

INTERGOVERNMENTAL EXPERT GROUP TO PREPARE A DRAFT MODEL  
BILATERAL AGREEMENT ON DISPOSAL OF CONFISCATED PROCEEDS OF  
CRIME COVERED BY THE UNITED NATIONS CONVENTION AGAINST  
TRANSNATIONAL ORGANIZED CRIME AND THE UNITED NATIONS CONVENTION  
AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC  
SUBSTANCES OF 1988

VIENNA, AUSTRIA  
26 TO 28 JANUARY 2005

DRAFT MODEL BILATERAL AGREEMENT ON DISPOSAL OF  
CONFISCATED PROCEEDS OF CRIME

PROPOSAL SUBMITTED BY THE UNITED STATES OF AMERICA

# **DRAFT MODEL**

**AGREEMENT BETWEEN  
THE GOVERNMENT OF \_\_\_\_\_**

**AND**

**THE GOVERNMENT OF \_\_\_\_\_**

**REGARDING THE SHARING OF FORFEITED  
OR CONFISCATED ASSETS OR THEIR EQUIVALENT FUNDS**

**The Government of \_\_\_\_\_ and The Government of \_\_\_\_\_  
(hereinafter referred to as "the Parties"),**

**CONSIDERING** that Article 5(5)(b)(ii) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances encourages States Parties to “give special consideration to concluding agreements on . . . sharing with other Parties on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative law, or bilateral or multilateral agreements entered into for this purpose”;

**CONSIDERING** that Article 8 (3) of the United Nations International Convention for the Suppression of the Financing of Terrorism calls on States Parties to consider “concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article”;

**CONSIDERING** that Articles 13 and 14 of the 2000 United Nations Convention Against Transnational Organized Crime obligate States Parties, when requested by other States Parties, to take measures to identify, trace, and freeze or seize proceeds and instrumentalities of crimes covered by the Convention for the purpose of eventual confiscation or forfeiture, and recommend that States Parties give special consideration to concluding bilateral agreements providing for sharing of such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property;

**CONSIDERING [reference mutual legal assistance treaty if one exists  
between the parties];**

**CONSIDERING** the relevant Recommendations of the Financial Action Task Force, including Recommendation 38, which calls on countries to coordinate seizure and confiscation proceedings, including with respect to asset sharing;

**DESIRING** to improve the effectiveness of law enforcement in both countries in the investigation, prosecution, and suppression of crime and in the tracing, freezing, seizure, and forfeiture or confiscation of assets related to crime and to strengthen bilateral cooperation; and

**DESIRING** also to create an equitable framework for sharing the proceeds of the disposition of such forfeited or confiscated assets;

**HAVE AGREED** as follows:

## **ARTICLE 1**

### **DEFINITIONS**

In this Agreement:

(a) “assets” shall mean property or funds that are in the possession of a Party, and which comprise the net proceeds or equivalent funds realized as a result of forfeiture or confiscation, including any interest and appreciation that has accrued on such property, after deduction of the costs of realization;

(b) “cooperation” shall mean any assistance, including intelligence, operational, legal or judicial assistance, and shall include the enforcement of a forfeiture or confiscation order of the other party, which has been given by one Party and which has contributed to, or significantly facilitated, forfeiture or confiscation in the territory of the other Party;

(c) references to “forfeiture” or “confiscation” shall mean any action under national law resulting in -

i) in the case of forfeiture, a final judgment which extinguishes title to assets of any description involved in or derived from crime, or a sum which amounts to the value of such assets, and the vesting of such title in the government pursuing the action; and

ii) in the case of confiscation, an order made by a court for the purpose of recovering payments or other rewards received in connection with an offense or their value, which order is not, or is no longer, capable of being the subject of any form of appeal proceedings;

## **ARTICLE 2**

### **CIRCUMSTANCES IN WHICH ASSETS MAY BE SHARED**

In any case where cooperation has been given by a Party (Cooperating Party) to a Party in possession of forfeited or confiscated assets (Holding Party) which facilitates the forfeiture or confiscation of assets, the Holding Party may, in accordance with domestic laws, share those assets with the Cooperating Party.

## **ARTICLE 3**

### **REQUESTS FOR ASSET SHARING**

1. A Cooperating Party may make a request for asset sharing from the Holding Party in accordance with the provisions of this Agreement when its cooperation has led, or is expected to lead, to a confiscation or forfeiture. A request for asset sharing shall be made at the time the assistance is rendered, or as soon as possible, but in any case, not later than one year from the date of entry of the final order of forfeiture or confiscation, unless otherwise agreed between the parties in exceptional cases.
2. A request made under paragraph 1 of this Article shall set out the circumstances of the cooperation to which it relates, and shall include sufficient details to enable the Holding Party to identify the case, the assets, and the agency or agencies involved.
3. On receipt of a request for asset sharing made in accordance with the provisions of this Article, the Holding Party shall -
  - (a) consider whether to share assets as set out in Article 2 of this Agreement, and
  - (b) inform the Party making the request of the outcome of that consideration.

## **ARTICLE 4**

### **SHARING OF ASSETS**

1. Where the Holding Party proposes to share assets with the Cooperating Party, it shall:
  - (a) determine, at its discretion and in accordance with its domestic law, the proportion of

the assets to be shared, which in its view, represents the extent of the cooperation afforded by the Cooperating Party [**possibly consider other formulations such as fixed percentages**]; and

(b) transfer a sum equivalent to that proportion set forth in subsection (a) to the Cooperating Party in accordance with Article 5 of this Agreement.

2. The Parties agree that it may not be appropriate to share where the value of the realized assets or the assistance rendered by the Cooperating Party is de minimis [**Parties may wish to define a threshold**].

## ARTICLE 5

### PAYMENT OF SHARED ASSETS

1. Any sum transferred pursuant to Article 4 (1) (b) of this Agreement shall be paid -

- (a) in the currency of the Holding Party, and
- (b) by means of an electronic transfer of funds or cheque,

unless the Parties agree otherwise.

2. Payment of any such sum shall be made to

(a) in any case in which the Government of \_\_\_\_\_ is the Cooperating Party, [**identify the pertinent office or designated account as specified in the request**].

(b) in any case in which the Government of \_\_\_\_\_ is the Cooperating Party, [**identify the pertinent office or designated account as specified in the request**].

or to such other recipient or recipients as the Cooperating Party may from time to time specify by notification for the purposes of this Article.

## ARTICLE 6

### TERMS OF TRANSFER

1. In making the transfer, the Parties recognize that all right, title, and interest to the

transferred assets has already been adjudicated and that no further judicial proceedings are necessary to complete the forfeiture or confiscation. The Party transferring the assets will assume no liability or responsibility for the assets once they have been transferred. Upon transfer, the Holding Party shall relinquish all right, title and interest in the transferred assets and shall assume no liability with regard to the assets transferred. Upon transfer, all right, title, and interest in the transferred assets shall vest in the Cooperating Party. **[The definition of “assets” contemplates that there may be occasions where property rather than funds may be shared. However, where a country’s domestic law requires it to sell forfeited/confiscated property and only permits it to share funds, this language may be unnecessary.]**

2. Unless otherwise mutually agreed, where the Holding Party transfers assets pursuant to Article 4(1)(b) above, the Cooperating Party shall use the assets for any lawful purpose in its discretion.

## ARTICLE 7

### TREATMENT OF VICTIMS

In appropriate cases where there are identifiable victims of crime in cases in which forfeiture or confiscation has been sought, consideration of the rights of victims and payment to them should take precedence over asset sharing between the Parties. In such cases, the Holding Party shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the assets as compensation or restitution to such victims.

## ARTICLE 8

### CHANNELS OF COMMUNICATION

All communications between the Parties pursuant to the provisions of this Agreement shall be conducted through [the Central Authorities designated pursuant to Article \_ of the Treaty on Mutual Legal Assistance in Criminal Matters, referred to in the preamble of this Agreement]

or as specified as follows:

(a) for the Government of \_\_\_\_\_, the Office of \_\_\_\_\_;

(b) for the Government of \_\_\_\_\_, the Office of \_\_\_\_\_;

or by such other nominees as the Parties may from time to time for their own part specify by notification for the purposes of this Article.

## **ARTICLE 9**

### **TERRITORIAL APPLICATION**

This Agreement shall apply:

**[if applicable, designate any territories to which the agreement should be extended for each government].**

## **ARTICLE 10**

### **SCOPE OF APPLICATION**

This Agreement is intended solely for the purposes of mutual assistance between the Parties. It does not give rise to any right on the part of any private person, and is not intended to benefit third parties.

## **ARTICLE 11**

### **ENTRY INTO FORCE**

This Agreement shall enter into force upon signature by both parties.

## **ARTICLE 12**

### **TERMINATION OF AGREEMENT**

Either Party may terminate this Agreement, at any time, by giving written notice to the other Party. Termination shall become effective six months after receipt of the notice.

In witness whereof the undersigned, being duly authorized by their respective governments, have signed this Agreement.

Done in duplicate at \_\_\_\_\_ [location] \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, Two  
Thousand Five.

FOR THE GOVERNMENT OF

\_\_\_\_\_:

\_\_\_\_\_ [signature]

FOR THE GOVERNMENT OF

\_\_\_\_\_:

\_\_\_\_\_ [signature]