actions taken in the proceedings related to the asset forfeiture action..

b. The Judge shall also examine the internal coherence of all the statements the witness made.

He/she'll be given a booklet with all the statements made by the contributing witness regarding the assets or people involved in the asset forfeiture action. In any case, the Judge will take the measures required for the defendant or the affected person may exert their entire right of defense, guaranteeing the contributing witness' security. The Public Prosecutor shall be responsible for sending an examination of these statements made under oath of telling the truth.

c. Statements of things they heard shall only be used for context, but the Judge shall not give them evidential value.

d. The Judge shall examine the external coherence of the testimonies against the material evidence stating that the crime really took place. Material evidence is understood as the physical evidence related to the crime and how, where and when it was committed, and the circumstances thereof.

Under no circumstance shall de mere statement of a contributing witness be considered enough to prove the existence of any of the corpus delicti components. Statements shall be examined and valued together with other proving elements to confirm them.

Article 34. When the defendant or the affected person provide certificates of any criminal proceeding, the Judge shall request for the competent jurisdictional organization to provide the within five working days.

Article 35. Once the expert's evidence is approved, the judge shall order its examination by an expert appointed from the official expert listing of the Federal Judicial Branch experts from the list of official Federal Judicial Branch. The Public Prosecutor or the defendant and/or affected person may extend the questionnaire within three working days starting on the date of the proceeding that where the evidence was approved. The expert shall provide his/her report on the evidence examination hearing at the latest.

Article 36. Testimony evidence shall be examined at the hearing and the provider shall be responsible for presenting the witness, except for provisions in article 167 of the Federal Code of Civil Proceedings.

Article 37. The Judge will value the evidence that was examined under the terms of the Federal Code of Civil Proceedings, except for provisions in article 33 of this Act.

Article 38. The Judge shall be able to declare an approved evidence deserted when:

- I. The provider has not met the requirements set forth for evidence to be approved;
- II. Their examination is materially impossible, or
- III. It is clear from other evidence examined that the examination thereof is irrelevant.

Article 39. The remedy of revocation shall be appropriate against the proceeding that discards evidence or declares it deserted.

Article 40. The hearing will begin with the examination of the Public Prosecutor's evidence, and continue with the defendants' evidence and, if applicable, the affected persons' evidence, observing the principles of immediacy, concentration and continuity.

## FIFTH CHAPTER

### About the Judgment

Article 41. In the hearing, as soon as the evidence has been examined, the parties shall be able to present allegations and, upon completing the allegation stage, the Judge will dictate the judgment in the same hearing or within eight days.

Article 42. The judgment for asset forfeiture shall be according to the letter or the judicial interpretation of the Law. If the Law is missing it shall be based on the general law principles; the facility in which it is pronounced, the court that dictates it, shall have a clear, concise abstract of the subjects addressed and the evidence submitted, as well as the foundation and motivation, and will finally, accurately and congruently resolve the subjects in dispute.

Article 43. The judgments shall declare the assets forfeiture or the irrelevance of the action. In the latter case, the Judge shall decide on removing the precautionary measures previously imposed and the person to whom they will be returned, according to Article 49 of this Law. The Judge shall rule on all the assets in dispute

When several assets are in forfeiture, the appropriate statement for each one of them shall be made with the due separation.

The judgments to resolve the irrelevance of the asset forfeiture action do not prejudice precautionary measures for confiscation with purposes of confiscation, precautionary seizure with purposes of repairing the damages, or any others agreed on by the legal authority in charge of the criminal proceeding.

In the event that the judgment declares for asset forfeiture, the Federal Government may choose to retain the assets and make payments to third parties, victims or offended persons.

Article 44. The acquittal of the affected person from the criminal proceedings since he/she was not found responsible or for not applying the penalty of asset forfeiture, shall not prejudge the legitimacy of any asset.

Article 45. When stating the judgment, the Judge shall determine the forfeiture of the assets subject to the proceeding relevant provided the Public Prosecutor:

I. Entirely approves the elements of the corpus delicti for which the action was taken, from those stated in article 7 of this Act;

II. Approves that the assets are among those sated in article 8 of this Act;

III. In the events referred to in article 8, fraction III of this Act, entirely proves the third party acted in bad faith, and

IV. In the events referred to in article 8, fraction IV of this Act, proves the criminal origin of such assets.

The judgment shall also resolve, among other determinations, issues related to preferable rights under the terms of article 54 of this Act.

Article 46. In the event that a judgment to forfeit the assets is stated, the judge shall also be able to state the forfeiture of other property, main or accessory, or

personal rights over them, if there is evidence that their holder was aware of the cause that led to the asset forfeiture action.

As for warranties, the holder shall prove the pre-existence of the guaranteed credit and, as applicable, that measures established by the regulations to grant and use credits were taken; otherwise the Judge shall declare the warranties extinct.

Article 47. In the event that the asset forfeiture action is declared irrelevant, the Judge will order for precautionary measures to be removed and proceed according to the terms in article 49 of this Act.

Article 48. The asset forfeiture action shall not be relevant for the assets seized that caused abandon in favor of the Federal Government, or those assets that were declared seized with nature of res judicata.

Article 49. In the event that the Judge declares irrelevant the asset forfeiture action of either some or all the assets, he/she shall order for the non-extinct assets to be returned in no longer than six months or, if that's not possible, he/she shall order for an amount equal to their value to be given to their legitimate owner, together with the interests, returns and accessories in cash, in the amount that effectively was accrued throughout the time in which the Service of Asset Administration and Alienation managed the assets.

Administrative expenses shall preferably covered as provided by the Federal Law for Public Sector Asset Administration and Alienation, or charged to the specific sub-account of the fund referred to in article 61 of this Act.

Article 50. When the judge of the criminal case determines the absence of any of the corpus delicti elements in cases provided for in Article 7 of this Act, the asset forfeiture judge shall order for the assets subject to dispute to be returned to their legitimate owner if possible, or an amount equal to their legitimate value together with the asset forfeiture of property return matter of controversy if potential or their value to the rightful owner or possessor, together with the interests, returns and accessories, if any, accrued throughout the time in which the Service of Asset Administration and Alienation managed the asset.

Artículo 51. Causan ejecutoria las sentencias que no admiten recurso o, admitiendo no fueren recurridas, o, habiéndolo sido, se haya declarado desierto el interpuesto, o haya desistido el recurrente de él, y las consentidas expresamente por las partes o sus representantes legitimados para ello.

Article 52. If, after the completion of the asset forfeiture proceeding through a final judgment, the existence of other assets related to the same crime is uncovered, a new asset forfeiture proceeding shall be opened.

Article 53. Once the judgment to resolve the asset forfeiture is final, the judge shall order for the assets to be given to the State under the terms provided in this Act and in the Federal Law for Public Sector Asset Administration and Alienation.

Assets on which forfeiture is declared, or the product of alienating such assets, shall be assigned to the Federal Government and made available for its final allocation through the Service of Public Sector Asset Administration and Alienation. The shares, equities or any other deeds representing a share of the capital or assets of the company or association in question shall not be counted to consider the issuing organizations as semi-public entities.

The Service of Asset Administration and Alienation shall not make use of the assets, even though the forfeiture has already been stated, if their preservation was ordered in any criminal cause due to their evidential effects, provided that such proceeding has previously been notified to the Service of Asset Administration and Alienation.

For the purposes of the performance of the Service of Asset Administration and Alienation with mandatory nature, whenever there is contradiction between two judgments, the judgment stated in the asset forfeiture shall prevail, except for provisions in article 50 of this Act.

Article 54. The realizable value of the assets and their fruits, whose forfeiture has been declared extinct through final judgment, shall be allocated until their end, according to the following order of precedence, to pay::

I. The repair of the damage caused to the victim or offended person through the crimes, if any, that caused the asset forfeiture action determined in the final judgment of the corresponding proceeding; or, in the events referred to in paragraph four of this article, in cases where the concerned person submits the favorable resolution of the respective incident, and

II. Claims that are relevant due to guaranteed credits.

For the purposes of this Act, victim or offended person are understood as the holder of the legal asset that was injured or endangered when the criminal action that caused for the asset forfeiture action to be taken, or the individual who suffered direct harm as a consequence of the instances stated in article 7 of this Act.

The proceeding referred to in fraction I of this article is of a civil or criminal nature, through which the victim or offended person was given the damage repair, provided that the judgment that was final.

When the certificates in the preliminary investigation or the criminal proceeding reveal the termination of the criminal responsibility due to the death of the accused or to statute of limitation, the Public Prosecutor or the legal authority, respectively,

shall be able to act ex-officio to recognize the nature of victim or offended person , provided that there are sufficient reasons for them to have access to the resources of the fund provided for in this Act.

The destination of the value of the assets and their fruits referred to in this article shall be subject to transparency regulations and will be supervised by the Federation's Higher Audit.

Article 55. In those cases where the Service of Asset Administration and Alienation is not in condition to alienate the assets in the forfeiture in order to distribute their value as provided in the previous article, it shall then distribute them according to the terms of its own law.

Article 56. The remains of the value resulting after the corresponding resources are disposed of according to the terms of article 54 shall be deposited by the Service of Asset Administration and Alienation in the fund referred to article 61 of this Act, without becoming with this action a trustor and requiring the holder's approval for that purpose.

Article 57. For the purpose stated in article 54, the Service of Asset Administration and Alienation will do as the Judge determines, provided that a liquid amount is available from the corresponding asset forfeiture proceeding. In any case, the Judge shall specify in his/her corresponding judgment or resolution the amounts to be settled, the identity of the creditors and their order of preference.

When the judgment of asset forfeiture is issued previously to the proceeding that will solve the damage repair, at the request of the Federal Public Prosecutor or the corresponding Judge, the forfeiture Judge shall be able to order for the Service of Asset Administration and Alienation to keep the resources until, if applicable, the judgment is final. This will be in an amount stated by the asset forfeiture Judge, provided that the debts due to guaranteed credits do not increase.

The Public Prosecutor shall, as applicable, represent the interest of who acts as victim or offended person due to the criminal facts referred to in article 7 of this Act, and the criminal facts that caused the asset forfeiture action to be taken.

## TITLE THREE

### TITLE ONE

#### Challenge Means

Article 58. The remedy of revocation is appropriate against the proceedings dictated by the judge in the proceeding is appropriate, except for those cases where this Act expressly states that the remedy of appeal is appropriate.

The Judge, previously granting a hearing to the parties with the remedy of revocation for two working days, shall resolve the remedy in the same period of time.

Article 59. The remedy of appeal is appropriate against the judgment that ends the trial, which, as applicable, shall be approved for both purposes. The remedy of revocation is appropriate against the agreement discarding evidence means provided in due time and course.

The remedy of appeal submitted against the final judgment shall be resolved within 30 days after the date of receipt.

Article 60. Both revocation and appeal shall be substantiated under the terms provided in the Federal Code of Civil Proceedings.

## TITLE FOUR

### TITLE ONE

#### About the Fund

Article 61. The resources referred to in article 56 will be used to make up a public trusteeship that will not be considered a semi-public entity, which operation shall be coordinated by the General Attorney's Office of Mexico, with the purpose of managing such resources until they are allocated to support the victims or persons offended by the crimes referred to in article 7, under the terms of the following article.

Under no circumstance shall the resources referred to in the previous paragraph be used for operation expenses or salaries.

Article 62. Requests to access the resources in the fund referred to in the previous article shall proceed provided that:

- I. The facts are the crimes referred to in article 7;
- II. The victim or offended person have a final judgment which states that he/she suffered the damages due to crimes, as well as the amount to be paid; or the favorable resolution referred to in the third from last paragraph of article 54;
- III. The victim or offended person couldn't be paid for the damages they suffered according to the terms in article 54, fraction I. For the purposes of the provisions in this fraction, the Judge of the criminal cause or the Service of Asset Administration and Alienation shall issue the corresponding letter to certify that situation;

IV. The victim or offended person wasn't given any attention or damage repair through any other means, which shall be approved with the criminal cause, and

V. Resources are available in the fund.

The requests submitted under the terms of this article shall be addressed in order of receipt as long as the resources in the fund are sufficient.

The Public Prosecutor shall be subrogated in the rights of the victim or offended person as recognized in the criminal proceeding, derived from the payment to repair the damages according to this Act.

## TITLE FIVE

### TITLE ONE

#### About International Cooperation

Article 63. When the assets are abroad or subject to the jurisdiction of a foreign state, the precautionary measures and the judgment dictated for the asset forfeiture proceeding will be substantiated through international legal assistance under the agreements and instruments in which the Republic of Mexico is involved, or otherwise based on international reciprocity.

Article 64. For the purposes provided for in the previous article, the Public Prosecutor will request for the Judge to issue certified copies of the proceeding that enforces the precautionary measure or the judgment, as well as any other certificates of the proceeding as required.

Article 65. The assets recovered through international cooperation, or their products, shall be aimed to attain the purposes in article 53 of this Act.

Article 66. When a foreign government's competent authority requests for legal assistance according to the provisions in the international legal instruments of which Mexico is member, or through international reciprocity with the purpose of recovering the assets for the purposes of this Act, either located in national territory or subject to the Mexican Government's jurisdiction, the procedure shall be as follows:

I. The request for international legal assistance shall be made through the General Attorney's Office or the central authority set forth by the international instrument or, otherwise, the Ministry of Foreign Relations;

II. Based on the international legal assistance request, the Public Prosecutor shall take the asset forfeiture action before the Judge and require the precautionary measures this Act refers to, and

III. The proceeding shall be examined under the terms in this ordinance.

Article 67. When the asset forfeiture proceeding leads to make notifications abroad, they shall be made under the terms of international legal instruments or through rogatory letter, according to the Federal Code of Civil Proceedings. In such instances, the terms provided by this Act will be suspended until the arrangement required is carried out.

Article 68. The asset forfeiture action will be appropriate based on the request for legal international assistance provided that:

I. The crimes committed in the foreign State, had they been committed in national territory, are identified in the events provided for in article 7 of this Act, and

II. The assets for which forfeiture is requested are identified in any of the events provided for in article 8 of this Act.

Article 69. In the event that judgment is stated declaring the forfeiture of the assets in question, as soon as it is executed, the delivery of such assets and the product of their sale shall be ordered through the Public Prosecutor and the Foreign Ministry, to the competent foreign authority, unless an agreement on asset sharing has been held; in such case, the corresponding part shall be given.

Previously to giving the assets, the amount for the expenses made to manage them and pay the taxes and liens they were subject to will be deducted.

Article 70. In the event that the Judge resolved to return the assets to their holder after declaring the asset forfeiture is inadmissible, the respective resolution shall be communicated to the foreign State, without prejudice for the assets to be subject to forfeiture for other reasons, or to seizure, due to any legal proceeding under the terms of the Federal Code for Criminal Proceedings.

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#### TRANSITORY

FIRST.- This Decree will be effective within thirty calendar days from the date on which it is published in the Federation's Official Newspaper.

SEXOND.- Until the Federal Asset Forfeiture Act is issued to Regulate Article 22 of the Mexican Constitution, the administration and allocation of the resources in the Fund made up with the alienation of assets referred to in article 61 of the Act shall be managed by the Service of Asset Administration and Alienation.

THIRD.- The Federal Judiciary Board will have a term not exceeding one year, starting on the date on which this Decree is published, to make up the courts specialized in asset forfeiture referred to in article 10 thereof. Meanwhile, district judges for civil matters with no special jurisdiction will be competent according to the agreements determined for such purpose by the Federal Judiciary Board.

Mexico City, April 30th, 2009.- Sen. Gustavo Enrique Madero Muñoz, President.- Dep. Cesar Horacio Duarte Jaquez, President.- Sen. Adrian Rivera Perez, Secretary.- Dep. Margarita Arenas Guzman, Secretary.- Signatures."

In compliance with fraction I of Article 89 of the Mexican Constitution, and to be duly published and observed, I issue this Decree at the Residence of the Federal Executive Power in Mexico City, on the twenty-seventh day of May, two thousand and nine.- Felipe de Jesus Calderon Hinojosa.- Signature.- Minister of the Interior, Fernando Francisco Gomez Mont Urueta.- Signature.