



STATE OF ISRAEL

Response of the State of Israel– Ministry of Justice

Information requested from States parties in relation to preventing and combating corruption in all its forms, including when it involves vast quantities of assets, in accordance with the United Nations Convention against Corruption

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1. **Experiences and best practices on criminal and civil measures and remedies to enhance international cooperation and asset recovery related to corruption, when it involves vast quantities of assets**

Israel has attempted to devise and implement a proactive, flexible and multidisciplinary approach to the combatting of international corruption and in cooperating with other states in the prevention, investigation, and prosecution of offenses covered by UNCAC. Recognition of Israel's efforts in this regard was evidenced in the very recent report (September 2018) of the international anti-corruption organization Transparency International, "Exporting Corruption". In this report the State of Israel was not only placed in the highest category of states engaged in active enforcement against foreign bribery (a designation shared by only 6 other states) but was also recognized as showing the greatest improvement, over recent years, of any of the 44 states reviewed.

As a very small country, Israel has understood the crucial importance of cooperating with other states against the scourge of corruption and regularly seeks and provides cooperation to other jurisdictions in investigations and enforcement measures regarding corruption offenses. It has consistently sought to improve the tools and measures it utilizes and has developed an array of practices – both formal and informal – to effectively operate in this regard. Despite the recent recognition of its successes, Israel is constantly seeking to upgrade and improve its enforcement measures. Nowhere is this clearer than in the all-important area of economic enforcement. Israel has increased its ability to cooperate in the seizure, confiscation, and repatriation of the criminal proceeds of corruption as well as undertaken and proposed measures to address remaining challenges to its transnational economic enforcement mechanisms.

Below we will attempt to describe a number of what Israel considered to be best practices that it pursues in this area, as well as remaining challenges.

Mutual Legal Assistance in the Investigation and Prosecution of Corruption

Under Article 3 of Israel's Legal Assistance Law (ILAL), the competent authority to receive requests for legal assistance in Israel is the Minister of Justice. The Minister of

Justice has delegated this authority to a number of authorities in order to facilitate the consideration of requests for legal assistance. As a special measure to assure more rapid and effective consideration of MLA requests in corruption cases, the Department of International Affairs of the Office of the State Attorney ("DIA"), a group of prosecutors expert and experienced in the area of international cooperation, has been specially designated by Israel as the Central Authority to receive requests pursuant to both UNCAC and the OECD Foreign Bribery Conventions. These are the only Conventions dealing with MLA in which the Department has been so designated. This was intended to assure that MLA requests in corruption matters would receive from the very start the special and ongoing attention that these often complicated and sensitive requests require. This itself is considered by Israel as a best practice that has allowed Israel to provide effective assistance to other States in corruption cases. It has also enabled Israel to rapidly detect offenses, originating in other states and reflected in incoming MLA requests, where Israeli criminal jurisdiction might be relevant and appropriate.

Israel utilizes all available formal MLA tools on a comprehensive basis to seek assistance from other states in its own corruption cases. In so doing, Israel however always carefully considers the legitimate interests of all the investigating jurisdictions in these matters which are often multi-jurisdictional in nature. Moreover, Israel regularly utilizes the help of international bodies such as the UNODC and the OECD in establishing necessary contacts and communications in corruption matters so as to facilitate its MLA requests. This approach is also considered by Israel a best practice. Israel's formal MLA efforts in corruption cases were also specifically recognized by Transparency International in its recent September 2018 report which noted that *"Israel does not have any significant inadequacies in the legal framework governing international cooperation and has reported a demonstrated increase in the use of formal MLA since 2015"*.

Particular challenges and difficulties arise in international cooperation in measures related to economic enforcement and asset recovery. These measures which are the subject of Articles 14 and Chapter V of UNCAC represented an innovative approach but one which has now been recognized as a highly effective and essential tool in dealing with the combatting of corruption. Israel has in very recent years undertaken innovations and improvements both its domestic mechanisms and procedures related

to seizure and confiscation and in its international cooperation mechanisms. Both domestic and transnational mechanisms can be significant in reaching an effective result in a corruption case. As discussed below, Israel is continuing to seek to improve its procedures, practices and abilities so as to create a maximally effective mechanism in international asset recovery cases.

Integration of Formal and Informal Cooperation Mechanisms and Channels

While as noted, Israel seeks to make the maximal effective use of the formal MLA mechanisms in the handling of both incoming and outgoing MLA requests, it fully recognizes that there are highly significant but less formal mechanisms of international cooperation which can precede and complement the more formal mechanisms. These informal mechanisms, which are specifically contemplated by Article 48 of UNCAC can enable crucial cooperation in real time in highly urgent situations, which is common characteristic of requests for seizure of assets. Such complementary cooperation mechanisms include direct communication and cooperation by police and other investigative and intelligence authorities.

One main channel for intelligence and transnational investigative cooperation between law enforcement authorities are the Financial Intelligence Unit (FIU). The Israeli Money Laundering and Terror Financing Prohibition Authority (IMPA), Israel's FIU, can share financial information with its counterparts from other countries through the Egmont Secure Web service. Article 30(f) of the Israeli Prohibition of Money Laundering Law (PMLL), as interpreted and applied under guidelines established by Israel's Attorney General, provides that states that IMPA can share information from its database with other FIUs (either upon request or as spontaneous disclosures) if there is a reasonable ground to suspect that the information relates to money laundering, financing of terrorism or a predicate criminal offence.

The informal FIU network is regularly utilized by Israel to maximize international cooperation. In time-sensitive cases, critical information can be obtained from a counterpart FIU network on a highly expedited basis and can help move an investigation forward, and ultimately ensure a more detailed and complete MLA Requests.

Section 30(f) of the PMLL permits IMPA to transmit information to a foreign FIU, even in the absence of an international agreement. Nevertheless, IMPA has a policy to sign MOUs with its counterparts FIUs. Such informal agreements establish agreed procedures on exchange of information and facilitate cooperation. Israel has to date entered into MOU's with 66 states and considers the utilization of such MOU agreements a best practice.

Relatedly, another essential benefit of the FIU is that in certain cases, it can work with foreign FIU counterparts to temporarily freeze or implement other administrative measures that can temporarily halt the release of the funds. This is a critical tool in time-sensitive cases, as it can provide a necessary "window" of time ahead of the submission of a formal MLA. In Israel's experience, utilizing this method has afforded the central authority the necessary time to work via the more formal channel of MLA. As such, Israel recommends this synthesis of the informal network with the more formal channel of mutual legal assistance as a best practice can help maximize success both in corruption investigations and in asset recovery cases.

Another valuable intelligence channel which can precede or complement formal MLA is the CARIN network. CARIN is a transnational network of expert-practitioners in the areas of asset tracing, freezing and confiscation. Both the Israel Tax Authority and the Israel Police (IP) can receive and transmit informal requests through the framework of CARIN. Israel receives an average of 15-20 requests every year from foreign states, and in 2018 has sent at least 13 requests. Every request received by Israel is answered, even if the answer is that no assets were traced in Israel. This network has proven useful for legal assistance and asset recovery cases, both incoming and outgoing, however it should be noted that not many requests were corruption-related. CARIN is also a basis for exchange of experience and work practices on international cooperation on tracing, freezing and confiscation of assets.

Israel considers the utilization and effective integration of both formal and informal assistance mechanisms to be not only a best practice but the only really effective way of providing successful international cooperation in the context of corruption and asset recovery cases.

Preparation and Communication for Effective MLA

One basic, but significant, practice that Israel views as very essential to international cooperation in general, and asset recovery-related MLA Requests in particular, is that of conducting careful and effective preparation and communication prior to the issuance of formal requests. In light of the fact that seizure and confiscation are coercive measures, many state parties have relatively high or specific procedural thresholds or requirements that must be met in order to enforce the foreign order. As many of these requests are highly time-sensitive (particularly in asset recovery where the dissipation or concealment of the assets is always a concern), it is essential to do the proper groundwork and necessary assessments prior to the Request's transmission. This will often involve prior communication and discussion between the Central Authorities of the requesting and requested states and also, where possible, between their investigation and prosecution authorities. Establishing regular contacts and channels of communication are essential for this. As already noted, transnational agencies such as the UNODC, the OECD and Eurojust can be highly useful to establish channels for coordination and communication between the relevant jurisdictions. This practice also minimizes the need for further supplementary materials or explanations, which can ultimately delay and even frustrate the execution of required assistance. Only such an approach, which constitutes a best practice, can ensure that the requested investigative or enforcement measures be executed as soon as possible.

Best Practices and Challenges in Economic Enforcement and Asset Recovery

Issuance of Guides and Guidelines

Regarding requests for seizure, confiscation and asset recovery, the Department of International Affairs of the Office of the State Attorney will consult with other domestic authorities who are relevant to the consideration and execution of the Request, including relevant District Attorneys who have designated functions regarding such matters under the Law. The Department of International Affairs has prepared a guide for foreign central authorities containing the various steps and legal requirements for foreign authorities to fulfill in order to ensure successful enforcement of foreign seizure and confiscation orders. In line with the above

comment regarding preparation, this guide allows the foreign authorities to familiarize itself with Israel's legal requirements and procedural thresholds, ultimately leading to a more complete MLA request and allowing for its more rapid enforcement and execution.

In addition to the guide prepared for foreign authorities, a successful practice in helping to facilitate more efficient communication and cooperation, it is notable that Israel's Deputy State Attorney for Economic Enforcement has issued Guidelines regarding the handling of foreign requests for seizure, confiscation and asset recovery, including the delineation of the functions of the various relevant authorities.

These guidelines are another best practice as they are publicized for the broader prosecutorial agencies and are part of a larger effort to integrate the various law enforcement arms, both criminal and civil, to establish a more effective and efficient anti-corruption regime. This multi-disciplinary and integrative effort, which incorporates yearly conferences and more regular meetings, provides a critical platform to inform the various agencies of the different authorities and agencies that are relevant to the various steps of the economic enforcement/ asset recovery process, allows for the sharing of information and approaches, and ultimately allows for greater coordination, ultimately streamlining the overall process and saving valuable time

Alternative measures: Non-conviction based confiscation and Domestic investigation

As is detailed below, the ILAL empowers Israeli courts, with respect to certain designated crimes and subject to certain procedures and pre-conditions, to freeze assets and enforce confiscation orders executed in foreign courts for crimes committed outside of Israel.

Israel's Legal assistance Law (ILAL) also has the legal capacity to provide assistance to requests for co-operation made on the basis of non-conviction based confiscation proceedings and related provisional measures. The definition of "foreign confiscation order" includes an order to confiscate property made by a foreign judicial authority (including any government authority competent to issue a confiscation order), either in a criminal or in a civil proceeding. On a domestic level, non-conviction based confiscation ("civil confiscation") can also be obtained through several mechanisms–

e.g. s.22(a)(2) of the PMLL (which covers the absence of a perpetrator) and s.14 of the Combatting Criminal Organisations Law (which covers the property of a criminal organisation).

A challenge Israel encounters relates to the ILAL's narrower focus regarding the enforcement of foreign-based seizure or confiscation orders, as it does not currently allow for enforcement of foreign orders for value-based confiscation or seizure. One way Israel can successfully meet this challenge is the utilization of domestic measures, such as opening a domestic investigation, in order to freeze and confiscate assets in response to a foreign enforcement order. Articles 41-43 of the ILAL allow for the funds to be confiscated to an Asset Recovery Fund (managed by the General Receiver in the Ministry of Justice) and arrangements for asset sharing with the foreign state are possible. However, it should be noted that Israel is currently in advanced stages of amending the ILAL to allow for the enforcement of foreign value-based seizure and confiscation orders.

Confiscation

The ILAL enables the enforcement of a foreign confiscation order concerning property in Israel connected to criminal offences provided that the Competent Authority (the head of the DIA of the office of the State Attorney, or another District Attorney) determines that the property was used or intended to be used for an offence, or was obtained directly or indirectly from the offence, or is an instrumentality (s. 33(a)(2) of ILAL) of the offense. As mentioned above, the law does not specifically cover value-based confiscation, however Israel is currently in the advanced stages of a proposal to amend the ILAL to allow for enforcement of foreign value-based seizure and confiscation orders.. Passage of such an amendment should hopefully minimize the challenges restricting in the execution of such foreign enforcement requests and facilitate enforcement of foreign enforcement orders

The offences for which assistance may be provided are those listed Schedule 2 (s.33(a)(1)). These offences include: drug offences, ML offences, and TF offences, predicate offences as enumerated in the PMLL, as well a number of other offences.

The Competent Authority then conducts an examination as to whether the evidence on the strength of which the foreign confiscation order was issued would have sufficed for the issuance of a domestic confiscation order under Israeli Law

If the Competent Authority finds that this precondition has been fulfilled, he submits an application to the relevant District Court, (s.33(b)). If the District Court concludes that the conditions specified in section 33(a) and (b) are met, then it may order the enforcement of the order, which shall be treated like a confiscation order issued in Israel (s. 34(a)).

Alternative Measures: Value-based Seizure and Confiscation

While this questionnaire focuses on international cooperation, we thought it prudent to highlight Israel's robust domestic economic enforcement regime, in particular value-based seizure and confiscation. Value-based seizure and confiscation is a best practice in domestic asset recovery cases, and it is our hope that it can become a popular tool in international cooperation, particularly as the aforementioned amendment to the ILAL will allow for the enforcement of foreign value-based seizure or confiscation order.

Value-based seizure is a relatively new but incredibly critical tool in Israel's domestic asset recovery efforts, as without value-based seizure, valued-based confiscation is rendered largely ineffective.

Asset Recovery: Domestic Legislation

There are a number of statutes that provide the domestic legal framework concerning recovery of assets. Under Israeli law, seizure and confiscation authority is prescribed in Section 39 of the Criminal Procedure Ordinance (Arrest and Search) (new version), 1969 (hereinafter: "Criminal Procedure Ordinance" or "Ordinance"), and applies to the majority of offenses in the Penal Law, 1977. Under articles 34 and 35 of the Ordinance, the court may order the extension of the period of time during which the police is entitled to seize the item.

Article 34 provides that following a request from a police officer or a person claiming a right to the item, the court may exercise wide discretion as to the handling or the possession of that item.

Israeli authorities have applied a broad and creative approach to the interpretation of these provisions, enabling confiscation in a variety of contexts. This provides a practical route to confiscation in many instances in relation to the proceeds of predicate offenses when a money laundering charge is not available.

The main statute under which the proceeds of crime- either derived from offenses established in accordance with UNCAC, or property of an equivalent value -may be seized and ultimately confiscated is the Prohibition on Money Laundering Law, 2000 (hereinafter: "the Prohibition on Money Laundering Law" or "PMLL"). In addition, in cases where organized crime offenses are connected to the bribery offense, funds may be confiscated according to the Combating Criminal Organizations Law, 2003 (hereinafter: "CCOL"). Confiscation under these statutes is mandatory unless the court concludes that there are special grounds not to do so.

Most of the offenses under the Convention are considered predicate offenses according to the PMLL. Pursuant to the PMLL, an offense of money laundering applies both to persons who commit the predicate offense ("self-laundering") as well as to persons who laundered the proceeds of crimes committed by others. Section 21 of the PMLL provides that, where a person has been convicted of an offense under Sections 3 or 4 of the PMLL, then in addition to any penalty, the court shall order - unless it decides not do so on special grounds that it shall specify -the confiscation of property of the defendant that is of equal value to property that constitutes one of the following:

1. Property on which the offense was committed;
2. Property used in the commission of the offense;
3. Property which enabled the commission of the offense or was intended for that purpose;
4. Property which is the profit of the offense.

Article 21(a) of the PMLL allows for value-based confiscation for certain offences. Value-based confiscation is also possible under the Dangerous Drugs Ordinance. Property of the convicted person which may be confiscated includes any property found in his possession control or account (article 21(b)) of the PMLL.

According to article 21(c) of the PMLL, if the property found is insufficient to enforce the confiscation order in full, the court may decide that the order should be implemented from the property of another person, the acquisition of which was

financed by the convicted person or which he transferred to that person without consideration. However, property which the convicted person financed or transferred to the same person prior to the commission of the offense for which he was convicted, and with regard to which the confiscation order was made cannot be the subject of confiscation.

Under article 21(d) of the PMLL, the Court may not order the confiscation of property unless it has granted the convicted person, the owner of the property, the person in possession or control of the property or the individual claiming a right to the property, if known, an opportunity to state their case. According to the PMLL, it is not necessary that a person be convicted of a predicate offense in order to establish that certain assets were the proceeds of a predicate offense and to convict any person of laundering such proceeds.

Article 22 of the PMLL provides for the confiscation of property in civil proceedings, if the person suspected of committing the crime is not present in Israel on a regular basis, if he cannot be located, and therefore an indictment cannot be filed against him, or if the property was discovered after the conviction.

2. **Best practices in the identification of legal and natural persons, involved in the establishment of corporate entities, including shell companies, trusts and other similar arrangements which may be abused to commit or conceal crimes of corruption or to hide, disguise or transfer their proceeds of corruption to countries that provide safety to the corrupt and/or their proceeds.**

The requirements of Israel's laws and procedures regarding corporate registration and governance are designed to assure that, as contemplated of Article 12(2)(c) of UNCAC, Israel's corporations system will not be abused by the creation of shell and shelf companies that can be utilized mask corporate ownership and control of entities that can then be utilized for criminal purposes, including corruption. This is accomplished by a comprehensive system of strict and reasonable disclosure requirements regarding the beneficial ownership and the control of corporate entities both at the time of their establishment and thereafter. This system is overseen and

managed by the Israel Corporations Authority (ICA) which is part of Israel's Ministry of Justice.

Generally, there is a requirement to indicate the identity of the shareholders and the directors when registering a company in the corporations' authority, and also to report of any change of personnel. The information reported in the application includes a name, I.D and the address of the shareholders and directors, as well as a personal affidavit of any one of them with a verification of the signature signed by an Israeli lawyer. After the establishment of the company, any changes in the details of the shareholders or directors must be reported in 14 days, as detailed in provision 140 of the companies' law, 1999 and companies' regulations, 1999. In addition, according to provision 141 to the Companies' Law, a company has to submit annual reports including up-to-date information regarding the shareholders and directors. The information provided is checked by the ICA against relevant official databases.

When an individual is presented as a controlling member or a manager of a company in the Companies Registrar, but on the other hand reports low profits to the tax authorities, that is usually a sign that this individual is a straw man and that the company is really a shell company, being used to conceal money or the true identity of the owners.

Sometimes it is also possible to identify companies that their business cycle is high but analysis of their bottom line reveals that the company is not profitable and their main activity is comprised of the movement of funds in and out of the company, all the while the company does not have any real equipment or assets and it is unclear what services it offers. Israel's FIU and the ICA, in the context of their supervisory duties, may often notice said anomalies regarding companies indicating the use of shell entities for criminal purposes. If this occurs, they will refer to appropriate investigative and enforcement agencies.

Below is a summary of the ICA guidelines relating to methods to ascertain the identity of company founders:

1. Applications can be made to the ICA to form companies either by submitting written documentation or online. Approximately 85% of applications are made online.
2. Applications are made using prescribed forms, which require the basic to be provided to the ICA, as well as the contact details of the company in Israel

or, in the case of foreign companies -a nominated person in Israel with whom the ICA can liaise. Information on the purposes of the legal person is provided by way of descriptive narrative (as well as by way of the contents of the constitutive documents). The online form (but not the paper form) requires each shareholder to confirm whether the shares are held as trustee. The application and bye-laws must be signed by the founding shareholders in the presence of an Israeli lawyer; the directors must also sign the application in front of a lawyer and confirm their position as directors. The lawyer must obtain identification information on each signatory. The only exception to the ICA's requirement that

3. Online applications must be handled by a lawyer. The sole exception is when the application is submitted by a shareholder who is the sole shareholder and a director of a company. In such cases the shareholder/director must be identified by an electronic certificate which is issued after a face to face meeting with one of the companies certified by law for this purpose. Even in these cases, the shareholder must upload a scanned copy of the bye-laws which he/she has signed in the presence of a lawyer and to whom he/she has provided identity information. The vast majority of applications made in paper form are also submitted by lawyers.
4. Where a shareholder/director is not an Israeli citizen, the registry requires to be provided with a copy of the passport for individuals and a certificate of incorporation for legal persons.
5. Directors can be individual or corporations. However, if a corporation is appointed as the director then the company must also appoint an individual director acting on behalf of that corporation. The fiduciary duties of the individual director and the corporate director are severed and joined; there are no provisions permitting nominee directors.
6. The ICA reviews the information provided by the legal person by checking its existing records in the register of the relevant type of legal person, the register of bankrupt individuals, and the population register.

Israel believes that its corporations' regulation system assures that Israel companies cannot be utilized to mask the perpetrators and beneficiaries of fraud, corruption and other crimes and constitutes a useful and best practice to prevent abuse of the corporate system.