



A programme funded by  
the European Union

**EUROMED  
JUSTICE**

# **EUROMED JUSTICE**

## **Legal and Gaps Analysis Mutual Legal Assistance in Criminal Matters / Confiscation of Proceeds of Crime in the EuroMed Area**



### **CrimEx**

**EuroMed Justice Group of Experts in Criminal Matters**

**ALGERIA, EGYPT, ISRAEL, JORDAN, LEBANON,  
MOROCCO, PALESTINE, TUNISIA**

**EuroMed Justice Expert: David Mayor Fernandez Senior Prosecutor, Spain**

Lead Firm /Chef de file



**AUTHOR(S):**

This Legal and Gaps Analysis has been written by Mr. David Mayor Fernandez (Spain), in collaboration with: Mr. Dan Suter (Director iJust International - United Kingdom), Mr. Giel Franssen (The Netherlands), and Professor Dr. Mohamed Elewa Badar (Egypt- United Kingdom).

**EDITOR AND COORDINATOR:**

Virgil Ivan-Cucu, EuroMed Justice Key Expert, Senior Lecturer EIPA Luxembourg.

**LINGUISTIC VERSIONS**

Original: EN

Manuscript completed in February 2018.

**DISCLAIMER**

The information contained in this Legal and Gaps Analysis is based on the research and data provided by the senior experts assigned, and the representatives of the Southern Partners Countries in the framework of the work carried out under the EuroMed Justice Project, except for Lebanon. In conformity with Lebanese Law none of the Lebanese judges and representatives contributed to the work in any mean or way. The Consortium implementing this EuroMed Justice project cannot be held responsible for the accuracy, actuality or exhaustiveness of the analysis, nor can it be made liable for any errors or omissions, contained in this document.

This publication has been produced with the assistance of the European Commission. The contents of this publication can in no way be taken to reflect the views of the European Commission.

**COPYRIGHT**

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged, according to the following model: "EuroMed Justice is an EU project fostering international judicial cooperation in the Euro-Mediterranean area". Furthermore, please inform EuroMed Justice and send a copy at: [info@euromed-justice.eu](mailto:info@euromed-justice.eu).

[www.euromed-justice.eu](http://www.euromed-justice.eu)

# CONTENTS

|   |           |
|---|-----------|
| <b>PART ONE / LEGAL ANALYSIS .....</b>  | <b>4</b>  |
| 1. Introduction .....   | 4         |
| 2. The complexity of the legal basis for the mla: bilateral, multilateral, regional, and universal instruments.....       | 4         |
| 3. Un convention against transnational organized crime as the common legal framework for the euromed area.....            | 7         |
| 4. The unctoc scope of application.....   | 9         |
| 5. Harmonized criminalization of the participation in organized criminal groups as a prerequisite for successful mla..... | 10        |
| 6. Requirements related to the criminalization of the participation in organized criminal activities.....                 | 12        |
| 7. Unctoc provisions on mutual legal assistance on criminal matters.....  | 13        |
| 8. Requirements related to mutual legal assistance .....  | 14        |
| 9. Confiscation of proceeds of crime and identification, tracing, freezing, or seizure of assets .....                    | 19        |
| 10. Algeria / legal analysis.....   | 22        |
| 11. Egypt / legal analysis.....   | 25        |
| 12. Israel / legal analysis.....  | 30        |
| 13. Jordan / legal analysis.....  | 38        |
| 14. Lebanon / legal analysis.....   | 39        |
| 15. Morocco / legal analysis.....   | 41        |
| 16. Tunisia / legal analysis.....   | 45        |
| 17. Palestine / legal analysis.....   | 50        |
| <b>PART TWO / GAPS ANALYSIS.....</b>  | <b>52</b> |
| Conclusions and recommendations for the euromed SPCs.....   | 52        |
| <b>ANNEXES.....</b>   | <b>53</b> |
| Annex I: UNODC model law on criminalization of offences related to organized crime.....                                   | 54        |
| Annex II: UNODC model law on mutual assistance in criminal matters.....   | 57        |
| Annex III: Table north-south bilateral treaties on mla.....   | 76        |
| Annex IV: Table of grounds for refusal mutual legal assistance.....   | 77        |
| Annex V: Table of other practical answers to the questionnaires.....  | 78        |
| Annex VI: Other practical comments in the answered questionnaires .....   | 79        |
| <b>BIBLIOGRAPHY.....</b>  | <b>80</b> |
| <b>ACKNOWLEDGEMENTS.....</b>  | <b>81</b> |

# Part one / Legal analysis

## 1. Introduction

The fight against new and emerging forms of transnational crime has undergone new challenges in the last few years because of the fast worldwide transformation that has aroused mainly due to the following factors:

- Globalization process;
- Growth in the volume of international trade;
- Larger freedom of movement of goods and persons;
- New forms of international terrorism;
- New links between groups engaged in previously separate criminal activities;
- Highly sophisticated money-laundering schemes;
- The development of the global electronic connectivity.

The complexity of the cross-border criminal opportunities involving transnational organized groups requires logistics and organization in the international legal and judicial cooperation.

Considering that transnational organized criminal groups work through coordinated and specialised structures, international cooperation should work as well through specialised cross-borders networks. Only a fast and coordinated answer can be efficient in the fight against transnational organized crime.

In the context of globalization, national authorities increasingly need the assistance of other States for the successful investigation, prosecution, and punishment of offenders, particularly those who have committed transnational offences.

The international mobility of offenders and the use of advanced technology make it more necessary than ever that law enforcement and judicial authorities collaborate and assist the State that has assumed jurisdiction over the matter.

## 2. The complexity of the legal basis for the mla: bilateral, multilateral, regional, and universal instruments

International cooperation is the only way to address effectively transnational organized crime. This cooperation can be formal and informal. Some States do not require a treaty basis for judicial cooperation, and many are able to provide assistance on the basis of reciprocity or comity.

However, there is an essential difference between reciprocity or domestic legislation and the rules laid down in bilateral and multilateral agreements. Treaties are primary sources of international law that cover both the rights and the obligations of the parties to those agreements.

Bilateral and multilateral treaties, conventions, protocols, and covenants contain rules for cooperation in the form of a legal relationship providing legal certainty and security.

In addition, the existence of legal rights and obligations within a bilateral or multilateral instrument provides a clear framework governing the manner in which the requested State or States should respond to requests. Those rights and obligations are subject to a range of conditions, procedures, or grounds for refusal, which are recognized within each agreement.

There have been some multilateral efforts through treaties aimed at mutual legal assistance in criminal matters with respect to particular offences, such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the Council of Europe Convention on Cybercrime, the Inter-American Convention against Corruption, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

There have also been some regional initiatives, such as the Schengen Implementation Agreement, the European Convention on Mutual Assistance in Criminal Matters, the Inter-American Convention on Mutual Legal Assistance in Criminal Matters and the Arab League Convention on Mutual Assistance in Criminal Matters.

Regional instruments do not always coincide exactly with the geographical regions for the following reasons:

- Geographical regions usually have a number of sub-regional country groups, which may or may not have developed multilateral agreements for judicial cooperation.
- Some regional instruments are open to ratification/accession by States outside the geographical region to which the instrument primarily applies.
- Some multilateral instruments include State parties from more than one geographical region. This is also the case with multilateral instruments on international cooperation in criminal matters within the context of the Council of Europe.

## **South-South tools for cooperation on mutual legal assistance**

---

The Riyadh Convention is considered the most instrumental treaty for mutual legal assistance among Arab States. The Convention was signed on 6 April 1983 by the SPCs that are member States of the Arab League except Egypt and entered into force on 30 October 1985.

The Riyadh Convention replaced the three agreements dealing with judicial cooperation that were concluded in 1952 within the framework of the Arab League (1952 Convention for Judicial Notification and Rogatory Commission; 1952 Convention for enforcement of judgments; 1952 Convention for Extradition of Criminals).

The Convention defines its scope in a broad way. According to article 69, in case of conflict between the Convention and another international treaty, the one most efficient for the success of the judicial cooperation shall apply.

Furthermore, a broad range of issues are covered by the Convention, such as:

- Exchange of criminal records (article 5);
- Notification of judicial documents (articles 6-13);
- Judicial appointments (articles 14-21);
- Attendance of witnesses and experts in criminal cases (articles 22-24).

The Convention establishes three grounds for refusing mutual legal assistance:

- If the requested legal assistance does not fall within the competence of the judicial body of the requested State.
- If the requested legal assistance could cause prejudice to sovereignty or public order of the requested State.
- If the requested State considers that the assistance is related to a crime of political nature.

There are other specific instruments in the framework of cooperation between member States of the Arab League such as the Arab Convention for the Suppression of Terrorism (1998), the Arab Convention against Transnational Organised Crime (2010), the Arab Convention against Corruption (2010), the Arab Convention against Money Laundering and the Financing of Terrorism (2010), and the Arab Convention on Combatting Information Technology Offences (2010).

As regards bilateral instruments, five SPCs have concluded several treaties on mutual legal assistance:

- Algeria has concluded bilateral treaties with Egypt, Jordan, Morocco and Tunisia.
- Egypt has concluded bilateral treaties with Jordan and Algeria.
- Jordan has concluded bilateral treaties with Algeria, Lebanon, and Tunisia.
- Lebanon has concluded one bilateral treaty with Jordan.
- Tunisia has concluded bilateral treaties with Algeria and Jordan.

## **North-South cooperation tools on mutual legal assistance**

---

The participation of some SPCs in the conventional developments of the Council of Europe have generated transregional cooperation tools between Europe and some of the SPCs.

That is mainly the case of Israel as State party of the European Convention on Mutual Legal Assistance in Criminal Matters. Additionally, Israel has also ratified the Budapest Convention and Morocco has been invited by the European Council to ratify it. Morocco ratified the Budapest Convention in 2018.

Regarding bilateral north-south cooperation, every SPCs except Israel and Palestine have signed bilateral agreements on mutual legal assistance in criminal matters with different EU member states (14 Algeria, 7 Egypt, 5 Lebanon, 11 Morocco, 12 Tunisia).

This complex network of bilateral and regional instruments on mutual legal assistance represents a significant legal basis for many countries. However, from a global perspective, it does not represent a uniform system. The scope of bilateral and multilateral judicial cooperation agreements can vary, in terms of the

offences to which an agreement applies and the types of assistance that may be provided under the agreement and the applicable conditions.

In any case, the legal basis employed has a significant impact on the success of requests for cooperation.

## 3. UN Convention against Transnational Organized Crime as the common legal framework for the EuroMed area

The SPCs and EU Member States have specific instruments on mutual legal assistance in common in different specific areas such as drug trafficking, trafficking in persons, smuggling of migrants, trafficking in firearms, corruption and counter-terrorism. The main sectoral treaties and conventions are the following:

### Drug trafficking

- Single Convention on narcotic drugs of 1961 (amended by the 1972 protocol);
- Convention on Psychotropic Substances of 1971;
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (2000).

### Trafficking in persons

- UNCTOC Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000);
- UNCTOC Protocol against the Smuggling of Migrants by Land, Sea and Air; supplementing the United Nations Convention against Transnational Organized Crime (2000).

### Trafficking in firearms

- UNCTOC Protocol against the Illicit Manufacturing and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (2000);

### Corruption

UN Convention against Corruption (2003).



## Counter-terrorism instruments

- Convention on offences and certain other acts committed on board aircraft signed in Tokyo on 14 September 1963 and its additional protocol (2014).
- Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970 and its additional protocol (2010).
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
- International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
- Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980 and its additional amendments (2005).
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful.
- Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime
- Navigation, done at Rome on 10 March 1988 and its additional protocol (2005)
- Convention on the marking of plastic explosives for the purpose of detection (1991).
- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988 and its additional protocol (2005),
- International Convention for the Suppression of Acts of Nuclear Terrorism (2005).
- Convention on the suppression of unlawful acts relating to international civil aviation (2010).

However, according to the submitted and available information, the **United Nations Convention against transnational organized crime (UNTOC) is the broadest instrument on mutual legal assistance that EU member states and SPCs have in common.**

The main purpose of this Convention is to achieve the most effective international cooperation against transnational organized crime, and mutual legal assistance is one of the points more developed in the text of the Convention.

In this context, the Organized Crime Convention should be considered as a possible response to all forms of transnational organized crime, including new and emerging forms of such crime. For this reason, this instrument can be considered as a useful tool in addressing legal gaps.

## UNTOC

UNGA Resolution 55/25 of 15 November 2000, containing the adopted text of the Convention and of two of its Protocols, expresses that the Convention would “*constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering,*



*corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organized crime and terrorist crimes”.*

The provisions of the UNCTOC can play a key role in harmonizing obligations and addressing legal gaps. The UNCTOC provides:

- A basis for mutual legal assistance in and of itself;
- A way of filling possible legal gaps where no bilateral or multilateral agreement exists; and
- A means for increased harmonization.

As a legal basis for implementing judicial cooperation, the UNCTOC contains several provisions related to mutual legal assistance. Article 18, on mutual legal assistance, shall be applied to requests made pursuant to that article not only if the State parties in question are not bound by a treaty of mutual legal assistance but also if they are bound by such a treaty, then States parties are encouraged to apply the provisions of article 18 in lieu thereof.

## 4. The UNCTOC scope of application

The added value of the UNCTOC for judicial cooperation in the EuroMed area is its broad and flexible scope. The Convention enables its application not only to offences established by it and its Protocols but also to any other serious crime where the offence is transnational in nature and involves an organized criminal group.

The reason of the broadness of its scope is the definition of these three concepts: a) offence transnational in nature; b) serious crime; c) organized criminal group.

### Offence transnational in nature

According article 3.2 of the UNCTOC, an offence is transnational in nature when:

- It is committed in more than one State;
- It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- It is committed in one State but involving an organized criminal group that engages in criminal activities in more than one State;
- It is committed in one State but has substantial effects in another State.

### Organized criminal group

According to article 2.a of the UNCTOC, an organized criminal group is defined as a structured group:

- consisting of at least three persons;

- existing for a period of time;
- acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain a financial or other material benefit.

## **Serious crime**

According to article 2.b of the UNCTOC, a serious crime is defined as a conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

The flexibility in the interpretation of these three elements ensures that the widest range of criminal activities can be covered by the Convention.

## **5. Harmonized criminalization of the participation in organized criminal groups as a prerequisite for successful MLA**

A common legal framework on the criminalization of the offences related to organized crime is a previous condition in order to avoid the obstacles that the control of dual criminality could frequently generate.

Consequently, approximation of the criminal legislation in this matter is the first mandatory provision in the Convention. Because the activities of criminal groups affect many countries at once, the need to coordinate and harmonize laws is clear.

Two different ways of criminalization of participation in organized criminal groups could be encountered in comparative law: while common law countries have used the offence of conspiracy, civil law jurisdictions have used offences that proscribe the involvement in criminal organizations. Other countries combine such approaches.

Some initiatives have already been taken in that direction at a regional level among which the adoption of the 2008 EU Framework Decision on the fight against organized crime is remarkable.<sup>1</sup>

However, this is not merely a regional issue but one that demands an effective global response. The UNCTOC aims at a global response and at ensuring the effective criminalization of acts of participation in criminal groups.

---

1. COUNCIL FRAMEWORK DECISION 2008/841/JHA of 24 October 2008, on the fight against organised crime establish the following harmonized definition: Criminal organisation as a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit; Structured association as an association that is not randomly formed for the immediate commission of an offence, nor does it need to have formally defined roles for its members, continuity of its membership, or a developed structure. Each UE Member State shall ensure that one or both of the following types of conduct related to a criminal organisation are regarded as offences: Conduct by any person who, with intent and with knowledge of either the aim and general activity of the criminal organisation or its intention to commit the offences in question, actively takes part in the organisation's criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation's criminal activities; Conduct by any person consisting in an agreement with one or more persons that an activity should be pursued, which if carried out, would amount to the commission of offences in question even if that person does not take part in the actual execution of the activity.

Article 5 UNCTOC recognizes the two main approaches to such criminalization to reflect the fact that the law in some countries is based on the concept of conspiracy (common law countries) and the other is based on the concept of *association de malfaiteurs* (civil law countries).

## **The common law conspiracy model**

In this model, liability for the offence is based on an agreement to commit a serious crime. The elements of the offence are the agreement to commit a crime and doing so for the purpose of obtaining a financial or other benefit.

In essence, liability arises when two or more persons deliberately enter into an agreement to commit a serious crime for the purpose of obtaining some material benefit.

Unlike liability for attempt in certain legal traditions, there is no requirement to demonstrate that the accused came close (“proximate”) to the completion of the substantive offence (or “serious crime”).

## **The civil law criminal association model**

This model attaches criminal liability to intentional contributions to organized criminal groups, not to the pursuit of a preconceived plan or agreement. Under that subparagraph, the accused must have been taking an active part in either the criminal activities of the organized criminal group or other activities of such a group.

Determining whether the person concerned has taken an active part is a question of fact and jurisdictions may vary in determining if and when more passive roles suffice to establish that element.

The activities may not constitute crimes in themselves, but they may perform a supportive function for the criminal activities and objectives of the group.

Additionally, according to article 5.1.b UNCTOC, State parties are required to establish criminal secondary liability related to persons who provide advice or assistance with respect to the commission of serious crimes involving an organized criminal group.

This specifically includes persons intentionally “organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group”.

That way the prosecution of leaders, accomplices, organizers, and arrangers, as well as lower-level participants in the commission of serious crime is covered.

Finally State parties are required to have the legal framework to enable the knowledge, intent, aim, purpose, or agreement to be inferred from objective factual circumstances.

## 6. Requirements related to the criminalization of the participation in organized criminal activities

Under article 5 of the UNCTOC, States must establish either or both offences set forth in its subparagraphs (i) and (ii) as crimes.

### Option 1 (conspiracy model)

The first offence is akin to the common law conspiracy model and is set forth in article 5, paragraph 1 (a) (i), as follows:

*“Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group.”*

The requirements of this offence include the intentional agreement with one or more persons to commit a serious crime for a purpose related directly or indirectly to obtaining a financial or other material benefit.

This requirement criminalizes the mere agreement to commit serious crimes for the purpose of obtaining a financial or other material benefit.

However, States parties may optionally include as elements of the offence either:

- an act committed by one of the participants furthering that agreement;
- the involvement of an organized criminal group.

### Option 2 (criminal association model)

The second option is more consistent with the civil law legal tradition and countries with laws that do not recognize conspiracy or do not allow the criminalization of a mere agreement to commit an offence.

This option criminalizes the *“conduct by a person, who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:*

- r. *“Criminal activities of the organized criminal group;*
- s. *“Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.”*

These other activities may not constitute crimes, but they perform a supportive function for the group's criminal activities and goals.

For the second type of offence, that is, criminal association, the required mental element is the general knowledge of the criminal nature of the group or of at least one of its criminal activities or objectives.

In the case of participating in criminal activities, the mental element of the activity in question would also apply.

In the case of taking part in non-criminal but supportive activities, an additional requirement is that of the knowledge that such involvement will contribute to the achievement of a criminal aim of the group.

Both of the above offences are distinct from any offence addressing the attempt or completion of a criminal activity.

Under article 5, paragraph 2, the knowledge, intent, aim, purpose, or agreement referred to above may be inferred from objective factual circumstances.

State parties are also obliged to establish as a crime the offence of organizing, directing, aiding, abetting, facilitating or counselling the commission of a serious crime involving an organized criminal group. This type of offence, *inter alia*, is intended to ensure the liability of leaders of criminal organizations who give orders, but do not engage in the commission of the actual crimes themselves.

## 7. UNCTOC provisions on mutual legal assistance on criminal matters

In its article 3, the UNCTOC calls for the widest measure of mutual legal assistance as listed in article 18.3 and expands the scope of application to all offences covered by the Convention.

This includes the offences established under articles 5, 6, 8 and 23, offences established under any of the Protocols States become parties to and transnational serious crimes involving an organized criminal group (art. 2, subparagraph (b)).

Legal assistance may be requested for taking evidence or statements, effecting service of judicial documents, executing searches and seizures, examining objects and sites, providing information, evidence and expert evaluations, documents and records, tracing proceeds of crime, facilitating the appearance of witnesses and any other kind of assistance not barred by domestic law.

Article 18 applies also to international cooperation in the identification, tracing and seizure of proceeds of crime, property and instrumentalities for the purpose of confiscation (see also art. 13).

The UNCTOC recognizes the diversity of legal systems and allows States to refuse mutual legal assistance under certain conditions (see art. 18, para. 21). However, it makes clear that assistance cannot be refused:

- on the ground of bank secrecy (art. 18, para. 8);
- for offences considered to involve fiscal matters (art. 18, para. 22).

States are required to provide reasons for any refusal to assist. Otherwise, States must execute requests expeditiously and consider possible deadlines facing the requesting authorities (for example, expiration of a statute of limitation).

## 8. Requirements related to mutual legal assistance

### 8.1. Scope of the obligation to provide mutual legal assistance

Article 18, paragraph 1, establishes the scope of the obligation to provide mutual legal assistance.

Each State party must ensure that its mutual legal assistance treaties and laws provide for assistance to be provided for cooperation with respect to investigations, prosecutions, and judicial proceedings in relation to the offences covered by article 3 of the Convention, that is to say:

- Offences established in accordance with articles 5, 6, 8 and 23 that are transnational (defined in art. 3, para. 2) and involve an organized criminal group (defined in art. 2.a);
- Offences established in accordance with articles 5, 6, 8 and 23, where there are reasonable grounds to suspect that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State party and the offence involves an organized criminal group;
- Offences established in accordance with the three Protocols, which are considered as offences established in accordance with the Convention under article 1, paragraph 3, of each Protocol;
- Serious crime (defined in art. 2.b) that is transnational and involves an organized criminal group;
- Serious crime which involves an organized criminal group, where there are reasonable grounds to suspect that victims, witnesses, proceeds, instrumentalities, or evidence of such offences are located in the requested State party (art. 18, paras. 1 and 3).

The criterion for the requests and the provision of legal assistance is broader than that applying to most other Convention and Protocol obligations.

Article 3 UNCTOC applies where the offence in question is transnational in nature and involves an organized criminal group.

In contrast, article 18.1 UNCTOC only requires **reasonable grounds to suspect** that the offence is transnational in nature and that the offence involves an organized criminal group.

Additionally, the mere fact that victims, witnesses, proceeds, instrumentalities, or the evidence of such offences are located in the requested State party constitutes in itself a sufficient reasonable ground to suspect that the offence is transnational.

### 8.2. Mutual legal assistance for proceedings involving legal persons (article 18.2 UNCTOC)

Article 18.2 UNCTOC provides that mutual legal assistance shall be facilitated to the fullest extent possible under relevant laws, treaties, agreements, and arrangements with respect to investigations, prosecutions, and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10.

## 8.3. Purposes for which mutual legal assistance is to be provided (article 18.3 UNCTOC)

---

Article 18.3 UNCTOC list the specific types of mutual legal assistance that a State party must be able to provide:

- Taking evidence or statements from persons;
- Effecting service of judicial documents;
- Executing searches and seizures, and freezing;
- Examining objects and sites;
- Providing information, evidentiary items and expert evaluations;
- Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- Identifying or tracing proceeds of crime, property, instrumentalities, or other things for evidentiary purposes;
- Facilitating the voluntary appearance of persons in the requesting State party;
- Any other type of assistance that is not contrary to the domestic law of the requested State party.

States parties should ensure that their current mutual legal assistance treaties are broad enough to cover each form of cooperation listed above. In most cases, domestic law already provides powers to take the measures necessary to deliver the above types of assistance. If not, such powers must be created. If they exist, amendments may be necessary to ensure that they can be used in legal assistance cases.

## 8.4. Procedure to be followed in the absence of a treaty (article 18.7 UNCTOC)

---

Article 18.7 UNCTOC provides that where there is no mutual legal assistance treaty in force, the rules of mutual legal assistance set forth in article 18, paragraphs 9-29, apply in providing the forms of cooperation listed in paragraph 3.

If a treaty is in force between the States parties concerned, the rules of the treaty will apply instead, unless they agree to apply paragraphs 9-29.

For State parties whose legal systems permit direct applicability of treaties, implementing legislation will not be needed.

However, if the legal system of a State party does not permit direct applicability of these paragraphs, legislation will be required to ensure that in the absence of a mutual legal assistance treaty, the terms of paragraphs 9-29 apply to requests made under the Convention.

State parties are also strongly encouraged, but not obliged, to apply any of paragraphs 9-29 if they facilitate cooperation to a greater extent than the terms of a mutual legal assistance treaty in force between them.



## 8.5. Prohibition on denial of mutual legal assistance on the ground of bank secrecy (article 18.8 UNCTOC)

State parties shall not decline to render mutual legal assistance pursuant to article 18 on the ground of bank secrecy. State parties are obliged to ensure that no such ground for refusal may be invoked under their mutual legal assistance laws or treaties.

## 8.6. Spontaneous transmission of information

Article 18.4 and 18.5 provide a legal basis for a State party to forward to another State party information or evidence it believes is important for combating the offences covered by the Convention, where the other country has not made a request for assistance and may be completely unaware of the existence of the information or evidence.

However, there is no obligation to do so in a particular case. For those State parties whose legal system permits direct applicability of treaties, these paragraphs empower them to transmit information spontaneously where such transmissions are not otherwise possible under domestic law and no new legislation is needed.

If a State party does not already have a domestic legal basis for such spontaneous transmissions and under its legal system the terms of these paragraphs cannot be directly applied, it is encouraged, but not obliged, to take such steps as may be necessary to establish such a legal basis.

## 8.7. Testimony by videoconferencing

Article 18.18 UNCTOC requires State parties to make provision wherever possible and consistent with the fundamental principles of domestic law for the use of videoconferencing as a means of providing *viva voce* evidence in cases where it is impossible or undesirable for a witness to travel. This may require:

- Legislative powers allowing authorities to compel the attendance of a witness, administer oaths, and subjecting witnesses to criminal liability for non-compliance;
- Evidentiary rules to allow for the basic admissibility of evidence provided by videoconferencing and setting technical standards for reliability, verification, and identification of the witness;
- Expansion of perjury offences in order to ensure that a witness physically in the country who gives false evidence in foreign legal proceedings is criminally liable;
- Expansion of perjury offences in order to ensure that a witness in a foreign country who gives false evidence in a domestic court or proceeding via videoconferencing is criminally liable;

### Other recommendations related to videoconferencing

- The judicial authority of the requested State party shall be responsible for the identification of the person to be heard and shall, on conclusion of the hearing, draw up minutes indicating the date and place of the hearing and any oath taken;

- The hearing shall be conducted without any physical or mental pressure on the person questioned;
- If the judicial authority of the requested State considers that during the hearing the fundamental principles of the law of that State are infringed, he or she has the authority to interrupt or, if possible, to take the necessary measures to continue the hearing in accordance with those principles;
- The person to be heard and the judicial authority of the requested State shall be assisted by an interpreter as necessary;
- The person to be heard may claim the right not to testify as provided for by the domestic law of the requested State or of the requesting State; the domestic law of the requested State applies to perjury.

## **8.8. Joint investigations (article 19 UNCTOC)**

---

According to comparative expertise, two joint investigation models could be considered.

### **Coordinated investigations**

The first model consists of parallel and coordinated investigations with a common goal assisted by a liaison officer network or through personal contacts and supplemented by formal MLA requests in order to obtain evidence.

The officials involved are not co-located and are able to work jointly on the basis of long-standing cooperative practices and/or existing MLA legislation depending on the nature of the legal system involved.

### **Integrated investigations**

The second model consists of integrated joint investigation teams with officers from at least two jurisdictions. These teams can be further divided and characterised either as passive or active.

An integrated/passive team includes a foreign law enforcement officer integrated with officers from the host State in an advisory or consultancy role or, in a supportive role based on the provision of technical assistance to the host State.

An integrated/active team would include officers from at least two jurisdictions with the ability to exercise operational powers under host State control in the territory or jurisdiction where the team is operating.

Integrated teams are usually co-located, in the case of the integrated/passive team; this is on the basis of either national legislation enabling a foreign officer to be appointed/designated or a technical assistance agreement.

In the case of the integrated/active team, foreign officers may also be designated based on existing national legislation providing it is adequate.

Relevant legislation in EU Member States is based on the concept of a seconded – foreign – officer with the ability, subject to statutory discretion, to exercise powers under the control of a team leader of the host State where the operational activity is taking place.

The integrated/active model is a specially created infrastructure enabling officials from at least two countries to work in one jurisdiction with at least some equivalent operational powers.

The legal basis for establishing joint investigations depends on the domestic context in each State in particular and on the nature of the legal system.

Thus, the basis can range from mutual legal assistance legislation, legislation on international co-operation including cross border use of specialist investigative techniques (surveillance and undercover work), the code of criminal procedure, specific legislation on joint investigations (EU only), administrative guidance, standard operating procedures and long-standing co-operative practices. The extent of legislation required depends on the joint investigation model used.

The main legal impediments relating to the establishment of joint investigations generally are:

- Lack of a clear legal framework or specific (enabling) legislation dealing with the establishment of joint investigations,
- Lack of clarity regarding operational control e.g. in relation to undercover officers,
- Liability for costs of the joint investigation.

The establishment of integrated/active teams should consider additional legislation to cover the following issues:

- The equivalence of powers (in the host State) for foreign law enforcement officers;
- Operational control over the joint investigation and where this should lie;
- Evidence gathering by foreign law enforcement officers (especially with the use of coercive means) to facilitate admissibility in any subsequent proceedings;
- Evidence gathering by a team member in their home jurisdiction without the necessity for a formal MLA request;
- The civil and criminal liabilities of foreign law enforcement officers;
- Exchange of operational information and control over such information once exchanged.

Article 19 UNCTOC establishes that joint investigative bodies may be created by the competent authorities concerned in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States.

The EU Council Framework Decision of 13 June 2002 on joint investigation teams establishes that representatives of the authorities of non-EU Member States may take part in the activities of EU joint investigation teams.

The UNCTOC encourages, but does not require, States to enter into agreements or arrangements to conduct joint investigations, prosecutions and proceedings in more than one State, where several States parties may have jurisdiction over the offences involved.

However, in the absence of a treaty basis, the second sentence of the article provides a grant of legal authority to conduct joint investigations, prosecutions, and proceedings on a case-by-case basis.

The domestic laws of most countries already permit such joint activities and for those few countries whose laws do not so permit, this provision will be a sufficient source of legal authority for case-by-case cooperation of this sort.

## 9. Confiscation of proceeds of crime and identification, tracing, freezing, or seizure of assets

### 9.1. Introduction

One of the most important ways to keep offenders from profiting from their crimes is to ensure that States have strong confiscation regimes that provide for the identification, freezing, seizure, and confiscation of illicitly acquired funds and property.

Specific international cooperation mechanisms are also necessary to give effect to foreign freezing and confiscation orders and to provide for the most appropriate use of confiscated proceeds and property. Significant variation exists in different legal systems.

The property-based system allows the confiscation of property found to be proceeds of criminal activities or instrumentalities used for the commission of crime.

The valued-based system allows the determination of the value of proceeds and instrumentalities of crime and the confiscation of an equivalent value.

Other variations are related to:

- The range of offences with respect to which confiscation can take place;
- The requirement of a prior conviction of the offender;
- The required standard of proof (to the criminal or lower civil level). Some countries allow confiscation without conviction, if the defendant has been a fugitive for a certain period of time and there is proof to the civil standard that the property is the proceeds or instrumentalities of crime. Other countries allow confiscation ordered through civil or administrative proceedings. Some jurisdictions provide for a discretionary power to reverse the burden of proof, in which case the offenders must demonstrate the legal source of the property.
- Whether and under which conditions third-party property is subject to confiscation;
- The power to confiscate the products or instrumentalities of crime.

## 9.2. Harmonization of the legal framework for the confiscation of proceeds of crime

Considering this variety of circumstances in comparative law, the need for integration is clear. The UNCTOC establishes legal definitions for the terms “property”, “proceeds of crime”, “freezing”, “seizure”, “confiscation” and “predicate offence” in article 2, subparagraphs (d)-(h), as follows:

- Property shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- Proceeds of crime shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
- Freezing or seizure shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- Confiscation, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;
- Predicate offence shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 UNCTOC (money-laundering).

Article 12 UNCTOC requires to adopt measures, to the greatest extent possible within its legal system, to enable:

- Confiscation of proceeds of offences covered by the Convention;
- Confiscation of equivalent value of proceeds of offences covered by the Convention;
- Confiscation of the instrumentalities of offences covered by the Convention;
- Identification, tracing, freezing and seizing of items for the purpose of eventual confiscation.

In addition, each State party should empower courts or other competent authorities to order the production of bank records and other evidence for purposes of facilitating such identification, freezing and confiscation.

The Firearms Protocol establishes additional principles for the confiscation of firearms and their destruction as the preferred method of disposal.

## 9.3. UNCTOC mandatory requirements related to the identification, tracing, freezing, or seizure of assets and confiscation of proceeds of crime

### Scope

Article 12 UNCTOC requires that States parties enable, to the greatest extent possible within their domestic legal systems, the confiscation of:

- Proceeds of crime derived from offences covered by the Convention or property the value of which corresponds to that of such proceeds;

- Property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention;
- Property into which such proceeds have been converted, as well as intermingled proceeds of crime up to their assessed value;
- Income or other benefits (material benefits as well as legal rights and interests of an enforceable nature) derived from investing proceeds of crime are also liable to confiscation.

## Obligations to adopt procedural powers (article 12.2 and 12.6 UNCTOC)

States parties are required to ensure:

- Such measures as may be necessary to enable the identification, tracing, freezing or seizure of proceeds or other property;
- Powers for courts or other competent authorities to order that bank, financial or commercial records be made available or be seized;
- Such measures as may be necessary to ensure that bank records, financial records, and commercial records are subject to compulsory production;
- Bank secrecy cannot be raised as an excuse for not implementing a request.

## Third parties (article 12.8 UNCTOC)

Article 12, paragraph 8, requires that the seizure and forfeiture requirements be interpreted as not prejudicing the rights of *bona fide* third parties, which would at a minimum exclude those with no knowledge of the offence or connection with the offender(s).

## Specific requirements for international cooperation of proceeds of crime (article 13)

Article 13, paragraph 1, requires States parties that receive a request for confiscation from another State party to take one of two actions, to the greatest extent possible within their domestic legal systems:

- Directly submit for enforcement by its competent authorities an order issued by the requesting State party;
- Submit the request to its competent authorities in order to obtain a domestic order of confiscation, to which the requested State party would be required to give effect if granted.

Article 13.3 UNCTOC provides that the provisions of article 18 of the Convention (mutual legal assistance) are applicable to produce the evidence and information necessary to justify the identification, tracing, freezing or seizing and confiscation pursuant to article 13 and sets forth the contents of requests for such assistance.

## Burden of proof

Article 12.7 UNCTOC permits shifting the burden of proof to the defendant to show that alleged proceeds of crime were actually from legitimate sources. Because countries may have constitutional or other constraints on such shifting of the burden of proof, countries are only required to consider implementing this measure to the extent that it is consistent with their domestic law.

Similarly, legislative drafters may wish to consider adopting the related practice in some legal systems of not requiring a criminal conviction as a prerequisite to obtaining an order of confiscation, but providing for confiscation based on a lesser burden of proof to be applied in proceedings.

## 10. Algeria / legal analysis

### 1. Criminalization of conspiracy / criminal association

The Algerian Criminal Code punishes conspiracy in a strict and a broad sense.

Conspiracy, in a strict sense of the word, is classified as an offence against the authority of the State and the integrity of the national territory. It is punished by articles 78 and 85 of the Criminal Code and concerns the following offences (punished by death penalty):

- Destruction or change of regime;
- Inciting citizens or residents to take arms against each other;
- Violating the integrity of the national territory;
- Attacks whose objective is to commit massacre or devastation in one or more municipalities.

Conspiracy, in the broad sense of the word, is foreseen by article 176 of the Criminal Code, under the offence of criminal association and concerns the offences punished by a minimum of 5 years of imprisonment.

Conspiracy in the broad sense includes agreement to commit an offence whose objective is to make any financial or other profit, as inferred from the provisions contained in article 176 of the Criminal Code on the offences against property or people.

The legislation punishes conspiracy even though the offence has not actually been committed or initiated to prepare its execution (articles 78/2 and 85/2 of the Criminal Code); however, the penalty is lower than that of conspiracy actually executed or attempt of execution.

The same holds true regarding the criminal association, which exists only because of the voluntary decision to act in concert (article 176/1 of the Criminal Code).

Many provisions of the Criminal Code punish the active participation in the criminal activities of a criminal group organized in full knowledge of the facts (see, in particular, articles 86 and 177 bis of the Criminal Code).

Article 87 of the Criminal Code punishes gang members, even without being in a position of command or employment, with a penalty of 10 to 20 years of imprisonment. Nonetheless, this provision concerns the crimes aiming to disrupt the State through massacre and devastation.

However, article 177 bis 2(a) generally punishes the active participation in the activities of the criminal association and other activities of the group of a person having knowledge of the objective of the criminal



association or of its intention to commit the relevant offences, provided that (s)he knows that their participation will contribute to the fulfilment of the criminal purpose of the group.

The Algerian Criminal Code does not define the notion of “organized criminal group”, but it is likened to a criminal association, which is punished under articles 176-178 of the Criminal Code. The elements of definition of this association can be inferred from these articles. The latter comprise the following elements:

- A group of two (2) or more persons (article 177 bis of the Criminal Code);
- An undefined period (article 176 of the Criminal Code: “whatever its duration”);
- Formed with the aim of preparing one or several crimes or one or several misdemeanours punished with penalties of a minimum of 5 years of imprisonment, against property or people;
- Obtaining a financial or any other material benefit (article 177 bis).

## **2. Domestic legislation on mutual legal assistance in criminal matters**

---

- In the criminal procedural code:
- Articles 721-722 on rogatory letters;
- Articles 723-725 on documents and evidence.
- In the law for the prevention and fight against corruption (law 06/01 of the 20th of February 2006).
- In the law on prevention and fight against money laundering and terrorism (law 05/01 of the 6th of February 2005).
- In the law on cybercrime (law 09/04 of the 5th of August 2009).

## **3. Legal framework regarding asset recovery, confiscation and forfeiture**

---

Confiscation is an ancillary punishment foreseen by articles 9, 15, 15 bis 1, 15 bis 2 ad 16 of the Algerian Criminal Code.

It is also foreseen by the Customs Code, in articles 329, 335 and 336, as well as by article 16 of Ordinance 2005/06 of 23/08/2005 on the fight against contraband.

Article 51 of Act 06/01 of 20/02/2006 on the prevention and fight against corruption.

## **4. Concept of “proceeds of crime” (in order to include any property derived from or obtained, directly or indirectly, through the commission of a criminal offence)**

---

The concept of “proceeds of crime” is defined in the article 2(g) of law 06/01 on the prevention and fight against corruption to include any property derived from or obtained, directly or indirectly, through the commission of a criminal offence.

## **5. Extent of the confiscation of proceeds of crime (in order to include confiscation of property the value of which corresponds to that of such proceeds)**

Article 15 of the criminal code establishes that confiscation consists in the definitive devolution to the State of one or several specific goods, or, failing that, their financial compensation.

## **6. Extent of the confiscation of proceeds of crime (in order to include the confiscation of property, equipment or other instrumentalities used in or destined for use in criminal offences)**

Article 15 bis of criminal code establishes that in case of conviction relating to a crime, the court orders the confiscation of the objects that have been used or should be used to commit the offence, or which are the fruit thereof, as well as the donations and other benefits that have served to reward the perpetrator, without prejudice to the rights of third parties acting in good faith.

In case of conviction relating to a misdemeanour or a fine, the confiscation referred to in the previous paragraph is necessarily imposed in the cases where this penalty is expressly stated in the legislation, without prejudice to the rights of third parties acting in good faith.

## **7. Extent of the confiscation of proceeds of crime in order to include the property in which the proceeds of crime have been converted**

As long as the conversion of proceeds of crime constitutes money laundering, the property into which the proceeds of crime have been converted can be confiscated.

Article 389 sixies of the Algerian Criminal Code establishes the confiscation of the property which is the subject-matter of the criminal offence including the income and other benefits derived therefrom, from any person to whom it belongs, is ordered by the competent court, unless its owner demonstrates (s)he obtained it legally and did not have knowledge of its illegal origin.

## **8. Definition of the scope of “property” (in order to include all assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets)**

The definition of the scope of “property” is established in the law 06/01 on the prevention and fight against corruption. According to article 2 of the law 06/01, “property” means any assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal acts and documents certifying the ownership of these assets or resulting rights.

## 9. Possibility of shifting to the defendant the burden of proof of the lawful origin of alleged proceeds of crime or other property liable to confiscation

The legislation exceptionally allows the possibility of shifting to the defendant the burden of proof of the lawful origin for the offence of illicit enrichment. Article 37 of the law 06/01 on the prevention and fight against corruption establishes that any public official who cannot justify in a reasonable manner a substantial increase in their estate in comparison with their legitimate income is punished with a penalty of 2 to 10 years of imprisonment and a fine of 200.000 DA to 1.000.000 DA.

## 10. Elimination of barriers related to bank secrecy legislation that can result in impediments for investigation and international cooperation

The legal basis of bank secrecy is found in article 117 of Ordinance 03-11 of 26 August 2003 on the currency and credit that establishes:

“The following persons are bound by professional secrecy, subject to the penalties provided for in the Criminal Code:

- Any member of a board of directors, any auditor and any person who, for whatever reason, participates or has participated in the management of a banking or financial institution or who is or has been an employee thereof;
- Any person who participates or has participated in the monitoring of bankers and financial institutions under the conditions detailed in this section”.

Subject to express legislative provisions, secrecy is opposable to all authorities except:

- The public authorities of appointment and designation of banking and financial institutions managers;
- The judicial authority acting within the frame of criminal proceedings.

Different acts expressly establish that bank secrecy is not opposable to the investigating authorities in matters such as money laundering or corruption (ex: article 22 of Act 05/01 of 06/02/2005 relating to the fight against money laundering and the financing of terrorism).

## 11. Egypt / Legal analysis

### 1. Criminalization of conspiracy / criminal association

Article 48 of the Egyptian Criminal Code establishes that a criminal agreement exists whenever two or more persons unite to commit a certain felony or misdemeanour, or to arrange the works that prepare for or facilitate its commission.

An agreement shall be considered criminal, whether or not its purpose is admissible, if committing felonies or misdemeanours is within the methods that were noticed in fulfilling that purpose.

The Egyptian Criminal Code establishes that any person who participates in a criminal agreement, whether its purpose is to commit felonies or to adopt them as a means to fulfil the purpose of that agreement, shall be penalized for his or her mere participation in it.

## **2. Domestic legislation on mutual legal assistance in criminal matters**

---

The Judicial Instructions to the public prosecutors regulate letter rogatory matters. Article 1707 stipulates that “a letter rogatory is a manifestation of international cooperation among judicial authorities and States have been keen to organize a set of procedures governing letters rogatory and related matters in order to establish the rules of justice and maintain the independence thereof and the extension of sovereignty over its territory”.

Article 1709 of the same Instructions stipulates that “States provide their responses to letters rogatory, even in the absence of international conventions on such matter. A letter rogatory may include all the investigative work, including hearing witnesses, confrontations, assigning experts, seizure, inspection, and interrogation of accused persons. However, it is not allowed to request the imprisonment of the accused through a letter rogatory, as this procedure is undertaken only in the framework of extradition requests.”

The Egyptian legislation lacks a general provision regulating Mutual Legal Assistance matters, although there are provisions dealing with letters rogatory in a number of special penal laws, such as the Anti-Money Laundering Law, the Law on Combating Human Trafficking, the Law on Combating Illegal Migration and the Smuggling of Migrants, and the Law on Combating Terrorism. Therefore, the provisions stipulated in the Judicial Instructions to the prosecutors are considered to be the general framework regulating letters rogatory, in accordance with the applicable legal framework, including the international bilateral, territorial, and multilateral conventions, the penal laws, the executive regulations thereof, the decision on the establishment of the International Cooperation office and assigning the competence thereof, in addition to the periodical publications of the Prosecutor General.

The Egyptian Court of Cassation ruled that a witness residing abroad may be heard through an international letter rogatory if it is decided that the adjudication of the case might require action to be taken abroad, such as a declaration, the pleadings, the hearing of an accused or a witness, or interrogation.

## **3. Legal framework regarding asset recovery, confiscation and forfeiture**

---

The Egyptian Criminal Code provides for the seizure of funds and confiscation measures regarding the offences set forth in the aforementioned conventions, as well as for the possibility of executing confiscation foreign judgements in Egypt.

## Seizure of funds

Article 208 Bis (A) of the Egyptian Code of Criminal Procedure authorizes the Attorney General to issue an order to prevent the accused person from disposing of or managing his or her funds or to adopt other precautionary measures, conditional on the following:

- The offence for which the accused is charged shall be one of the offences of embezzlement, misappropriation or other diversion of property by a public official as provided for in the United Nations Convention against Corruption, or other offences related to funds owned by the State, public bodies and institutions, its subsidiaries, or other legal persons.
- There must be sufficient evidence regarding the seriousness of the accusation that has emerged from the investigation.
- The order shall be issued by the Attorney General or the Advocate General, in accordance with their respective competences.
- There must be a situation of necessity or urgency.

Moreover, the legislator has authorized the issuance of orders to prevent the accused, or their spouse or minor children from disposing of or managing their funds according to the previous conditions, provided that such funds were obtained from the crime subject of the investigation. In this regard, it is sufficient to have adequate evidence and the burden of proof to the contrary lies with the concerned person.

In all cases, the Attorney General shall submit the injunctive order to the competent criminal court within seven days at most from the date of issuance, requesting the Court to render a judgement to prevent the accused from disposing of or managing the funds. Otherwise, the order shall be considered null and void.

The judgment or the injunctive orders issued for prevention shall include the appointment of a syndic to manage the confiscated funds. Such syndic shall be appointed and their duties shall be determined in accordance with the rules provided for in Chapter I of the Minister of Justice Decree No. 2219 of 19 May 1999.

The Attorney-General or the First Attorney-General of the Appellate Prosecutors' Office may, as the case may be, replace a syndic for the management of the funds with the one prescribed in the injunctive order before presenting the matter to the Court. The public prosecution shall express an opinion regarding the choice of the appointed syndic by the Court when submitting the injunctive order thereto or when requesting the judgment to prevent the disposal or management of the funds. If the Court appoints a syndic to manage the funds, it is not permissible to replace him or her, unless the matter is presented thereto.

## Circular Letter of the Attorney General No. 5 of 1999, drawing the attention of the prosecutors to the following

**First:** The legislator extended the scope of the offences for which interim measures regarding funds may be adopted in order to ensure the execution of the penalty, either as a fine, restitution or compensation (Article 208 Bis "A"). They include the following offences:

- Embezzlement, misappropriation or other diversion of property by a public official as stipulated in the Fourth Section of the Second Book of the Penal Code.

- Offences related to public funds owned by the State, authorities, public bodies and institutions, its subsidiaries or other legal persons (ex: sabotage offences on production means or setting fire intentionally thereon; sabotaging, damaging or destroying public properties; destructing power lines; disrupting public transport; arson on public funds; robbery of tools and equipment used in public utilities; infringement on State property by any means.)
- The offences for which the law requires the Court to decide - on its own initiative - to refund the amounts or the value of the objects of the crime or compensate the victim (such as tax evasion offenses of all kinds, customs evasion, bringing narcotic drugs, which are the offences stated in the taxes, customs and drugs laws).

**Second:** The interim measures indicated in the prevention of disposal of funds or in the prohibition from managing such funds or any other precautionary procedures related to the funds are deemed sufficient to ensure the execution of such fine, restitution or compensation, such as closing a bank account, seizing or depositing amounts in order to enforce the judgments relating to the offence under investigation.

**Third:** The provisions of Article 208 bis of the Criminal Procedure Code regarding the right to appeal against the judgement of prohibition of disposal or management of funds, the procedures or the deadlines for submitting complaints, and the requirements set forth in this article regarding the procedures to lodge a complaint with the Court shall be taken into consideration.

**Fourth:** Interim measures shall not be resorted to, except for the crimes that have reached a specific level of seriousness which justifies such resort, and in case of necessity to adopt such measures, such as the possibility of disposing of funds that may be used or smuggled abroad.

The disposal of funds shall be sufficient to ensure that the fine, restitution or compensation shall be carried out without exceeding them.

**Fifth:** Measures of prohibition of disposal of or management of funds shall be terminated upon the issuance of the final judgement of acquittal without waiting for the judgement to be final and conclusive, or upon the full implementation of the financial penalties and the compensations ordered.

**Sixth:** The Supreme Public Prosecutors for State Security, the Higher Public Funds Prosecution, the Commercial and Financial Affairs Prosecution and the Tax Evasion Prosecution at the General Prosecutor's office are deemed competent in preparing the cases to be presented to the Attorney General in order to issue the interim measures prohibiting the disposal and management of funds, as well as the ones that must be submitted to the competent criminal court to issue a judgement with an interim measure, in addition to implementing the judgements and interim orders issued therein. Moreover, the aforementioned prosecutors are responsible for the conduct of the investigations into the offences prescribed in the first paragraph in accordance with the rules and decrees determining their respective competences.

The First Attorney-Generals of the Appellate Prosecution Offices, each within their respective territorial jurisdiction, are responsible for issuing interim orders of prohibition of disposal of and management of funds and for presenting the cases requiring the adoption of precautionary measures from the competent criminal court. They are also responsible for the execution of interim measures and judgements in the cases that are not prescribed in the first paragraph or if the Attorney General entrusts the department of confiscated funds in the office with the management.

Moreover, the department of confiscated funds is responsible for examining the cases delivered by the aforementioned prosecutors as in the first paragraph and presenting them to the Attorney General. It is also responsible for the cases for which the Attorney General orders the department to adopt all or part of the procedures related to the fund confiscation due to specific importance of the subject matter or of the parties thereof and to execute the judgements in these cases.

## Confiscation of funds in accordance with the Anti-Money Laundering Law No. 80 of the year 2002

The Egyptian legislator enacted Law No. 80 of 2002, amended by Law No. 36 of 2014 criminalizing and combating money laundering, in which money laundering is defined in Article 2 as follows: "A person shall be deemed a perpetrator of a money laundering offence, if he/she knows that the funds involved are the proceeds of a predicate offence and wilfully performs any of the following acts: 1- The conversion or transfer of proceeds, for the purpose of concealing the funds, disguising their true nature, source, location... 2- Acquiring, holding, disposing of, managing, keeping, exchanging, depositing, guaranteeing, investing the proceeds, or tampering with the value, or concealing or disguising the true nature of these proceeds..."

Article (3) of the aforementioned law provides for the establishment of an independent unit in the Central Bank of Egypt to combat money laundering, which assumes the functions stipulated in such law. In accordance with article 5.2, the Unit may request the investigation authorities to adopt provisional measures as stated in Articles 208 (bis) a, 208 (bis) b, and 208 (bis) c, of the Code of Criminal Procedure.

These are the protection procedures that shall be taken according to Egyptian Law. It is noticed that the aforementioned bodies are judicial authorities ensuring the protection against the abuse of power. Moreover, the order must be presented to the competent judicial authority to take a decision either of confiscation of funds or of refusal. Furthermore, the adjudicated person shall have the right to lodge a complaint with the competent court.

## Court Judgment of Confiscation

Confiscation is a financial penalty consisting in the dispossession of the property related to a crime. Confiscation may also relate to money and the objects whose manufacture, use, possession, sale or offer for sale is considered a crime in itself.

Confiscation is determined by a court judgement that shall be issued by the competent court.

In this context, we present some of the provisions of Egyptian law that govern the confiscation of the seized tools and equipment used in the commission of the crime, the materials that are considered as a crime penalized by the law, and the property or funds that derive from such offence.

The general legal basis for confiscation in Egyptian law is found in Article 30 of the Penal Code.

Article 30 of the Penal Code No. 58 of the year 1937 stipulates that "If a judge passes a penalty sentence in a felony or misdemeanour case, (s)he may rule that the objects seized as a result of the crime, and the weapons and equipment that were used or are likely to be used to commit a crime, be confiscated, without derogation to the rights of a third party of good faith..



In the event that the aforementioned objects are those whose manufacture, use, possession, sale or offer to sale is considered a crime in itself, they shall be confiscated in all cases, even if these objects are not owned by the accused person.”

Confiscation is also found in Article 14/2 of the Law No.80 2002 of Anti-Money Laundering: “The verdict shall in all cases ordain confiscation of the seized funds, or an additional fine equivalent to the value thereof, where such funds cannot be seized, or in case of disposal thereof to bona fide third parties”.

## 12. Israel / Legal analysis

### 1. Criminalization of conspiracy / criminal association

Article 1 Law 5763-2003 on criminal organizations defines “criminal organization” as an incorporated or unincorporated body of persons acting in an organized, systematic and continuous format for the commission of offenses which, under the laws of Israel, fall within the category of a felony or the offenses enumerated within the First Schedule, except offenses falling within the category of a felony enumerated within the Second Schedule; for this purpose, it is irrelevant:

1. Whether or not the members of the organization know the identity of the other members;
2. Whether the composition of the members of the group is fixed or changing;
3. whether the aforesaid offenses in the opening passage are committed or intended to be committed in Israel or abroad, provided however that they constitute offenses both under the laws of Israel and under the laws of the place in which they were committed, or that under Israeli law, the Israeli penal laws apply to them, even if they are not offenses under the laws of that place;
4. Whether the organization also commits lawful acts and whether it also acts for lawful purposes.

Article 5.24 Law 5737-1997 of the Criminal Code defines “felony” as an offense punishable with a penalty more severe than three years imprisonment.

Article 4 of the same law establishes the criminal liability of Body Corporate as follows:

1. A body corporate shall bear criminal liability under section 22, if the offence was committed by a person in the course of the performance of his or her function in the body corporate;
2. For an offence that requires proof of criminal intent or negligence, if – under the circumstances of the case and in the light of the position, authority, and responsibility of the person in the management of the affairs of the body corporate – the act by which (s)he committed the offence, his or her criminal intent or his or her negligence are to be deemed the act, the criminal intent or the negligence of the body corporate.

If the offence was committed by way of omission, when the obligation to perform is directly imposed on the body corporate, then it is immaterial whether the offence can or cannot be related also to a certain officer of the body corporate.

## 2. Domestic legislation on mutual legal assistance in criminal matters

### International Legal Assistance Law, 1998

The ILA law allows Israel to offer full and effective cooperation to authorities in foreign States. The law regulates legal assistance in both civil and criminal cases. In criminal cases, the ILA law permits assistance in both the investigative and judicial stages.

The ILA law and the regulations promulgated thereunder (International Legal Assistance Regulations, 1999), specifically relate to many forms of legal assistance, including taking witness statements, court testimony (including via **videoconference**), search and seizure operations, authentication of documents, and service of judicial documents.

The ILA law essentially permits all lawful actions relating to the investigation or prosecution of offenses, including in corruption cases. These regulations, like all the provisions concerning mutual legal assistance, are applicable to the offences established under the Palermo Convention.

The authority competent to receive requests for legal assistance is the Minister of Justice (Section 3) who may delegate his or her authority in this area. However, the authority to refuse a request is exclusive to the Minister of Justice. Thus, requests for legal assistance in cases involving investigations or prosecutions of criminal offenses are generally received by the Directorate of Courts, the office that deals with administrative matters on behalf of Israel's judiciary.

Requests received from the competent foreign judicial authorities will be reviewed and transferred for execution to an appropriate judicial authority, or, if the request involves investigative activities, will be transferred to the Legal Assistance Unit of the Israel Police (IP) for consideration and ultimate execution by an investigative unit. In most cases, requests are passed on to the Israel Police Legal Assistance Unit for execution.

The authority competent to issue requests for legal assistance on behalf of the State of Israel is the Attorney General who may delegate this authority to anyone who has received authority from the Minister of Justice to receive requests.

Such authority has been delegated to the Department of International Affairs of the Office of the State Attorney and, as a practice, the Department submits all requests for assistance under the Law on behalf of the State of Israel.

Thus, Israel indicated that it has the full capacity under its law to afford effective mutual legal assistance in matters relating to this Convention.

It must be stressed that the ILA Law is not an 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); the Israel Tax Authority; etc., possess under Israeli law and under applicable agreements and memoranda of understanding, the ability to provide information and other forms of assistance to similar bodies in other States.

The Israel Tax Authority has entered into more than 40 treaties for the avoidance of Double Taxation with foreign States permitting the exchange of information relating to tax matters in order to avoid double taxation of income and in order to prevent tax evasion.

Similarly, the Prevention Money Laundering Law (PMLL) specifically permits the IMPA to transmit information from its database to a foreign authority of its kind to assist it in the investigation of criminal offenses related to money laundering (Section 30(f) of the PMLL).

It should be noted that under Israeli law, the existence of a treaty is not required as a prerequisite to the provision of legal assistance.

Assistance may be provided to any State, and to certain designated international bodies, when the request is submitted by an authority competent to do so. However, in order to facilitate the provision and obtainment of legal assistance in criminal matters, the State of Israel has entered into legal assistance treaties with a large number of States.

### 3. Legal framework regarding asset recovery, confiscation and forfeiture

---

Freezing, seizing and confiscation provisions are mainly contained in the Criminal Procedure Ordinance (Arrest and Search) and the PMLL.

Value-based confiscation is possible for certain offences under the PMLL and Dangerous Drugs Ordinance. In addition, Section 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 (s)he cannot be located, and therefore an indictment cannot be filed against him or her; or if the property was discovered after the conviction.

The court may grant a provisional forfeiture order prior to filing an indictment or a request for forfeiture in civil proceedings, if it is satisfied that there are reasonable grounds to assume that the property is likely to disappear or that actions are likely to prevent the subsequent forfeiture of such property. Israeli legislation provides extensive protection to *bona fide* third parties. Israel has considered the adoption of measures in accordance with article 31, paragraph 8, through the preparation of a draft bill which was under consultation at the time of review.

Israeli law allows investigative authorities to overcome confidentiality considerations and to obtain the requisite information from banks through a court order as provided for in Section 43 of the Criminal Procedure Law.

## **4. Concept of “proceeds of crime” (in order to include any property derived from or obtained, directly or indirectly, through the commission of a criminal offence)**

It is not only a criminal offense in Israel to convert and transfer prohibited property or to conceal the illicit origin of the property, but also to hold or to use such property, knowing its character. According to Section 4 of the Prohibition on Money Laundering Law, 2000, a person performing any property transaction knowing that it is “prohibited property”, for the purpose of that Section, is liable to up to seven years imprisonment or a heavy fine.

The types of property to which the section applies - provided that the value of the property is 150,000 NIS (approx. 43,365 USD) or more - are: works of art, Judaica and religious objects, vehicles, including ships and aircraft; precious metals and gems, securities, immovable property, antiques, rugs, and money, above the amount of 500,000 NIS (approx. 142,000 USD).

For the purposes of the section it is sufficient to prove that the person who performed the act knew that it was prohibited property, even if they did not know to which specific offense the property was connected (PMLL, Section 5).

Additionally, a person who maliciously receives, assumes control of or deals with money, securities or any other asset, knowing it was stolen, procured by blackmail, or obtained or was being used during a felony, is liable to up to seven years of imprisonment. However, the person may be tried by the same court that tries the person who committed the felony and is liable to the same penalty as that person (Section 411 of the Penal Law, 1977).

A person who receives and assumes control of money, securities or any other asset, knowing that it was taken, obtained, converted, or dealt with by a misdemeanor is liable to the same penalty as the person who committed the misdemeanor (Section 412 of the Penal Law).

Furthermore, a person who is in possession of money, a security or another asset, in respect of which there is a reasonable suspicion that it was stolen, and the person is not able to establish to the Court's satisfaction that (s)he acquired possession of it lawfully, will be liable to six months imprisonment (Section 413 of the Penal Law).

## **5. Extent of the confiscation of proceeds of crime (in order to include confiscation of property the value of which corresponds to that of such proceeds)**

Seizure and forfeiture provisions are mainly contained in the Criminal Procedure Ordinance and PMLL. Value-based confiscation is possible for certain offences under the PMLL and Dangerous Drugs Ordinance. In addition, Section 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 (s)he cannot be located, and therefore an indictment cannot be filed against him or her, or if the property was discovered after the conviction.

The court may grant a provisional forfeiture order prior to filing an indictment or a request for forfeiture in civil proceedings, if it is satisfied that there are reasonable grounds to assume that the property is likely to disappear or that actions are likely to prevent the subsequent forfeiture of such property. Israeli legislation provides extensive protection to *bona fide* third parties. Israel has considered the adoption of measures in accordance with article 31, paragraph 8, through the preparation of a draft bill which was under consultation at the time of review.

## **6. Extent of the confiscation of proceeds of crime (in order to include the confiscation of property, equipment or other instrumentalities used in or destined for use in criminal offences)**

The main statute through which the proceeds of crime derived from offenses or property the value of which corresponds to that of such proceeds may be forfeited is the PMLL.

In addition, funds may be forfeited according to the Combating Criminal Organizations Law, 2003 (CCOL).

Forfeiture under these statutes is mandatory unless the court concludes that there are special grounds not to do so.

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 to do so on special grounds that it shall specify - the forfeiture of property of the defendant equal to the value of 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 that enabled the commission of the offense or was intended for that purpose;
4. Property that is the profit of the offense.

Under Section 21(a) of the PMLL, the forfeiture of property of equivalent value is possible for certain offenses because the provision is value-based and does not require forfeiture of actual proceeds.

Value-based confiscation is also possible under the Dangerous Drugs Ordinance. Property of the convicted person which may be forfeited includes any property found in his or her possession, control or account (Section 21(b) of the PMLL).

According to Section 21(c) of the PMLL, if the property found is insufficient to implement the forfeiture 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 (s)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 (s)he was convicted, and with regard to which the forfeiture order was made cannot be the subject of forfeiture.

Under Section 21(d) of the PMLL, the Court may not order the forfeiture 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.

The CCOL enables the conviction-based forfeiture for criminal offenses according to that law. Section 5 of the CCOL provides that when a person has been convicted of an offense under Sections 2, 3 (offense within the framework of a criminal organization -aggravating circumstance) or 4 (public servant aiding a criminal organization), the Court shall order, unless it decides not to do so based on special circumstances that it shall specify, that in addition to any penalty, the following property shall be forfeited:

1. Property connected to the offense (as detailed in paragraphs 1-4 above regarding money laundering) found in the possession of the convicted person, under his or her control or in his or her account;
2. Property of the convicted person which is equal in value to the property connected to the offense.

Sections 6, 7 and 8 of the CCOL provide for discretionary forfeiture. According to Section 6, if there is no property which meets the requirements of Section 5, the Court may issue a forfeiture order relating to the property of another person, when the defendant purchased or was transferred by the defendant to that person without consideration. The Court will not issue such an order if the relevant assets became the property of the other person prior to the commission of the offense, unless the payment or transfer was made with the purpose of preventing the forfeiture. Furthermore, Section 7 provides that if a person was convicted of offenses under Sections 2, 3 or 4 of the Law, the Court may order forfeiture of property connected to the offense even if that property is not in the possession, control or bank account of the defendant.

Forfeiture of a bribe or its proceeds when they have been transferred to a non-*bona fide* third party is possible in two situations:

- Section 39(b) of the Criminal Procedure Ordinance grants the courts the discretion to forfeit an object if it was given by its owner (or person who has legal possession of it) as payment for the commission of an offense of which the defendant was convicted, or as a means of committing it, or as payment for the commission of another offense that is related to the offense of which the defendant was convicted, or as a means of committing the other offense, even if the defendant did not commit the other offense and even if the defendant did not intend to commit it.
- When the transfer of the object or its ownership from the defendant to a third party was fictitious. For example, in *Cr.C. (Nazareth) 3689/02 State of Israel v. Bolus*, the Court discussed a request to confiscate a car and held as follows: "The question of clarifying the right of a person who claims to be the owner of the object is clearly a civil matter. While determining whether the aforesaid right has been established, and to what extent, the Court will decide based upon the standards in a civil case."

In *Cr.A. 1982/93 Bank Leumi v. State of Israel* the Court stated: "It has been held more than once, that a car's registration in the name of John Doe does not establish an "immunity" from confiscation, if it is proven that the registration was made for the sake of appearances only, and the true owner of the vehicle is the offender, who used the car for committing a criminal offense."

Section 39(c) of the Criminal Procedure Ordinance provides that the forfeiture order can be included as part of the sentence and can be issued in response to a petition filed by the prosecution, even after issuing the sentence (Cr.A. 5905/04 *Salomon v. State of Israel*).

As a general rule, in deciding whether to forfeit, the Court is guided by the principle of restitution: a wrongdoer should not be rewarded, and therefore, if the grounds enumerated in the Section are met, the Court will usually order forfeiture.

## Civil confiscation

Section 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 (s)he cannot be located, and therefore an indictment cannot be filed against him or her; or if the property was discovered after the conviction.

Property that can be confiscated includes property on which the offense was committed, property used in the commission of the offense, property which enabled the commission of the offense or was intended for that purpose, and property obtained directly or indirectly as remuneration for the offense, or in consequence of commission of the offense, or which was intended for that purpose. The confiscation in civil proceedings is also carried out in accordance with Section 36B(a) of the Dangerous Drugs Ordinance, 1973.

Section 14 of the CCOL enables confiscation of property in civil proceedings without prior criminal proceedings if one of the following conditions has been fulfilled:

1. The property is connected with an offense within the framework of a criminal organization - aggravating circumstance or a public official aiding a criminal organization;
2. The property is that of a criminal organization.

According to the CCOL, "property connected with an offense" is defined as property satisfying one of the following:

1. The offense was committed in the property, it was used for the commission of the offense, it enabled the commission of the offense or was intended for the commission of the offense;
2. It was directly or indirectly obtained as remuneration for the commission of the offense, intended to be the remuneration for the commission of the offense, or obtained in consequence of the commission of the offense.

## **7. Extent of the confiscation of proceeds of crime in order to include the property in which the proceeds of crime have been converted**

---

(See point 6).



## **8.- Definition of the scope of “property” (in order to include all assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets)**

(See point 6).

## **9. Possibility of shifting to the defendant the burden of proof of the lawful origin of alleged proceeds of crime or other property liable to confiscation**

The Dangerous Drugs Ordinance, 1973 establishes presumptions in order to shift to the defendant the burden of proof of the lawful origin of alleged proceeds of crime. According to article 31 “where the court has established (...) that a sentenced person is a dealer in drugs:

- (a) any property of that person, and any property of his or her spouse and his or her children under twenty one years of age, and any property of another person the acquisition of which by the other person was financed by the sentenced person or which was transferred to the other person by the sentenced person without consideration shall be regarded as property of the sentenced person obtained by a drug transaction offence unless the person proves -
  - (aa) that the property was obtained by legal means or
  - (bb) that the property came into his or her hands or the hands of its owner not later than eight years before the filing of the information concerning the offence for which (s)he was sentenced;
- (b) any property found in the possession or in an account of the sentenced person shall be regarded as his or her property unless (s)he proves that it belongs to another person who is not one of these specified in paragraph (a).”.

Regarding civil forfeiture, the burden of proof is less than that of “beyond a reasonable doubt.” Section 22 of the PMLL, which provides for the confiscation of property in civil proceedings, only requires proof that the property was obtained illegally and that the suspect is not physically in Israel or cannot be found, or that the property was discovered after the conviction.

In C.A. 9796/03 Justice Cheshin, *in obiter*, stated that “forfeiture of property under section 22 demands a burden of proof as required in civil proceedings, however the quantity and weight of the evidence is to go beyond that required in normal civil law” (Para. 49).

## **10. Elimination of barriers related to bank secrecy legislation that can result in impediments for investigation and international cooperation**

Israeli law allows investigative authorities to overcome confidentiality considerations and to obtain the requisite information from banks through a court order as provided for in Section 43 of the Criminal Procedure Law.

## 13. Jordan / Legal analysis

### **1. Criminalization of conspiracy / criminal association**

No specific / No available domestic law on this matter

### **2. Domestic legislation on mutual legal assistance in criminal matters**

No specific / No available domestic law on this matter

### **3. Legal framework regarding asset recovery, confiscation and forfeiture**

No specific / No available domestic law on this matter

### **4. Concept of “proceeds of crime” (in order to include any property derived from or obtained, directly or indirectly, through the commission of a criminal offence)**

No specific / No available domestic law on this matter

### **5. Extent of the confiscation of proceeds of crime (in order to include confiscation of property the value of which corresponds to that of such proceeds)**

No specific / No available domestic law on this matter

### **6. Extent of the confiscation of proceeds of crime (in order to include the confiscation of property, equipment or other instrumentalities used in or destined for use in criminal offences)**

No specific / No available domestic law on this matter

### **7. Extent of the confiscation of proceeds of crime in order to include the property in which the proceeds of crime have been converted**

No specific / No available domestic law on this matter

## **8. Definition of the scope of “property” (in order to include all assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets)**

No specific / No available domestic law on this matter

## **9. Possibility of shifting to the defendant the burden of proof of the lawful origin of alleged proceeds of crime or other property liable to confiscation**

No specific / No available domestic law on this matter

## **10. Elimination of barriers related to bank secrecy legislation that can result in impediments for investigation and international cooperation**

No specific / No available domestic law on this matter

## **14. Lebanon / Legal analysis**

### **1. Criminalization of conspiracy / criminal association**

Article 270 of the Lebanese Criminal Code establishes that any agreement concluded between two or more persons to commit a felony by specific means shall be termed a conspiracy.

Article 335 of the Lebanese Criminal Code establishes that if two or more persons establish an association or enter into a written or oral agreement to commit felonies against persons or property, or to undermine the authority of the State, its prestige or its civil, military, financial or economic institutions, they shall be punishable by fixed-term hard labour. The term of this penalty shall be no less than 10 years if the offenders' acts were directed against the lives of other persons or those of employees of public institutions and administrations.

Additionally, article 336 of the Lebanese Criminal Code establishes that the members of a group of three or more persons operating on public highways and in rural areas as an armed band with a view to robbing passers-by, attacking persons or property, or committing any other act of robbery, shall be liable to fixed-term hard labour for a minimum term of seven years. They shall be sentenced to hard labour for life if they committed one of the above-mentioned acts. The death penalty shall be imposed on any member who, in executing a felony, kills or attempts to kill the victims or subjects them to torture or acts of barbarity.

The Lebanese Criminal Code does not require that the involved person actually take action in carrying out the agreement or the objective of the criminal group.

## **2. Domestic legislation on mutual legal assistance in criminal matters**

No specific / No available domestic law on this matter

## **3. Legal framework regarding asset recovery, confiscation and forfeiture**

No specific / No available domestic law on this matter

## **4. Concept of “proceeds of crime” (in order to include any property derived from or obtained, directly or indirectly, through the commission of a criminal offence)**

No specific / No available domestic law on this matter

## **5. Extent of the confiscation of proceeds of crime (in order to include confiscation of property the value of which corresponds to that of such proceeds)**

No specific / No available domestic law on this matter

## **6. Extent of the confiscation of proceeds of crime (in order to include the confiscation of property, equipment or other instrumentalities used in or destined for use in criminal offences)**

No specific / No available domestic law on this matter

## **7. Extent of the confiscation of proceeds of crime in order to include the property in which the proceeds of crime have been converted**

No specific / No available domestic law on this matter

## **8. Definition of the scope of “property” (in order to include all assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets)**

No specific / No available domestic law on this matter

## **9. Possibility of shifting to the defendant the burden of proof of the lawful origin of alleged proceeds of crime or other property liable to confiscation**

No specific / No available domestic law on this matter

## **10. Elimination of barriers related to bank secrecy legislation that can result in impediments for investigation and international cooperation**

Law 318 / 2001 on the fight against money-laundering has kept the Lebanese banking sector away from money-laundering operations, and preserved, on the other hand, banking secrecy on funds deposited in banks in Lebanon. This law allowed the lifting of the name of Lebanon from the list of countries not cooperating with the FATF.

Additionally, Law 32/2008 increased the powers of the Special Investigation Commission established under the aforementioned Law No. 318/2001 on the fight against money laundering, by granting it exclusively the prerogative of blocking accounts and lifting bank secrecy under the conventions and laws for the fight against corruption.

More recently with regard to the exchange of tax information on demand, Lebanon can already exchange with foreign countries that have signed a bilateral agreement with Lebanon, while waiting for the new government to sign the convention (Multilateral Agreement on Mutual Administrative Assistance in Tax Matters (Mac)) which establishes the standard for the exchange of information on request with the signatory countries. In the case of a request, the banks must transfer the information of the customer concerned to the Special Commission of Inquiry (CSI), without seeking his or her tax residence.

## **15. Morocco / Legal analysis**

### **Criminal Code of Morocco**

Article 293 establishes that “any association or agreement, regardless of their duration and number of members, formed or established with a view to prepare or commit crimes against people or property, constitutes the crimes of criminal association, which exists solely because of the voluntary decision to act in concert”.

Article 294 establishes that “any individual belonging to an association or agreement as provided for in the previous article is punished with five to ten years of imprisonment.

The penalty increases to ten to twenty years for the heads of the association or agreement, or for those who have been in any position of command”.

The Criminal Code of Morocco does not require that the involved person actually take action in carrying out the agreement or the objective of the criminal group.

Pursuant to article 129 of the Criminal code, a person is considered an accomplice of a felony, including participation in a criminal association, or a misdemeanour, without direct participation in the offence, if they have:

1. Provoked this action or given instructions to commit it through donations, threats, abuse of authority or power, machinations or guilty artifices;
2. Provided weapons, instruments or any other means serving the action, with the knowledge that they would be used for this purpose;
3. Wilfully aided or abetted the perpetrator or perpetrators in the preparation or facilitation of the offence;
4. Wilfully provided accommodation, place of retreat, or meeting place to one or several culprits committing robbery or violence against State security, public peace, persons or property.

## **2. Domestic legislation on mutual legal assistance in criminal matters**

---

Morocco has extensively regulated international judicial cooperation at internal level. The Code of criminal procedure dedicates a whole Title (Title III: On judicial relations with foreign authorities) to this matter, and is divided into the 6 following chapters:

- Chapter I: General provisions
- Chapter II: Letters rogatory
- Chapter III: Recognition of certain foreign criminal judgments
- Chapter IV: Extradition
- Chapter V: Hearing of witnesses
- Chapter VI: Denunciation

## **3. Legal framework regarding asset recovery, confiscation and forfeiture**

---

Confiscation is a measure regulated mainly by the Moroccan criminal code:

-In article 36, which defines ancillary penalties, including partial confiscation:

“Ancillary penalties are: 1° Legal prohibition; 2° Deprivation of civil rights; 3° Suspension of the exercise of some civil, political, and family rights; 4° Loss or suspension of the right to the pensions provided by the State and other public institutions. However, this loss cannot apply to the persons providing alimony to one or more children, subject to the provisions established in pension regimes in this regard. 5° The partial confiscation of the property belonging to the sentenced person, regardless of the confiscation established as a preventive measure in accordance with article 89; 6° The dissolution of a legal person; 7° The publication of the conviction”.

- In article 89, where confiscation is decided as a preventive measure: “The confiscation of objects and instruments whose production, use, carrying, possession or selling constitutes an offence is ordered as a preventive measure, even if they belong to a third person and no conviction has been issued”.

- Total confiscation is a measure provided for in the Criminal code, in article 218-4-1, in the following terms:

“In case of conviction for terrorist financing or a terrorist offence, the total confiscation of the objects, instruments and property used or destined for use in criminal offences, its proceeds, or equivalent value, shall be issued, subject to the rights of *bona fide* third parties”.

Furthermore, the Code of criminal procedure provides some examples of confiscation in several articles (arts. 57, 59, 99-107, 238, 246, 362, 449, 595-1, and 595-5). The same holds true regarding the Act 43-05 on the fight against money laundering (arts. 19 and 37) and other special texts, such as:

- Act n°31-08 on the protection of consumers (arts. 170 and 174).
- Act n°06-99 on freedom of pricing and competition (Arts. 36, 65, 73, and 88).
- Dahir of 22 May 1974 on the suppression of drug addiction and the prevention of drug addiction (arts. 10 and 11); and
- The Code of customs and indirect taxes (Arts. 42-1, 168, 213, 219, 229bis, 232, 234...).

#### **4. Concept of “proceeds of crime” (in order to include any property derived from or obtained, directly or indirectly, through the commission of a criminal offence)**

The Moroccan legislature defined the concept of “proceeds of crime” in the Criminal Code. Indeed, article 218-4-2 states the following:

“For the application of the provisions contained in articles 218-4 and 218-4-1 of this act, “proceeds” shall mean any property derived from, directly or indirectly, one of the offences defined in the above-mentioned articles;

#### **5. Extent of the confiscation of proceeds of crime (in order to include confiscation of property the value of which corresponds to that of such proceeds)**

The Criminal Code does mention that the confiscation of the proceeds of crime includes the confiscation of property whose value corresponds to that of such proceeds (article 218-4-1).

#### **6. Extent of the confiscation of proceeds of crime (in order to include the confiscation of property, equipment or other instrumentalities used in or destined for use in criminal offences)**

The Criminal Code does mention that the confiscation of proceeds of crime may include the confiscation of property, equipment or other instrumentalities used in or destined for use in criminal offences. Article 89 states the following:

“The confiscation of objects and instruments whose production, use, carrying, possession or selling constitutes an offence is ordered as a preventive measure, even if they belong to a third person and no conviction has been issued”.

Similarly, article 574-5 of the Criminal Code states that the persons convicted of money laundering incur one or several of the following ancillary penalties: The total or partial confiscation of property, subject to the rights of *bona fide* third parties. This confiscation is always issued in case of conviction.

## **7. Extent of the confiscation of proceeds of crime in order to include the property in which the proceeds of crime have been converted**

---

See point 4.

## **8. Definition of the scope of “property” (in order to include all assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets)**

---

The Moroccan legislature defined the concept of “property” in the Criminal code. Indeed, article 218-4-2 states the following:

“Property: all types of assets, whether corporeal or incorporeal, movable or immovable, divided or undivided, as well as all legal documents or instruments, in any form, including electronic or digital, evidencing title to or interest in such assets.”

Similarly, article 1 of Act 43-05 on the fight against money laundering defines the concept of “property” as any type of funds or assets, whether corporeal or incorporeal, movable or immovable, divided or undivided, as well as all legal documents or instruments, in any form, including electronic or digital, evidencing title to or interest in such assets.

## **9. Possibility of shifting to the defendant the burden of proof of the lawful origin of alleged proceeds of crime or other property liable to confiscation**

---

No specific / No available domestic law on this matter

## **10. Elimination of barriers related to bank secrecy legislation that can result in impediments for investigation and international cooperation**

---

Article 595-4 of the Code of criminal procedure obliges banking institutions (banks subjected to the provisions of Dahir establishing the Act n°1-93-147 of 9 July 1993 on the exercise of the activity and monitoring of credit institutions, as well as off shore banks, which are regulated by Act n°58-90 on off shore places



promulgated by Dahir n°1-93-131 of 26 February 1992) to provide the information requested by the public prosecutor during a judicial inquiry, in order to obtain information on the operations or movements of funds suspected of being related to terrorist financing.

Banks cannot invoke professional secrecy before the above-mentioned authorities or Bank Al-Maghrib.

## 16. Tunisia / Legal analysis

### 1. Criminalization of conspiracy / criminal association

Conspiracy is governed by the provisions of Title I, Chapter IV, Section III of the Penal Code (Articles 131 to 135). The Tunisian legislator considers conspiracy as an offense against the public peace (Article 131). Anyone who has affiliated with a group or has participated in a conspiracy is punished with imprisonment of six years. The punishment shall be 12 years for the heads of the said group and for the employment of one or more children under the age of eighteen years (Article 132). Anyone, who knowingly and wilfully provided a meeting place or a pecuniary contribution to the members of a group of perpetrators, or has helped them to dispose of the proceeds of their misdeeds or provided them with housing, is punished with imprisonment of six years (article 133).

These provisions are general and cover all types of crimes, essentially serious crimes. The organic law No. 2015-26 of 7 August 2015 on the fight against terrorism and suppression of money laundering refers to the term of “agreement” in articles 3, 8, 9, 10, 31, 32, 34, 35 and 36.

The legislation requires, as mentioned above, the person to take action in carrying out the agreement or the objective of an organization.

The organic law No. 2015-26 of 7 August 2015 on the fight against terrorism and suppression of money laundering criminalizes all conducts to take an active part in the criminal activities of the organized criminal group. Thus, any person who joins, voluntarily, inside or outside the territory of the Republic, whether in a terrorist organization or arrangement in connection with terrorist offenses, or is trained inside or outside the territory of the Republic, is guilty of one of the terrorist offenses provided for in this Law (Article 31 and 32). Likewise, anyone who uses the territory of the Republic or territory of a foreign State to recruit or train a person or a group of people, or anyone who uses the territory of the Republic to commit one of the terrorist offences provided for in this Law against another State or its citizens, or to carry out preparatory acts... is guilty of a terrorist offence (Article 33).

The organic law on the fight against terrorism and suppression of money laundering criminalizes all conducts to take an active part in other non-criminal activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the criminal aim. In any case, the cited law penalizes the arrangement, help and intermediation, as well as the proxy of materials, equipment, uniforms, means of transport, provision, electronic sites, documents or images for the benefit of an organization or terrorist agreement, and also providing skills or experts at the service of an organization or a terrorist of persons involved in the terrorist offences (Article 34).

The concept of “organized criminal group” is defined in Article 3 of organic law on the fight against terrorism and suppression of money laundering. This article stipulates that an organization means “a structured group composed of three or more persons, existing for a period of time and operating in concert, with the aim of committing any of the offenses provided for in this law on territory or abroad”.

## **2. Domestic legislation on mutual legal assistance in criminal matters**

---

Mutual legal assistance is covered in Articles 331 to 335 of the Code of Criminal Procedure. Article 331 of this Code constitutes the general framework organizing mutual legal assistance. It stipulates that “with respect to non-political prosecutions in a foreign country, letters rogatory issued by a foreign authority shall be received through diplomatic channels and transmitted to the State Secretariat for Justice in the forms described in Article 317 [...]. In cases of emergency, they may be exchanged directly between the legal authorities of the two States, as provided for in Article 325.”

## **3. Legal framework regarding asset recovery, confiscation and forfeiture**

---

According to the Article 5 of the Penal Code, the confiscation of property is an accessory penalty to a criminal conviction. The texts which provide for confiscation are scattered. Thus, confiscation is possible regarding the crimes of corruption (Article 94 of Penal Code), abuse of authority (Article 115 of Penal Code) and illegitimate appropriations (Article 302 of Penal Code), as well as in customs offenses (essentially Article 301 of the Customs Code). Confiscation is also cited in Organic Law No. 2016-61 of 3 August 2016 on the Prevention and Combating of Trafficking in Persons (Articles 17 and 31).

The law allows the judge to order the confiscation of the instruments used to commit a terrorist offense and money laundering and those intended to be used to commit the offense. Indeed, freezing of assets and confiscation of property and proceeds of crime are provided for in details in organic law No. 2015-26 of 7 August 2015 on the fight against terrorism and suppression of money laundering. The cited Law distinguishes between confiscation and freezing of assets. According to Article 3, confiscation means the total or partial deprivation of property based on a judiciary decision, while freezing of assets means the temporary prohibition on the alienation, conversion, disposition of property, transmission or any other form of management, or sequestration or provisional control of those assets based on a judiciary decision or on decision of the competent administrative authority.

Provisions on confiscation in the organic law No. 2015-26 of 7 August 2015 on the fight against terrorism and suppression of money laundering:

- Article 44: The examining magistrate shall order the confiscation of weapons, ammunition, explosives and other materials, tools, equipment and documents that serve or are used to commit the offense or facilitate its commission.

(S)he shall also order the confiscation of objects whose manufacture, possession, use or marketing is an offense.

Article 51: The Court orders the confiscation of property used to commit the offense or to facilitate its commission, or if it has been proved that it results directly or indirectly from the offense, even transferred to other assets, whether they remain unaltered or are converted into other property, without prejudice to the rights of third parties acquired in good faith.

If the actual seizure has not been made possible, a fine of forfeiture shall be imposed, but not less than the value of the property to which the offense relates.

The Court also orders the confiscation of weapons, ammunition, explosives and other materials, tools, equipment used to commit the offense or to facilitate its commission, as well as any objects whose manufacture, possession, use or marketing is an offense.

Article 52: The Court may order the confiscation of all or a portion of any movable or immovable property and financial assets belonging to a convicted person, if there are serious charges regarding the use of said property and financial assets to meet the requirements of persons, organizations, or activities connected with a terrorist offense.

Article 97: The judicial authority is in charge of ordering the confiscation of assets and proceeds generated directly or indirectly by the offense of money laundering. The court must pronounce the confiscation of the money for the benefit of the State. The confiscated money is obligatorily placed in a special account opened in the registers of the Central Bank on behalf of the General Treasury of Tunisia.

Provisions on the freezing of assets in the Organic Law No. 2015-26 of 7 August 2015 on the Fight against Terrorism and the Suppression of Money Laundering:

Article 45: The investigating judge may order the freezing of movable or immovable property and the financial assets of the accused *ex officio* or at the request of the public prosecutor, and may establish modalities for their administration, or order, where appropriate, their sequestration.

Article 103: In the context of the respect of the international commitments of Tunisia, the Tunisian Commission for the Fight against Terrorism shall decide whether to freeze the property of the persons or organizations whose connection with terrorist crimes is established by the said Commission or by the competent international organizations.

Article 105: Anyone affected by a decision of freezing or his or her representative may request the Tunisian Commission for the Fight against Terrorism to order the lifting of the freezing if (s)he establishes that the said decision was taken against him or her by mistake.

The Commission must respond to the request within a maximum period of ten days from the date of its submission. In case of refusal, the decision may be appealed to the administrative court.

If the freezing is based on the resolution of a competent international organization, the Tunisian Commission for the Fight against Terrorism cannot decide the lifting of the freezing without the permission of the competent international organization.

Article 127: The Tunisian Financial Analysis Commission may provisionally order the declarant, by a written decision, to freeze the funds that are the object of the declaration and deposit them in a temporary account.

The declarant shall refrain from informing the concerned person about the declaration to which (s)he was subject and about the resulting measures.

Article 133: The prosecutor general at the Court of Appeal of Tunis may, even in the absence of a declaration concerning a suspicious transaction, request the President of the Court of First Instance to issue an order to freeze assets belonging to natural or legal persons suspected of being linked to persons or organizations or activities in connection with the offenses provided for in this Law, even if they are not committed on the territory of the Republic.

Article 134: The freezing decision provided for in the preceding article shall be taken by the President of the Court of First Instance in accordance with the procedure on orders on request. The decision is not subject to appeal.

#### **4. Concept of “proceeds of crime” (in order to include any property derived from or obtained, directly or indirectly, through the commission of a criminal offence)**

---

According to Organic Law on the Fight against Terrorism and the Suppression of Money Laundering (essentially articles 51 and 97), the proceeds of crime include any property generated directly or indirectly by a criminal offense. The same holds true for the legislation related to the Prevention and Combating of Trafficking in Persons. Thus, the definition is broad and includes the indirect proceeds of an offense.

#### **5. Extent of the confiscation of proceeds of crime (in order to include confiscation of property the value of which corresponds to that of such proceeds)**

---

Article 28 of Penal Code clarifies that special confiscation applies to items used or intended for use in committing the offense and to the proceeds, regardless of who owns them. Confiscation may be ordered by the judge in the event of a conviction. If the items ordered and confiscated have not been seized or are not handed over, the judgment fixes the value of such items for purposes of civil imprisonment. The rights of third parties are protected, on the express condition they have acted in good faith.

#### **6. Extent of the confiscation of proceeds of crime (in order to include the confiscation of property, equipment or other instrumentalities used in or destined for use in criminal offences)**

---

According to the articles 44 and 51 of Organic Law No. 2015-26 of 7 August 2015 on the Fight against Terrorism and the Suppression of Money Laundering, it is possible to confiscate any property, equipment or instrumentalities used in or destined for use in criminal offences. The texts stipulate that the investigating

judge or the court order the confiscation of weapons, ammunition, explosives and other materials, tools, equipment used to commit the offense or facilitate its commission.

## **7. Extent of the confiscation of proceeds of crime in order to include the property in which the proceeds of crime have been converted.**

---

According to article 51 of Organic Law No. 2015-26 on the Fight against Terrorism and the Suppression of Money Laundering and to article 17 of Organic Law No. 2016-61 on the Prevention of and the Fight against Human Trafficking, it is possible to confiscate property even transferred to other assets, whether they remain unaltered or are converted into other property.

## **8. Definition of the scope of “property” (in order to include all assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets)**

---

The legislator stated that the judge may order the confiscation of movable or immovable property of the accused and his or her financial assets (Articles 45 and 52 of organic law No. 2015-26 and Article 17 of Organic Law No. 2016-61). The term “property” defined in article 3 of organic law No. 2015-26 encompasses assets obtained by any means whatsoever their nature, whether tangible or intangible, movable or immovable, revenues and profits, as well as titles, documents and legal, physical or electronic acts. The scope of property is therefore very broad.

## **9. Possibility of shifting to the defendant the burden of proof of the lawful origin of alleged proceeds of crime or other property liable to confiscation**

---

It should be noted that Tunisian Law does not permit the reversal of the burden of proof as it would contradict the principle of the presumption of innocence (Article 27 of Constitution). The proof of the origin of the assets may result from a set of objective circumstances, in particular the behavior of the defendants. According to Article 92 of organic law No. 2015-26, the offense of money laundering is proved by the existence of sufficient presumptions and evidence on the illegal origin of the money laundered. It should also be noted that the previous legislation was not clear about the burden of proof of the origin of proceeds or crime or property. However, the legislator states that any person affected by a decision to freeze may apply to the Tunisian Commission for the Fight against Terrorism to order the lifting of the freezing on his or her property if (s)he considers that it was made against him or her by mistake (Article 105).

## **10. Elimination of barriers related to bank secrecy legislation that can result in impediments for investigation and international cooperation**

---

Professional or banking secrecy cannot be invoked as a ground to refuse a request for mutual assistance. The judge may obtain any information from all institutions and businesses upon a simple, unappealable

request. Similarly, bank documents are transmitted to the requesting States at their request, in connection with international letters rogatory.

Article 121 (2) of organic law No. 2015-26 of 7 August 2015 on the fight against terrorism and suppression of money laundering provides that: "Professional secrecy is not opposable to the Tunisian Financial Analysis Commission and the depositaries of such secrets may be prosecuted for their disclosure". Article 122 stipulates that: "The Tunisian Financial Analysis Commission may appeal from its foreign counterparts to which it is bound by memorandums of agreement or belonging to the international cooperation groups in the field of the fight against money laundering and financing of terrorism and speed up the exchange of financial information with them."

## 17. Palestine / Legal analysis

### 1. Criminalization of conspiracy / criminal association

No specific / No available domestic law on this matter

### 2. Domestic legislation on mutual legal assistance in criminal matters

No specific / No available domestic law on this matter

### 3. Legal framework regarding asset recovery, confiscation and forfeiture

No specific / No available domestic law on this matter

### 4. Concept of "proceeds of crime" (in order to include any property derived from or obtained, directly or indirectly, through the commission of a criminal offence)

No specific / No available domestic law on this matter

### 5. Extent of the confiscation of proceeds of crime (in order to include confiscation of property the value of which corresponds to that of such proceeds)

No specific / No available domestic law on this matter

## **6. Extent of the confiscation of proceeds of crime (in order to include the confiscation of property, equipment or other instrumentalities used in or destined for use in criminal offences)**

---

No specific / No available domestic law on this matter

## **7. Extent of the confiscation of proceeds of crime in order to include the property in which the proceeds of crime have been converted**

---

No specific / No available domestic law on this matter

## **8. Definition of the scope of “property” (in order to include all assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets)**

---

No specific / No available domestic law on this matter

## **9. Possibility of shifting to the defendant the burden of proof of the lawful origin of alleged proceeds of crime or other property liable to confiscation**

---

No specific / No available domestic law on this matter

## **10. Elimination of barriers related to bank secrecy legislation that can result in impediments for investigation and international cooperation**

---

No specific / No available domestic law on this matter

## Part two / Gaps analysis

### Conclusions and recommendations for the euromed SPCs

1. Consideration of the Transnational Organized Crime Convention as a legal basis for mutual legal assistance against every kind of transnational organised crime.
2. Consideration of the Organized Crime Convention to interpret the scope of existing bilateral agreements.
3. Consideration of legislative measures in order to improve the definition of the legal concept of “organized criminal group” according to article 2.a. of Organized Crime Convention (see model law below).
4. Consideration of legislative measures in order to improve the criminalization of conspiracy or / and criminal association according to article 5 of the Organized Crime Convention (see model law below).
5. Consideration of legislative measures in order to improve domestic laws on criminal liability of legal persons (see model law below).
6. Consideration of legislative measures in order to draft a domestic law on mutual legal assistance in accordance with the Organized Crime Convention (see model law on MLA below).
7. Consideration of legislative measures in order to improve the legal framework for the use of video-conferencing (see model law on MLA below).
8. Consideration of legislative measures in order to ensure that mutual legal assistance is not refused on the ground of bank secrecy (see model law on MLA below).
9. Consideration of legislative measures in order to introduce the legal definitions, according to the Organized Crime Convention, of the following key concepts related to freezing, seizure and confiscation: assets, confiscation, forfeiture, confiscation order, instrumentalities of crime, proceeds of crime, property, freezing and seizure (see model law on MLA below).
10. Consideration of legislative measures in order to promote joint investigation through existing regional organisations/networks and/or the development of a network of national contact points for joint investigations (see model law below).



# ANNEXES

# ANNEX I: UNODC model law on criminalization of offences related to organized crime

## Legal definition of organized crime group

“**Organized criminal group**” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more offences to which these model legislative provisions apply, in order to obtain, directly or indirectly, a financial or other material benefit;

## Criminalization of offences related to participation in an organized criminal group

### Option 1 / Conspiracy model

1. A person who agrees with one or more other persons to commit a serious crime [involving an organized criminal group] in order to obtain directly or indirectly, a financial or other material benefit, commits an offence punishable by *[insert penalty sufficient to take into account the gravity of the offence]*.
2. *[Only include if required by domestic law]* [For a person to be convicted under this article, an act other than the making of the agreement must be undertaken by one of the participants in furtherance of the agreement.]

### Option 2 / Criminal association

1. A person who intentionally takes an active part in criminal activities of an organized criminal group, knowing either the aim and general activity of the organized criminal group, or its intention to commit the crimes in question, commits an offence punishable by *[insert penalty sufficient to take into account the gravity of the offence]*.
2. A person who intentionally takes an active part in [any other] activities of an organized criminal group:
  - a. with knowledge of either the aim and general activity of the organized criminal group, or its intention to commit the crimes in question; and
  - b. knowing that their acts or omissions will contribute to the achievement of the criminal aim described above; commits an offence punishable by *[insert penalty sufficient to take into account the gravity of the offence]*.

3. The acts or omissions engaged in for the purpose of [paragraph 2] need not otherwise be illegal.

## Criminalization of offences of aiding, abetting, organizing or directing a serious crime

1. A person who intentionally organizes, directs, aids, abets, facilitates, counsels or procures the commission of a serious crime involving an organized criminal group commits an offence.
2. The penalty for organizing or directing shall be [insert penalty appropriate for taking a leading role in an offence].
3. The penalty for aiding, abetting, facilitating, counselling or procuring shall be [insert penalty appropriate for taking a support role in an offence].

## Criminalization of obstruction of justice

A person who, in a proceeding on offences related to organized crime uses force, threats or intimidation or promises, offers or gives any undue gift, concession or other advantage to:

- a. Induce false testimony;
- b. Interfere in the giving testimony or production of evidence;
- c. Or otherwise interfere with duties of law enforcement, prosecution or judicial authorities in the course of justice; commits an offence punishable by *[insert the penalty sufficient to take into account the gravity of the offence]*.

## Liability of legal persons

1. Any legal person, other than the State, on whose behalf or for whose benefit an offence related to organized crime has been committed by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it, based on a power of representation of the legal person, an authority to take decisions on behalf of the legal person, or an authority to exercise control within the legal person, acting in such capacity, shall be punished by a fine of an amount equal to [indicate multiplier] times the fines specified for natural persons, irrespective of the conviction of those individuals as perpetrators of or accomplices to the offence.
2. The following measures may be imposed on a legal person if there is criminal liability of directors, servants or agents acting within their authority:
  - a. If the activity of the legal person was entirely or predominantly used for the carrying out of criminal offences or if the legal person was created to commit an offence under these model legislative provisions, order that the legal person be dissolved;
  - b. Prohibit the exercise, whether directly or indirectly, of one or more social or professional activities [permanently] [for a maximum period of ...years];

- c. Order the [temporary] [permanent] closure of the establishment, or one or more of the establishments, of the legal person that was used to commit the offences in question;
  - d. Make an order that the legal person be excluded from public bidding [and/or] from entitlement to public benefits or aid;
  - e. Order the disqualification of the legal person from participation in public procurement whether on a temporary or permanent basis;
  - f. Disqualify the legal person from the practice of other commercial activities [and/or] from the creation of another legal person;
  - g. Order the legal person to publish the judgement by the court;
  - h. [Make such further orders as it considers just].
3. The liability of any legal person does not preclude that of the natural person.

## Joint investigations

- 1. Where appropriate, the [insert name of law enforcement authority] may conclude arrangements with a foreign law enforcement agency and relevant international and regional organizations regarding the establishment of a joint investigative body.
- 2. In addition to the provision in paragraph 1, the [insert name of national law enforcement authority] may enter into agreements or arrangements with foreign law enforcement authorities and relevant international and regional organizations in relation to the prevention, investigation and prosecution of judicial proceedings for offences to which these model legislative provisions apply in one or more States.
- 3. Where such an agreement or arrangement has been made [or on a case-by-case basis even without agreement], the [national law enforcement authority] may engage in joint [operations/investigations] with the relevant State or international or regional organization.

# ANNEX II: UNODC model law on mutual assistance in criminal matters

## Unodc model law on mutual assistance in criminal matters

### CHAPTER 1: PRELIMINARY

**Section 1:** Short title and commencement

**Section 2:** Definitions

**Section 3:** Objects of the Act

**Section 4:** Saving clause

**Section 5:** Central authority: making and reception of requests

**Section 6:** Spontaneous transmission of information

### CHAPTER 2: INCOMING REQUESTS FOR ASSISTANCE

#### Part 1: General provisions

**Section 7:** Scope of assistance

**Section 8:** Form of request

**Section 9:** Content of request for assistance

**Section 10:** Application of specific procedures sought by the requesting State

**Section 11:** General provision

**Section 12:** Refusal of request for assistance

**Section 13:** Non-disclosure of confidential requests for assistance

#### Part 2: Rules regarding specific forms of assistance

**Section 14:** Statements, testimony, production of evidence and identification of a person or thing

**Section 15:** Special provisions relating to the taking of testimony or statements

**Section 16:** Use of videoconferencing technology

**Section 17:** Search and seizure

**Section 18:** Transfer of a person detained in (name of State).

**Section 19:** Safe conduct.

**Section 20:** Effect of transfer on sentence of person in custody.

**Section 21:** Custody of persons in transit.

#### Part 3: Requests for freezing or seizure and confiscation

**Section 22:** Definitions

**Section 23:** Request for obtaining an order for freezing or seizure

**Section 24:** Request for enforcement of foreign orders

**Section 25:** Rights of bona fide third parties

**Section 26:** Disposition of confiscated proceeds of crime or property

## **Part 4: Assistance in relation to computers, computer systems and computer data**

**Section 27:** Definitions

**Section 28:** Expedited preservation and disclosure of stored computer data

**Section 29:** Production of stored computer data

**Section 30:** Search and seizure of computer data

## **CHAPTER 3: REQUESTS FOR ASSISTANCE BY (NAME OF STATE)**

**Section 31:** Special provisions relating to transferred persons in custody

**Section 32:** Safe conduct for person in **(name of State)** pursuant to a request for assistance

**Section 33:** Limitation on use of evidence obtained pursuant to a request for assistance

**Section 34:** Suspension of time limits pending execution of a request for assistance

## **CHAPTER 4: MISCELLANEOUS**

**Section 35:** Costs

## Chapter 1: Preliminary

### 1. Short title and commencement

1. This law may be called the “Mutual Assistance in Criminal Matters Act”.
2. This Act shall come into force on.....

### 2. Definitions

In this Act, unless otherwise specifically provided:

1. **Agreement** means a treaty, convention or other international agreement that is in force, to which **(name of State)** is a party and that contains a provision or provisions respecting mutual assistance in criminal matters.
2. **Central authority** means an authority designated in section 4 of this Act.
3. **Criminal matter** includes any investigation, prosecution or judicial proceeding relating to:
  - a. any criminal offence; or
  - b. the determination of whether property is proceeds or instrumentalities of crime or terrorist property;
  - c. a possible confiscation order; whether or not based on an underlying criminal conviction; or
  - d. the freezing or seizure of proceeds or instrumentalities of crime or terrorist property; or
  - e. an investigation carried out by an administrative investigative body with a view to referral for prosecution under the criminal law.
4. **International Criminal Court** means the Court established by the Rome Statute of the International Criminal Court that was adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the “Establishment of an International Criminal Court” on 17 July 1998 and came into force on 1 July 2002.

### 3. Objects of the Act

1. The object of this Act is to facilitate the widest range of assistance to be given and received by **(name of State)** in investigations, prosecutions and judicial proceedings in relation to criminal matters, including with respect to the freezing, seizing and confiscation of proceeds and instrumentalities of crime and terrorist property.
2. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
  - a. Taking evidence or statements from persons;
  - b. Effecting service of judicial documents;
  - c. Executing searches and seizures, and freezing;

- d. Examining objects and sites;
  - e. Providing information, evidentiary items and expert evaluations;
  - f. Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
  - g. Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
  - h. Facilitating the voluntary appearance of persons in the requesting State Party;
  - i. Any other type of assistance that is not contrary to the domestic law of the requested State Party.
3. Nothing in the Act precludes the granting of any other form or nature of assistance that may lawfully be afforded to foreign States, including controlled delivery, joint investigations, the use of other special investigative techniques and the transfer of criminal proceedings.

## 4. Saving clause

Nothing in this Act shall limit the power of a competent authority of **(name of State)** apart from this Act to make or receive requests for information or to cooperate with a foreign State through other channels or in another manner.

## 5. Central authority: making and reception of requests

- I. For the purposes of this Act a central authority is established with the tasks:
- a. to make and receive requests for assistance and to execute and/or arrange for the execution of such requests;
  - b. where necessary, to certify or authenticate, or arrange for the certification and authentication of, any documents or other material supplied in response to a request for assistance;
  - c. to take practical measures to facilitate the orderly and rapid disposition of requests for assistance;
  - d. to negotiate and agree on conditions related to requests for assistance, as well as to ensure compliance with those conditions;
- 7 States may wish to include in their mutual legal assistance legislation a section listing the types of assistance to be afforded to a foreign State. Such a provision was not included in the model law on the understanding that it may be considered by other countries as a limitation to cooperation even if a “catch all” reference (“any other type of assistance that is not contrary to the domestic law”) is inserted.
- For countries wishing to provide for a list of types of assistance, the following could be used as reference material: article 1, paragraph 2 of the Model Treaty on Mutual Assistance in Criminal Matters; article 18, paragraph 3 of the United Nations Convention against Transnational Organized Crime; and article 46, paragraph 3 of the United Nations Convention against Corruption.
- e. to make any arrangements deemed necessary in order to transmit the evidentiary material gathered in response to a request for assistance to the competent authority of the requesting State or to authorize any other authority to do so; and



- f. to carry out such other tasks as provided for by this Act or which may be necessary for effective assistance to be provided or received.
2. The central authority referred to in this section shall be the [designate appropriate authority/office, e.g. Minister of Justice/Ministry of Justice/Attorney-General/Procurator General] of **(name of State)**.
3. Requests transmitted to other agencies or authorities of **(name of State)** shall be referred as soon as possible to the central authority. The fact that the central authority of **(name of State)** did not receive the request directly from the foreign State shall not affect the validity of the request or action taken on it. The judicial authority of **(name of State)** may not reject the request on the grounds that the central authority did not receive it directly from the foreign State.

## 6. Spontaneous transmission of information

Nothing in this Act shall prevent the central authority of **(name of State)**, or any other competent authority of **(name of State)**, from spontaneously transmitting information relating to criminal matters to a competent authority in a foreign State without prior request.

## Chapter 2: Incoming requests for assistance

### Part 1: General provisions

#### 7. Scope of assistance

1. Assistance under this Act may be provided to any foreign State whether on the basis of an agreement or not.
2. This Act regulates the rendering of assistance by **(name of State)** to any foreign State, unless otherwise regulated by agreement.
3. Notwithstanding subsection (2), nothing precludes **(name of State)** from rendering of a broader range of assistance to another State under this Act than may be provided for in an agreement.
4. The provisions of this Act shall also apply to a request for assistance from the International Criminal Court or an international tribunal.

#### 8. Form of request

1. The central authority of **(name of State)** may accept a request for assistance from a foreign State by any means of communication that affords a record in writing including, but not limited to, by facsimile or e-mail.

2. In urgent cases, the central authority of **(name of State)** may accept an oral request provided it is confirmed by a means that affords a record within [x] days/hours.

## 9. Content of request for assistance

---

1. A request for assistance shall include:
  - a. the name of the authority conducting the investigation, prosecution or judicial proceeding to which the request relates, including contact details of the person capable of responding to enquiries concerning the request;
  - b. a description of the criminal matter, including a summary of the facts and, if applicable, offences and penalties concerned;
  - c. a description of the purposes of the request for assistance, as well as the nature of the assistance sought.
2. If the information set forth in subsection (1) is not sufficient, **(name of State)** may request the foreign state to provide additional information.
3. Notwithstanding subsection (1), the fact that a request for assistance does not contain the information set out therein shall not affect the validity of the request or preclude its execution.

## 10. Application of specific procedures sought by the requesting State

---

1. A request for assistance shall be executed in accordance with any procedures specified in the request, unless such execution would be contrary to the fundamental principles of the law of **(name of state)**.
2. For greater certainty, subsection (1) shall apply even if the requested procedures are not used in **(name of State)** or are not available in relation to the type of assistance sought domestically.

## 11. General provision

---

If a foreign State requests a form of assistance not specifically mentioned in this Chapter but available under the law of **(name of State)** for domestic criminal matters, the assistance sought may be provided to the same extent and under the same conditions as would be available to law enforcement authorities of **(name of State)** in a domestic criminal matter.

## 12. Refusal of request for assistance

---

### Option 1

*No reference to grounds for refusal of a mutual legal assistance request.*

## Option 2

- (1) A request for assistance under this Act may be refused if, in the opinion of [the central authority of] 14 **(name of State)**, granting of the request would prejudice the sovereignty, security, *ordre public* or other essential public interests of **(name of State)**.
- (1) or (2) Notwithstanding subsection (1) or the provisions of any other law of **(name of State)**, assistance under this Act shall not be refused:
  - (a) on the ground of bank secrecy; or
  - (b) on the sole ground that the offence for which such assistance is sought is also considered to involve fiscal matters.
- (2) or (3) Reasons shall be provided for any refusal of a request for assistance.
- (3) or (4) Where possible, the central authority of **(name of State)** may, instead of refusing a request, grant assistance subject to such conditions, including but not limited to use limitations, as may be appropriate in a particular case.
- (4) or (5) Once the conditions have been accepted to the satisfaction of the central authority of **(name of State)**, it may transmit the results of the execution of the request.

## 13. Non-disclosure of confidential requests for assistance 16

- 1. Unless otherwise authorized by law, a person who, because of his or her official capacity or office, and being aware of the confidential nature of the request, has knowledge of:
  - a. the contents of such request made under this Act; or
  - b. the fact that such request has been, or is about to be, made; or
  - c. the fact that such request has been granted or refused; shall not disclose those contents or these facts except to the extent that the disclosure is necessary to execute the foreign request.
- 2. Any person who contravenes subsection (1) commits an offence and is liable to (sentence).
- 3. The [court/prosecutor/other authority] issuing an order under sections (14), (17)-(18), (23)-(24) and (29)-(30) may order the person providing a statement or testimony, or the custodian of evidence or information being provided under this Act, to keep confidential the fact of having given such statement or testimony, or having produced such evidence or information. [The failure to respect such order is liable to (sentence).]

## Part 2: Rules regarding specific forms of assistance

### 14. Statements, testimony, production of evidence and identification of a person or thing

- 1. Where a request is made by a foreign State for

- a. the taking of a statement or testimony from a person; or
  - b. the production of documentary or other evidence in **(name of State)**; or
  - c. the identification of a person or thing, the [court/prosecutor/other authority] may issue an order for gathering evidence if satisfied that [there are reasonable grounds to (believe/suspect) that]<sup>19</sup> the relevant evidence may be found in **(name of State)**.
2. Such order shall specify the procedure by which the evidentiary material is to be gathered to give effect to the foreign request and may include such conditions as are considered appropriate, including conditions:
  - a. relating to the interests of the person named therein or of third parties; or
  - b. requiring a person to appear at a specified time and place for an examination or to produce documents or things; or
  - c. designating a person before whom an examination will take place; or
  - d. requiring a person to appear at a facility where technology for video or satellite link is available; or
  - e. providing for the non-disclosure of information regarding the request and its execution.
3. A person who, without reasonable excuse, refuses to comply with an order issued by a [court/prosecutor/other authority] in accordance with subsection (1) shall be liable to sanction available under the laws of **(name of State)**.
4. This Section is without prejudice to the ability of **(name of State)** to obtain the evidence sought through voluntary production of the documentary or other evidence or provision of a voluntary statement or testimony.

## 15. Special provisions relating to the taking of testimony or statements

1. Where the evidence sought under section (14) is a statement or testimony from a witness, including an expert or defendant where applicable, the [court/prosecutor/other authority] of **(name of State)** may permit:
  - a. any person to whom the foreign investigation, prosecution or proceeding relates or that person's legal representative; or
  - b. the legal representative of the foreign State to participate in the proceedings and question the witness.
2. A person named in an order issued under section (14) is entitled to be paid the expenses he or she would be entitled to if required to attend as a witness in proceedings in **(name of State)**.
3. A person named in the order may refuse to answer a question or to produce any other evidentiary material where the refusal is based on:
  - a. a law currently in force in **(name of State)**, except where this law provides otherwise;
  - b. a privilege recognized by a law in force in the requesting State;
  - c. a law currently in force in the requesting State that would render the answering of that question or the production of the evidentiary material by that person in its own jurisdiction an offence.

4. If requiring the person to answer the question might result in a breach of law of the requesting State in accordance with subsection 3(c) or be contrary to the fundamental purpose of a privilege recognized in the requesting State in accordance with subsection 3(b), the [court/prosecutor/other authority] may permit the refusal on a temporary basis, make a note of it and continue with the examination. At the end of the examination, the record of it with any such noted objection(s) shall be submitted to the requesting state. If the authorities of the requesting State determine any such noted objection(s) to be unfounded, they shall advise the central authority [or other competent authority] of **(name of State)**, the proceedings shall be resumed and the witness shall be required to answer the question.

## 16. Use of videoconferencing technology

---

1. The [court/prosecutor/other authority] of **(name of State)** may issue an order that the testimony or statement, the identification of a person or thing or any other form of assistance be provided by use of video or audio transmission technology.
2. An order issued under subsection (1) shall order the person:
  - a. to attend at a time and place fixed by the [court/prosecutor/other authority] to give a statement, testify or otherwise provide assistance by videoconference, and to remain in attendance until excused by the authorities of the foreign State;
  - b. to answer any questions raised by the authorities of the foreign State, or persons authorized by those authorities, in accordance with the law that applies to that foreign State;
  - c. to produce or show to those authorities at the time and place fixed by the [court/prosecutor/other authority] any item, including any document, or copy thereof and may include any other appropriate conditions.
3. Notwithstanding the provisions of section (35), the costs of establishing a video or telephone link, costs related to the servicing of a video or telephone link in **(name of State)**, shall be borne by the requesting State, unless otherwise agreed.

## 17. Search and seizure

---

1. Where a request is made by a foreign State for search and seizure to be carried out in **(name of State)**, the [court/prosecutor/other authority] of **(name of State)** may issue an [order to search/search warrant/other order] if satisfied that [there are reasonable grounds to (believe/suspect) that] evidence relevant [and proportionate] to the investigation, prosecution or proceeding may be found in **(name of State)**.
2. The procedures for the execution of the [order to search/search warrant/other order] shall be the same as those for the execution of an [order to search/search warrant/other order] in **(name of State)**, varied to the extent necessary to respond to the request.
3. In issuing the [order to search/search warrant/other order] in accordance with subsection (1), the [court/prosecutor/other authority] of **(name of State)** may subject its execution to conditions and may authorize the presence and participation of officers of the foreign State in the search.

## 18. Transfer of a person detained in (name of State)

- I. Where a foreign State requests the attendance of a person in custody in its territory for purposes of identification, giving evidence or otherwise providing assistance, the [court/prosecutor/other authority] may issue an [order/warrant] and direct that the person in custody be placed in the custody of an authorized officer for the purpose of giving the assistance requested, if satisfied that:
  - a. the person in custody has consented to attending; and
  - b. the foreign State has given assurances satisfying the requirements set out in section 19.
2. Where an [order/warrant] is issued in accordance with subsection (1), the central authority of **(name of State)** may make the necessary arrangements for the travel of the person in custody to the foreign State.

## 19. Safe conduct

- I. The matters in relation to which assurances are to be given for the purposes of section 18 are:
  - a. In all cases:
    - i. That the person shall not be detained, prosecuted or punished or subjected to any other restriction of personal liberty or subjected to any civil proceedings, in respect of any act or omission that occurred before the person's departure from **(name of State)**;
    - ii. That the person shall not be required, without his/her consent and the consent of **(name of State)**, to assist in any investigation or proceeding other than that to which the request relates;
    - iii. That the person shall be returned to **(name of State)** in accordance with the arrangements made or varied with the central authority of **(name of State)**.
  - b. Where **(name of State)** requires the foreign State to keep the person in custody while that person is in the territory of the State:
    - i. (i) That adequate arrangements are made for that purpose;
    - ii. (ii) That the person shall not be released from custody by the foreign State, unless **(name of State)** notifies that the person is entitled to be released from custody under the law of **(name of State)**.
2. The **(name of State)** may also require the requesting State to give the assurances set forth in subsection (1)(a) in case of a person not in custody.

## 20. Effect of transfer on sentence of person in custody

Where a person in custody who is serving a term of imprisonment [or is detained pending trial] in **(name of State)** is transferred to a foreign State pursuant to a request made under section 18, the time spent in custody in the foreign State shall count as part of any sentence required to be served by that person in custody.

## 21. Custody of persons in transit

- (1) Where a person is to be transferred in custody from a foreign State (transferring State) to another foreign State (receiving State) through **(name of State)** for purposes of identification, giving evidence or otherwise providing assistance,

### Option 1

the central authority of **(name of State)** may authorize the transit and apply to a [court/prosecutor/other authority] for the issuance of an [order/warrant] to that effect.

The [court/prosecutor/other authority] shall issue an [order/warrant] to enable the transportation of the person through **(name of State)** and the holding of that person in custody by authorities of the transferring State.

### Option 2

the central authority of **(name of State)** may approve the transportation of the person through **(name of State)** and the holding of that person in custody by authorities of the transferring State.

- (2) Where an unscheduled transit in **(name of State)** occurs, a competent authority of **(name of State)** may, at the request of the escorting officer, hold the person in custody for [24/48 hours] pending an authorization under subsection (1).

## Part 3: Requests for freezing or seizure and confiscation

## 22. Definitions

For the purposes of this Act:

- Assets** include items.
- Confiscation**, which includes **forfeiture** where applicable, means the permanent deprivation of property by order of a court or other competent authority.
- Confiscation order** means an order made by a court or other competent authority in **(name of State)** or a foreign State for the confiscation of proceeds or instrumentalities of crime or terrorist

property. Such an order includes a pecuniary penalty or other order imposing a penalty determined by reference to the benefit to a person from an offence or unlawful activity<sup>30</sup>, whether or not the order is based on an underlying criminal conviction.

4. **Instrumentalities of crime** mean any property:
  - a. used in, or in connection with, the commission of an offence or unlawful activity; or
  - b. intended to be used in, or in connection with, the commission of an offence or unlawful activity; whether the property is located, or the offence or unlawful activity is committed, within or outside **(name of State)**.
5. **Proceeds of crime** mean any property derived from or obtained, directly or indirectly, through the commission of an offence or unlawful activity, whether such property is located, or the offence is committed, within or outside **(name of State)**.
6. **Property** means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.
7. **Freezing or seizure** means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority and includes a restraining order.
8. **Terrorist property** means:
  - a. any property used in, to be used, in full or in part, in or derived from:
    - i. an act which constitutes an offence as defined in the 13 international counter-terrorism instruments listed in the schedule to this Act; or
    - ii. any act proscribed as a terrorist act under the law of **(name of State)** or of a foreign State.
  - b. any property required to be frozen by resolutions of the Security Council exercising its powers under Chapter VII of the Charter of the United Nations;
  - c. property of any individual or organization proscribed as terrorist by the **(name of State)** or a foreign State.

## 23. Request for obtaining an order for freezing or seizure

Where a request is made by a foreign State for the freezing or seizure of property as proceeds or instrumentalities or terrorist property, the [court/prosecutor/other authority] of **(name of State)** may issue a freezing or seizure order if satisfied that there is a sufficient basis to obtain such an order under the law(s) of **(name of State)**, which shall apply as if the offence or unlawful activity that is the subject of the order had been committed in **(name of State)**.



## 24. Request for enforcement of foreign orders

### Option 1

- I. Where a request is made by a foreign State for the enforcement of a freezing/seizure or confiscation order and there are reasonable grounds for believing that all or some of that property is located in the territory of **(name of State)**, the [court/prosecutor/other authority] of **(name of State)** may issue an order for the:
  - a. registration of the foreign freezing or seizure order if satisfied that the order is in force in the foreign State at the time of the application;
  - b. registration of the foreign confiscation order if satisfied that the order is in force in the foreign State at the time of the application and is not subject to appeal.
2. A copy of any amendments to the order may be registered in the same manner as the order and shall take effect upon registration.
3. The [court/prosecutor/other authority] of **(name of State)** shall cancel the registration of:
  - a. a foreign freezing or seizure order, if satisfied that the order has ceased to have effect; or
  - b. a foreign confiscation order if satisfied that the order has been satisfied or has ceased to have effect.
4. An order and any amendments thereto registered under this section may be enforced as if they were issued under the law of **(name of State)**.

### Option 2

- I. Where a request is made by a foreign State for the enforcement of a freezing/seizure or confiscation order and there are reasonable grounds for believing that all or some of that property is located in the territory of **(name of State)**, the [competent authority] may file a copy of the order with [relevant court] if satisfied that:
  - a. In the case of an order for freezing/seizure, the order is in force in the requesting state at the time of filing;
  - b. In the case of an order for confiscation, the order is in force and not subject to further appeal at the time of filing.
2. A copy of any amendments to the order may be filed in the same manner as the order and shall take effect upon registration.
3. The [competent authority] of **(name of State)** may cancel the registration of an order by filing a notice to that effect if satisfied that the order has ceased to have effect in the foreign State or, if applicable, has been satisfied.
4. An order and any amendments filed with the court in accordance with this section may be enforced as if they were issued under the law of **(name of State)**.

## 25. Rights of bona fide third parties

1. Notice of the [registration/filing] of an order under section 24 shall be given to all persons appearing to have an interest in property against which the order may be executed, prior to any execution action.
2. Subject to subsection (4), any person with an interest in the property against which an order [registered/filed] under section 24 may be executed, may, within 30 days of receiving notice of the [registration/filing], make an application for an order excluding his or her interest in the property from execution of the order. The time for bringing the application may be extended by order of the [court/prosecutor/other authority].
3. The provisions of the [proceeds of crime/anti-money laundering/terrorist financing laws of **(name of state)**] relating to the rights of bona fide third parties shall apply, mutatis mutandis, to any application brought under subsection (2).
4. Unless a [court/prosecutor/other authority] in the interest of justice orders otherwise, any person who received notice in advance of the confiscation proceedings in the foreign State, whether participated in those proceedings or not, is precluded from bringing an application under subsection (2).

## 26. Disposition of confiscated proceeds of crime or property

Upon request of a foreign State, the central authority of **(name of State)** may transfer to it the whole or part of any proceeds or instrumentalities confiscated in **(name of State)** in response to a request for the enforcement of a confiscation order pursuant to section 24 of this Act.

## Part 4: Assistance in relation to computers, computer systems and computer Data

### 27. Definitions

For the purposes of this Part:

1. **Traffic data** means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration or type of underlying service.
2. **Service provider** means:
  - a. any public or private person that provides to users of its service the ability to communicate by means of a computer system; and
  - b. any other person or entity that processes or stores computer data on behalf of such service or users of such service.
3. **Computer data** includes any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;

4. **Computer system** means any device or a group of interconnected or related devices one or more of which, pursuant to a program, performs automatic processing or recording of data.
5. **Subscriber information** means any information contained in the form of computer data or any other form that is held by a service provider relating to subscribers of its services, other than traffic or content data, by which can be established:
  - a. the type of communication service used, the technical provisions relating thereto and the period of service;
  - b. the subscriber's identity, postal or other address, telephone and other access number, billing and payment information as well as any other information on the site of the installation of communication equipment disclosed by or from the service agreement or arrangement.

## 28. Expedited preservation and disclosure of stored computer data

---

1. Upon request by a foreign State setting forth the need for specified computer data (including traffic data) to be preserved, the urgency of preserving it, sufficient information to locate the data, and a statement that a request for production of the data will follow, the central authority of **(name of State)** [or other competent authority that can issue an expedited order] may issue an order compelling a [legal or natural] person located in **(name of State)** to preserve and safeguard such data. The order shall lapse if the request for production is not received within [45/60] days of the request for preservation. Once the request for production has been received, the data shall continue to be preserved pending resolution of the request.
2. Where in the course of execution of a request under subsection (1) to preserve traffic data concerning a specific communication, **(name of State)** discovers that a service provider in another country was involved in the transmission of the communication, the central authority [or other competent authority] shall have the power to disclose to the requesting State, prior to receipt of the request for production, a sufficient amount of the traffic data to identify that service provider and the path through which the communication was transmitted.

## 29. Production of stored computer data

---

1. Upon request of a foreign State, the [court/prosecutor/other authority] of **(name of State)** may issue an order to enable the production of:
  - a. specified computer data in the possession or control of a person which is stored in a computer system or a computer data storage medium; and
  - b. subscriber information in the possession or control of a service provider where such data or information is relevant to the criminal matter in the requesting State.

## 30. Search and seizure of computer data

---

1. Upon request of a foreign State, the [court/prosecutor/other authority] of **(name of State)** may issue a [search warrant/order to search/other order] authorizing a person designated by it to search

- or otherwise access any computer system or part thereof as well as any computer storage medium in which computer data may be stored.
2. The [search warrant/warrant/other order] issued pursuant to subsection (1) may authorize the designated person, where necessary, to:
    - a. seize or otherwise secure a computer system or part thereof, or a computer data storage medium;
    - b. make and retain a copy of those computer data;
    - c. maintain the integrity of the relevant stored computer data; and
    - d. render inaccessible or remove those computer data in the accessed computer system.

## Chapter 3: Requests for assistance by (name of state)

### 31. Special provisions relating to transferred persons in custody

1. Where a person in custody in a foreign State is brought to **(name of State)** pursuant to a request for assistance under this Act, that person shall:
  - a. be permitted to enter and remain in **(name of State)** for the purposes of the request;
  - b. be required to leave **(name of State)** when no longer required for those purposes; and
  - c. be deemed to be in lawful custody in **(name of State)** for the purposes of the request.
2. The central authority of **(name of State)** shall be responsible for making any necessary arrangements for the transfer of a person in custody in the foreign State to **(name of State)**, including arrangements to keep the person in custody and to return the person to the requested State when that person's presence is no longer required pursuant to the request;
3. The law(s) of **(name of State)** with respect to the conditions of imprisonment of prisoners in that State, the treatment of such persons during imprisonment and the transfer of any such prisoner from prison to prison shall apply, insofar as they are capable of application, in relation to a person who is in **(name of State)** pursuant to a request made under this section.
4. Any person who escapes from custody while in **(name of State)** pursuant to a request made under this section may be arrested without warrant and returned to the custody authorized by this section.

### 32. Safe conduct for person in (name of State) pursuant to a request for assistance

#### Option 1

1. A person who is in **(name of State)** pursuant to a request for assistance under this Act, shall not:

## Option 2

1. A person whose presence in **(name of State)** has been sought pursuant to a request for assistance under this Act, and to whom the central authority of **(name of State)** has granted safe conduct under this section, shall not:
  - a. be detained, prosecuted or punished or subjected to any other restriction of personal liberty or subjected to any civil proceedings, in respect of any act or omission that occurred prior to that person's departure from the foreign State pursuant to the request;
  - b. be required, without his/her consent and the consent of the foreign State, to assist in an investigation or proceeding other than the investigation or proceeding to which the request relates.
2. Any safe conduct provided in accordance with subsection (1) shall cease to apply when the person has had the opportunity to leave **(name of State)** and has not done so within a period of [10/15/x] days from the date on which he/she has been informed that his/her presence is no longer required for the purposes of the request, or when the person has returned to **(name of State)**.

## 33. Limitation on use of evidence obtained pursuant to a request for assistance

(1)

### Option 1

Upon request of the foreign State, any evidentiary material provided to **(name of State)** as a result of a request for assistance under this Act:

- a. may not be used for any purpose other than the investigation, prosecution or judicial proceeding in respect of which the request for assistance was made; and
- b. is inadmissible as evidence in any proceedings other than the proceedings in respect of which it was obtained, unless the central authority of **(name of State)** has approved its use for those other purposes [or the material has been made public in the normal course of the proceedings for which it was provided].

### Option 2

1. The central authority of **(name of State)** shall have the power to enforce conditions or limitations on use of evidence obtained pursuant to a request for assistance imposed by the foreign State and accepted by **(name of State)**. The courts of **(name of State)** shall have the power to issue an order accordingly.
2. The central authority of **(name of State)** shall not approve such other use without consulting the foreign State which provided the evidentiary material.

## 34. Suspension of time limits pending execution of a request for assistance

The statute of limitations or other time limit on bringing prosecution or enforcing a sentence shall be suspended pending execution of a mutual assistance request made by **(name of State)]**

## 33. Limitation on use of evidence obtained pursuant to a request for assistance

(I)

### Option 1

Upon request of the foreign State, any evidentiary material provided to **(name of State)** as a result of a request for assistance under this Act:

- a. may not be used for any purpose other than the investigation, prosecution or judicial proceeding in respect of which the request for assistance was made; and
- b. is inadmissible as evidence in any proceedings other than the proceedings in respect of which it was obtained, unless the central authority of **(name of State)** has approved its use for those other purposes [or the material has been made public in the normal course of the proceedings for which it was provided].

### Option 2

1. The central authority of **(name of State)** shall have the power to enforce conditions or limitations on use of evidence obtained pursuant to a request for assistance imposed by the foreign State and accepted by **(name of State)**. The courts of **(name of State)** shall have the power to issue an order accordingly.
2. The central authority of **(name of State)** shall not approve such other use without consulting the foreign State which provided the evidentiary material.

## 34. Suspension of time limits pending execution of a request for assistance

The statute of limitations or other time limit on bringing prosecution or enforcing a sentence shall be suspended pending execution of a mutual assistance request made by **(name of State)]**

## Chapter 4: Miscellaneous

### 35. Costs

- I. Subject to subsection (2), or unless otherwise agreed, the execution of a request for assistance in **(name of State)** shall be conducted without charge to the foreign State, except for:
  - a. costs incurred by the attendance of experts in the territory of **(name of State)**; or
  - b. costs incurred by the transfer of a person in custody; or
  - c. any costs of a substantial or extraordinary nature.
2. The costs of establishing a video or telephone link, costs related to the servicing of a video or telephone link in **(name of State)**, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses shall be refunded by the foreign State, unless otherwise agreed.

# Annex III: Table north-south bilateral treaties on MLA

| EU 28<br>- SPCs   | ALGERIA | EGYPT | ISRAEL<br>No bilateral<br>agreements but Israel<br>is a party to the<br>European Convention<br>on Mutual Assistance<br>in Criminal Matters | JORDAN | LEBANON | MOROCCO | TUNISIA | PALESTINE |
|-------------------|---------|-------|--|--------|---------|---------|---------|-----------|
| Austria           |         |       |  |        |         |         |         |           |
| Belgium           |         |       |  |        |         |         |         |           |
| Bulgaria          |         |       |  |        |         |         |         |           |
| Croatia           |         |       |  |        |         |         |         |           |
| Cyprus            |         |       |  |        |         |         |         |           |
| Czech<br>Republic |         |       |  |        |         |         |         |           |
| Denmark           |         |       |  |        |         |         |         |           |
| Estonia           |         |       |  |        |         |         |         |           |
| Finland           |         |       |  |        |         |         |         |           |
| France            |         |       |  |        |         |         |         |           |
| Germany           |         |       |  |        |         |         |         |           |
| Greece            |         |       |  |        |         |         |         |           |
| Hungary           |         |       |  |        |         |         |         |           |
| Ireland           |         |       |  |        |         |         |         |           |
| Italy             |         |       |  |        |         |         |         |           |
| Latvia            |         |       |  |        |         |         |         |           |
| Lithuania         |         |       |  |        |         |         |         |           |
| Luxembourg        |         |       |  |        |         |         |         |           |
| Malta             |         |       |  |        |         |         |         |           |
| Netherlands       |         |       |  |        |         |         |         |           |
| Poland            |         |       |  |        |         |         |         |           |
| Portugal          |         |       |  |        |         |         |         |           |
| Romania           |         |       |  |        |         |         |         |           |
| Slovakia          |         |       |  |        |         |         |         |           |
| Slovenia          |         |       |  |        |         |         |         |           |
| Spain             |         |       |  |        |         |         |         |           |
| Sweden            |         |       |  |        |         |         |         |           |
| United<br>Kingdom |         |       |  |        |         |         |         |           |
| EU 28- SPCs       | ALGERIA | EGYPT | ISRAEL   | JORDAN | LEBANON | MOROCCO | TUNISIA | PALESTINE |



# Annex IV: Table of grounds for refusal mutual legal assistance

| GROUND FOR REFUSING MLA   | ALGERIA | EGYPT | ISRAEL | JORDAN | LEBANON | MOROCCO | TUNISIA | PALESTINE |
|---|---------|-------|--------|--------|---------|---------|---------|-----------|
| Prejudice to sovereignty, security, ordre public or other essential interests |         |       |        |        |         |         |         |           |
| Political nature of the offence   |         |       |        |        |         |         |         |           |
| Fiscal nature of the offence  |         |       |        |        |         |         |         |           |
| Offence related to military law   |         |       |        |        |         |         |         |           |
| Discrimination (race, sex, religion, ethnicity, etc.)                         |         |       |        |        |         |         |         |           |
| Cruel, inhumane or degrading penalties  |         |       |        |        |         |         |         |           |
| Ne bis in idem (double jeopardy)  |         |       |        |        |         |         |         |           |
| Likelihood of death penalty   |         |       |        |        |         |         |         |           |
| Lack of dual criminality  |         |       |        |        |         |         |         |           |
| Lack of reciprocity   |         |       |        |        |         |         |         |           |
| Lack of formal mutual assistance treaty or arrangement                        |         |       |        |        |         |         |         |           |
| Contradiction of data protection laws   |         |       |        |        |         |         |         |           |
| Bank Secrecy  |         |       |        |        |         |         |         |           |
| GROUND FOR REFUSING MLA   | ALGERIA | EGYPT | ISRAEL | JORDAN | LEBANON | MOROCCO | TUNISIA | PALESTINE |

## Annex V: Table of other practical answers to the questionnaires

| ANSWERED QUESTIONS ABOUT OTHER PRACTICALITIES     | ALGERIA | EGYPT | ISRAEL | JORDAN | MOROCCO | TUNISIA | PALESTINE |
|---|---------|-------|--------|--------|---------|---------|-----------|
| VIDEOCONFERENCE TESTIMONY                         |         |       |        |        |         |         |           |
| INFORMAL CONSULTATIONS PREVIOUS TO FORMAL REQUEST |         |       |        |        |         |         |           |
| URGENT ELECTRONIC REQUESTS                        |         |       |        |        |         |         |           |
| JOINT INVESTIGATION TEAMS                         |         |       |        |        |         |         |           |
| EXCHANGE OF INFORMATION ON CRIMINAL RECORDS       |         |       |        |        |         |         |           |
| CONFISCATION WITHOUT CRIMINAL CONVICTION          |         |       |        |        |         |         |           |
| ANSWERED QUESTIONS ABOUT OTHER PRACTICALITIES     | ALGERIA | EGYPT | ISRAEL | JORDAN | MOROCCO | TUNISIA | PALESTINE |

# Annex VI: Other practical comments in the answered questionnaires

## Factors leading to successful mutual legal assistance

- Good drafting of requests for mutual legal assistance with regards to form and substance.
- Being as precise as possible in setting out the assigned tasks within the requests for mutual legal assistance.
- Knowing how to issue urgent requests, by sending advanced copies to the key individuals dealing with mutual legal assistance in criminal matters within the country receiving the request.
- Involving liaison judges, as facilitators.
- Ratifying the greatest number of bilateral treaties on the subject.
- Subscribing to multilateral and regional treaties which deal with issues of cooperation.
- Knowing how to use other cooperation channels (police, customs, financial cooperation, etc.)
- Training judges and investigators in the more effective use of international cooperation channels.
- Direct contact between authorities.

## Difficulties and challenges requesting and providing mutual Legal assistance

### Difficulties encountered by a country making a request:

- The requirements of some European countries with regards to assurances over the death penalty.
- With regards to digital evidence, including the very short data retention deadlines, used by major international companies, in relation to storing digital and electronic records.
- The problems related to double criminality requirements.
- The lack of recognised mechanisms, on an international scale, for issuing urgent requests for mutual legal assistance in a paperless way.
- The slow nature of the process for making requests for mutual legal assistance in criminal matters.

### Difficulties encountered by a country receiving a request:

- Requests which require a process, to carry out the assigned tasks, which is unfamiliar and unrecognised by our laws and our legal practice.
- Requests where the foreign principal magistrate asks for tasks to be carried out which overlap with open enquiries being investigated by our domestic legal authorities.

## Bibliography

1. **Model Legislative Provisions against Organized Crime**, United Nations, 2012.
2. **Model law on mutual assistance in criminal matters**, United Nations, 2007.
3. **Legislative guide for the implementation of the United Nations Convention against trans-national organized crime**, United Nations, 2004.

# Acknowledgements

Special thanks to the scientific consultants for their contributions to the production of this paper.