

**Litigation and Alternative Dispute Resolution Practice Group
Newsletter
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National Domain Extinction Law.

On August 9th, 2019, as a result of the amendments and additions to article 22 of Mexico's Federal Constitution published in March of this year, by which the catalog of crimes contained in the abovementioned constitutional article was enlarged, a decree was issued through which the National Domain Extinction Law was promulgated.

Domain extinction must be understood as the loss of the rights that a person has in relation to their assets, declared by a judicial resolution, without any consideration or compensation for the owner.

The abovementioned Law was created with the intention of regulating:

- » The domain extinction of assets in favor of the State;
- » The procedure to carry out the domain extinction;
- » The mechanisms for the authorities to dispose, use, transfer and/or monetize the assets subject to the domain extinction; and
- » The criteria for allocating those assets.

The National Domain Extinction Law empowers federal and local authorities to extinguish private property assets, when the owners cannot prove the legal provenance of the assets or their origin derives from any of the following crimes:

- » Organized crime;
- » Kidnapping;
- » Trafficking in persons;
- » Corruption;
- » Crimes committed by public servants;
- » Crimes related to hydrocarbons, petroleum and petrochemicals;
- » Auto theft;
- » Cover-Up; and
- » Extortion

The domain extinction actions must be necessarily initiated by a Public Prosecutor through a judicial procedure of civil nature ("oral"), which will be autonomous, different and independent from any procedure initiated in criminal matters, given that it is not an essential requirement for the criminal responsibility of any of the abovementioned crimes to be demonstrated, being sufficient to have solid and reasonable grounds to infer the existence of illegal provenance assets.

The factors for a domain extinction action to be well-grounded are:

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Competencia Económica

- » Existence of an illegal act;
- » Existence of an asset of illegal provenience or destination;
- » Connection between the existence of the illegal act and the illegal provenance asset; and
- » In some cases the knowledge of the owner regarding the illegal act or the destination of the asset.

The public prosecutor, prior to initiating the domain extinction action or at the moment of initiating it, may request from the competent Judge a precautionary measure consisting in the attachment of assets, in order to prevent the assets to which the domain extinction action would be initiated to be hidden, altered, or to suffer any kind of decrease or economic deterioration, being able to order the immobilization of funds, assets, accounts and other values and financial instruments, among other assets and given to the nature of the action, the Judge will always presume the need to grant the precautionary measure.

The assets subject to the domain extinction action may be disposed of or sold in advance if requested by the Institute of Administration of Properties and Assets or the local competent authorities, in the following cases:

- » That the disposal is necessary given the nature of the asset;
- » That the assets represent a danger to the environment or public health;
- » That due to the passage of time the assets may suffer loss or deterioration or their operations is seriously affected;
- » That its administration is untenable for the State;
- » In the case of fungible, consumable, perishable or moving assets or animals; and
- » In the case of assets that depreciate substantially over time.

The defendant or the affected persons, at any time can prove good faith regarding the acquisition or destination of the assets subject to the domain extinction procedures, in order to verify their legitimate origin and destination.

Notwithstanding the abovementioned, both individuals and legal entities must try to detect any type of situations that could cause them to find themselves in the commission of the abovementioned crimes and have solid documentation as to the origin and destination of all their assets; for this, the legal advice that can be provided in corporate and compliance matters will be primary as a form of prevention of incurring in any type of illegal conduct, such as its incorporation, acquisition or transmission of assets or eventual mergers.

This Law has already entered into force, and it is contemplated that within 180 calendar days after its entry into force, the local governments must harmonize their legislation with this Law.

In addition to the abovementioned, the Federal Judiciary Council within a maximum term of 6 months must create competent courts in domain extinction matters, being competent during that term the federal civil courts and the local civil courts.

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We hope this note is useful for you, and the members of the Litigation and Alternative Dispute Resolution Practice at Sánchez Devanny Eseverri, S. C., will be glad to provide any additional information on the subject discussed herein. Please do not hesitate to contact us.

This bulletin was jointly prepared by Luis Miguel Velasco Lizárraga (lvelasco@sanchezdevanny.com) and Alfonso López Lajud (alopez@sanchezdevanny.com).

The multidisciplinary advice of our firm includes aspects of Corporate and Compliance, Tax, Regulatory and Dispute Resolutions.

Contact:

Alfonso López-Lajud
alopez@sanchezdevanny.com