



**IOE-USCIB Joint Statement on article 12 on a LBI on BHR**

**8th Session OEIGWG**

24-28 October 2022, UN Palais, Room XX, 10:00–13:00 and 15:00-18 :00 CET

**Article 12. Mutual Legal Assistance**

Thank you Chair, I am speaking on behalf of IOE and USCIB.

Let me start with our comments on the proposals that came out from the seventh session for article 12 that continue to be unimplementable:

As general comment, countries must undertake more efforts to support each other through technical cooperation, peer learning and the exchange of experience to strengthen judicial systems.

On provision 12.5., the list of proposed actions here to promote cooperation between States such as: "executing searches and seizures"; "examining objects and sites"; and "facilitating the freezing and recovery of assets” are not appropriate as they are not subject to legal due process. These wide- ranging examples could enable politically motivated abuse and frivolous prosecutions against business.

On provision 12.10, under international law, an important check on a foreign court’s adjudicative jurisdiction has always been the power of a national court to refuse to recognise the enforcement of that foreign court’s decision. This important safeguard continues to be removed by this draft as it still mandates that all State Parties recognise and enforce another State Party’s court order – with very limited exceptions.

Let me now turn to the Chair’s new proposals which are a step in the good direction although fall short regarding the following points:

First, we believe that any draft should take greater care to ensure the confidentiality and private nature of certain information, as applicable, as balanced against the relevant policy interests that may exist in contrast.

Second, at 12.3(a)(i), we note that any draft would do better to include greater specificity around certain processes. For example, with respect to “facilitat[ing] the secure and rapid exchange of information concerning all aspects of the enforcement of the measures referred to in Articles 6-8, including for the purposes of the early identification of breaches of such measures[,]” what does “early identification” mean and what policy goal or goals does this serve?

With respect to “concerning issues, challenges, and lessons learned in the prevention of business involvement in human rights abuse[,]” what lessons are contemplated here and how would these “lessons” within an applicable legal or other context?

Thank you.