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Information on International Cooperation in Civil and Administrative Proceedings

With reference to document CU 2014/66/DTA/CEB/CSS of the Secretary General of the United Nations, dated 21 March 2014, concerning information on international cooperation in civil and administrative proceedings, Israel would like to provide the following information:

International Cooperation in Civil and Administrative Proceedings for the Detection of Corruption Offenses and the Identification, Freezing and Confiscation of Assets

The International Legal Assistance Law, 1998 (hereinafter: "the Legal Assistance Law" or "the Law") regulates legal assistance in both civil and criminal cases. Evidence may be obtained pursuant to the Law for proceedings in a civil case, although some forms of assistance, such as investigative activities, are limited to investigations relating to criminal offenses. It should be noted that civil forfeiture proceedings for the freezing or confiscation of assets connected to criminal offenses are explicitly considered "criminal matters" for purposes of Israel's Legal Assistance Law (Section 1) and full investigative assistance for such proceedings is available under the Legal Assistance Law.

The underlying tenets of the Law are contained in Section 8, which provides that: (a) any form of assistance requested may be performed to the same extent and subject to the same safeguards that such act could have been performed had the crime involved occurred in Israel; and (b) assistance shall be performed in the particular manner requested so long as this does not violate Israeli law. The effect of this is to allow as legal assistance all measures that would have been available in a similar domestic procedure, while ensuring that their execution proceeds in accordance with the particular evidentiary or legal requirements of the requesting state to greatest extent possible.

Where investigative assistance is involved, such assistance is available, *inter alia*, when the act is carried out "in order to investigate an offense or prevent an offense" (See the definition of "investigative act" in Section 1 of the Legal Assistance Law). **In**



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this context, the formal categorization of the proceeding in the requesting state as criminal, civil or administrative is not pertinent – what matters is the purpose of the requested investigation: if the purpose is related to the investigation or prevention of a criminal offense (such as bribery or another corruption offense), then the investigative assistance could be available.

Investigative Assistance and Tracing of Proceeds

In accordance with Subparagraphs 3 (j) and 3 (k) of article 46 of UNCAC, the Law allows for a wide range of investigative assistance. This includes assistance with respect to the tracing of criminal proceeds in money laundering and other criminal cases. As mentioned before, "criminal matter" for the purposes of the Law includes proceedings related to the forfeiture of assets connected to a criminal offense even if the proceeding is categorized as civil rather than criminal.

The Legal Assistance Law is not the exclusive means of providing cooperation in the investigation of crimes. Section 2(d) of the Law specifically provides that the "provisions of this Law shall not derogate from the authority to extend or to accept legal assistance under any other Law". A number of investigative or regulatory bodies in Israel, including the Israel Securities Authority; the Prohibition of Money Laundering Authority (IMPA) and the Israel Tax Authority, are authorized under Israeli law and under applicable agreements and memoranda of understanding, to provide information and other forms of assistance to similar bodies in other States. Thus, by way of example, the Prohibition on Money Laundering Law, 2000 (PMLL) specifically permits IMPA to transmit information from its database to its foreign counterparts to assist them in the investigation of cases related to money laundering. Therefore, additional assistance in tracing proceeds of crime can be provided by IMPA, the Israeli FIU, to any requesting FIU in accordance with Section 30(f) of the PMLL.

Forfeiture and Recovery of Criminal Proceeds under the Legal Assistance Law

As mentioned above, civil forfeiture proceedings are explicitly considered criminal matters for the purposes of Israel's Legal Assistance Law, and full investigative assistance for such proceedings is available under the Legal Assistance Law.

The freezing and forfeiture of assets on the basis of a foreign request is regulated by Chapter 6 of the Legal Assistance Law. Section 33 of the Law provides that upon receipt of a foreign request, Israeli authorities may petition an Israeli Court to enforce a foreign order for the forfeiture of property in a criminal matter. The Law specifically includes "an order to forfeit property made by a foreign judicial authority, **either in a criminal or civil procedure**" (Section 1) (emphasis added) as a foreign forfeiture order that can be so enforced.

Section 33(a) sets forth the conditions under which enforcement of a foreign forfeiture order may be issued. Under Section 33(a)(1), the criminal offenses to which the



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provisions of Chapter 6 apply are limited to the offenses listed in a schedule (Schedule 2) attached to the International Legal Assistance Law. The offenses listed in Schedule 2 include a comprehensive variety of offenses under Israel's criminal law. When Israel enters into a convention providing for the forfeiture of assets, the offenses covered by the convention are routinely added to the Schedule. Consequently, in 2009, as part of Israel's measures to ensure compliance with UNCAC, this schedule was amended to include all the offenses relevant to corruption in the Israeli Penal Law, 1977. Thus, forfeiture of assets is available with respect to the corruption offenses covered by Chapter III of UNCAC, provided that the other requirements of Chapter 6 of the law are fulfilled.

Under the procedures of Chapter 6 of the Law, after preliminary determinations regarding the above matters have been made by the Competent Authority (i.e., the Minister of Justice or an authorized delegate thereof), the request for enforcement of the foreign forfeiture order is to be transmitted to a District Attorney. The District Attorney then examines the evidence in order to determine "whether the evidence on the strength of which the foreign confiscation order was handed down would have sufficed for the issuance of a forfeiture order under Israeli law" in a domestic case (Section 33(b)). If the District Attorney reaches such a determination, he then submits a petition to the Israeli District Court in whose jurisdiction the property in question is located to "issue an order for the enforcement of the foreign forfeiture order"(id.). If the District Court agrees that the requirements of Section 33 (a) and (b) have been met, it can issue an enforcement order, pursuant to which "the foreign forfeiture order shall be treated, for all intents and purposes, as if it had been issued in Israel".

Sections 35 and 36 of the Law provide measures to protect the interests of parties affected by proceedings under its provisions. Section 35(a-b) provides that all persons with a legitimate interest in the property in question may be heard in the forfeiture proceedings and that enforcement orders will not penalize persons who can prove that the use of the property in the offense occurred without their knowledge or consent, or that they acquired their rights in the property "for a consideration and in good faith and without the possibility of knowing that it had been used in or obtained in connection with an offense". Section 35(c) also provides that enforcement of a forfeiture order must still assure that the owner of the property "will have reasonable means of support and reasonable housing". Section 36 allows for the possibility of annulling an enforcement, in cases where the individual was not summoned to present his arguments concerning the order, so long as the request for annulment is submitted within two years after the order was made, or within such later date as may be set by the Court if the Court considers it just to do so.

Orders for enforcement of forfeiture under Chapter 6 are appealable in the same manner as civil orders (which generally means that a request for leave to appeal to the higher court must be submitted). Once an enforcement order is issued under Chapter 6, this will constitute, under Section 41, an authorization for the Administrator General and the Official Receiver to seize the property and transfer it to the forfeiture fund established under Israeli law. While proceeds forfeited to this fund are forfeited



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to the State of Israel, Section 42 of the Law authorizes the Minister of Justice, in consultation with the Minister of Finance, to order that "the property forfeited, or part of it, or its equivalent, be transferred to the state where the foreign forfeiture order was made". The ability to effect such transfers constitutes the legal means under Israeli law for implementing the recovery and return of assets requirements of UNCAC Article 46(3)(k) and Chapter V.

Freezing of Assets

In order to enable eventual forfeiture, it is often essential to have the possibility to temporarily freeze and seize suspect assets pending a definitive determination on forfeiture in the requesting state and in Israel. Provisions for such temporary measures are also provided in Chapter 6 of the Law and recent amendments and proposed amendments to the Law are designed to increase Israel's ability to take such measures effectively.

Temporary seizure measures are provided for under Sections 39 and 40 of the Legal Assistance Law. Under Section 39(a), upon the request of a foreign state, it is possible to request that "temporary relief be provided in order to secure property located in Israel in connection with a legal proceeding" that "is or will soon be in progress before a foreign judicial authority for an act which – had it been committed in Israel – would be one of the offenses enumerated in Schedule 2". The Competent Authority (i.e. the Minister of Justice or an authorized delegate thereof) will then consider if the requirements for forfeiture in Sections 33(a-b) (i.e. that the evidence upon which the foreign forfeiture order is based would have been sufficient basis for a forfeiture order in Israel, and that the offense is included in Schedule 2 of the Law) are *mutatis mutandis* also met with respect to the requested seizure.

If a request for temporary measures is made by the foreign state under Section 39(a) and the Competent Authority has determined that the requirements of that provision are met, the Competent Authority may transfer the request to a District Attorney who may apply, under Section 39(b), to the relevant District Court for an appropriate order.

Section 39 thus enables freezing and seizure orders or other appropriate measures to be taken in order to secure funds and assets regarding which forfeiture proceedings are or soon will be undertaken in the requesting state.

It should be noted that the original version of the Law contained two problematic aspects which affected its overall effectiveness. The first issue was that, under the original version of Sections 39(c) and 40(g), action could not be taken pursuant to a foreign request for freezing or other temporary measures unless the foreign state provided a sufficient undertaking guaranteeing that the foreign jurisdiction would cover any damages arising to private parties as a result of the seizure or temporary measure should the forfeiture ultimately not take place or be found invalid. While this requirement existed for obvious reasons, most foreign jurisdictions were unable or



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unwilling to provide such an undertaking, negating, in such cases, the utility of the procedures provided under Chapter 6. Consequently, an amendment to the Legal Assistance Law (Amendment No. 7) was enacted in October 2010, authorizing the Minister of Justice, on a case by case basis and for appropriate cause, to exempt requesting foreign jurisdictions from providing undertakings for compensation.

An exemption has already been granted in at least two cases (including a bribery case) and it is anticipated that such exemptions will be issued whenever appropriate and when the request satisfies the other requirements of the Legal Assistance Law.

The second issue was that under Section 40 of the Legal Assistance Law, as originally enacted, a freeze order issued by an Israeli court on the basis of a foreign request was valid for a period of up to one year (that is, a six-month period subject to one renewal). At the end of that period, a final forfeiture order had to be issued in the foreign state, failing which the frozen assets were to be released. Given the practical difficulty of completing proceedings within such period, the Law was amended to enable the extension of freezing orders by the courts an indefinite number of times, upon petition by the state authorities. Thus, as long as good cause is shown as to why proceedings in the foreign state have not been completed, the freezing of the assets in Israel can continue. This amendment is expected to improve Israel's ability to utilize the Legal Assistance Law for freezing of assets and asset recovery.

It should be noted that in many cases where the above-mentioned issues or other difficulties prevent recourse to the Legal Assistance Law and its Chapter 6 procedures, the assets may be frozen and forfeited using domestic measures. In such cases the assets are forfeited to an Asset Recovery Fund (managed by the Administrator General and the Official Receiver in the Ministry of Justice) and arrangements for asset sharing with the foreign state are possible. With the recent amendments, it is believed that recourse to the Legal Assistance Law so as to freeze, forfeit and repatriate foreign criminal proceeds, will take place more routinely.

Measures Meant to Improve Israel's Capacities to Freeze, Forfeit, and Repatriate Foreign Criminal Proceeds

In addition to the legislative framework (including the recent amendments) outlined above, in 2010 Israel created the office of the Deputy State Attorney (Financial Enforcement) whose task, inter alia, is to establish procedures and guidelines in this area and to provide general supervision concerning matters related to confiscation, forfeiture and economic enforcement generally. In 2014, The Deputy State Attorney (Financial Enforcement) issued internal guidelines which deal with matters of interpretation and implementation of the Legal Assistance Law dealing with such requests, as well as with the functions of various authorities in this area. These guidelines now enable the Israeli authorities to operate in a rapid and coordinated manner regarding the foreign requests for seizure, confiscation and forfeiture.