

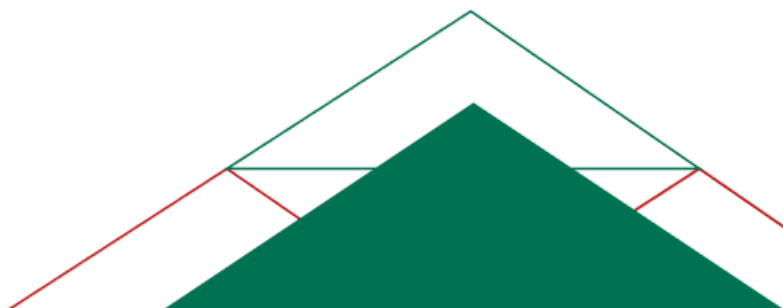


# G20 ANTI-CORRUPTION WORKING GROUP

Responses to the  
2020 Accountability  
Report questionnaire

## **Summary**

This document contains an overview of verbatim country responses received to the 2020 Accountability Report Questionnaire circulated by the Saudi Presidency.



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# Responses to the 2020 Accountability Report questionnaire

## ARGENTINA

### A. ASSET RECOVERY

- A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

Criminal forfeiture is provided by article 23 of the National Criminal Code and it can be applied for all the offenses foreseen in that code or in special criminal laws. Under this provision the things that have served to commit the crime and the things or profits that are the product, or the benefit of the crime can be forfeited with the criminal conviction. Requiring a conviction only judges can order the assets forfeiture.

To ensure the confiscation of the property or assets during the criminal process until the conviction, article 23 also allows judges to order, from the beginning of the judicial proceedings, sufficient precautionary measures to ensure.

Forfeiture under article 23 of the NCC can also be addressed to third parties who has benefited from the proceeds or the benefit of the crime free of charge, and or when the author or the participants have acted as someone's agent or representative, members or administrators of a legal person, and the proceeds or the benefit of the crime have benefited the principal or the legal person, the forfeiture shall be pronounced against these.

Even though the NCC does not provide in an express manner the scope of the forfeiture of the gains of an offense, the jurisprudence settle that the principle behind the confiscation is to avoid a crime to produce benefits, and those benefits were the direct and also the indirect proceeds of a crime, even the assets in which the profit could have transformed.

The Corporate Liability Law 27 401 (CLL) which entered into force in March 2018 also provides the confiscation for legal entities applying the provisions of the NCC.

Law No. 26 683 introduced into the NCC the paragraph 7° of article 23, and article 305 which allows the definitive confiscation, without or before the criminal conviction in the case of the forthcoming offenses:

- Terrorist acts,
- Terrorism financing,
- Money laundering,
- Provide and/or use privilege information in securities operations,
- Fraudulent operation over securities

In such cases, however, it is necessary to verify the illegal origin of the assets, or of the criminal facts to which they were linked, and the accused:

- cannot be prosecuted due to death,
- escape,
- prescription or any other reason for suspension or termination of the criminal action,
- or when the defendant has recognized the origin or illicit use of the goods.

On January 22nd, 2019, the Procedural Regime for the Civil Action of Expiration of Ownership was published as Annex I of Decree of necessity and urgency No. 62/2019 (DNU 62/19) (Annex 2). This regime intends to provide the Public Prosecutor's Office (PPO) with the legal instruments suitable to effectively obtain the expiration of ownership of assets that would have been obtained through the commission of a crime, as well as their profits and benefits. Article 5 of the Procedural Regime has a wide scope, allowing for the confiscation of the bribe, any asset in which the amount of the bribe was transformed or converted, partially or totally, and the income, rents, yields, profits and other benefits derived from the previously mentioned assets (whether they be derived from the original bribe or the assets into which they were converted or transformed).

It is an autonomous and independent mechanism of the criminal process, and as it is civil it is of a patrimonial and inrem nature. It is autonomous from the criminal case because it does not require a prior conviction, and it can even proceed in the case of a criminal dismissal.

A direct relationship between the assets and the crime is not needed in this action. But it is to have a suspicion based on the commission of a serious crime (listed in article 6 of DNU 62/2019).

Faced with this suspicion, the State may question the ownership of a property incorporated into the defendant's assets after the date of the alleged commission of a crime and that does not reasonably correspond to the income of its holder, possessor or owner, or that represents an unjustified capital increase. These elements allow us to consider that they come directly or indirectly from an investigated crime. Faced with the verification of these elements, it is the defendant who will have to prove the lawful origin of his assets. The quality of the defendant subject

in the extinction of domain is independent of that of the author or participant of the predicate offense.

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

The joint work of the General Directorate for Asset Recovery and Forfeiture of Assets (DGRADB) with the Attorney General's Offices throughout the country, allowed the immobilization of assets through different precautionary measures, in order to enforce the embargoes ordered for more than 111 billion pesos in federal justice. Below are the measures requested and obtained according to the type of good during the period 2017-2019, both in the country and abroad:

	Requested	Obtained
- Dollars	15,379,922	20,744,023
- Arg. Pesos	160,752,021	152,645,564
- Properties	738	507
- Cars	2,109	317
- Motorcycle vehicle	175	164
- Machinery	19	3
- Boats	24	20
- Aircraft	5	0

Specifically, in relation to cases related to crimes of corruption in both the public and private sectors in which the DGRADB intervened, the following assets were identified and guarded:

	Requested	Obtained
- Dollars	13.103.629	18.467.730
- Arg. Pesos	160.341.660	152.235.203
- Properties	451	373
- Cars	1840	157
- Motorcycle vehicle	165	163
- Machinery	19	3
- Boats	22	20
- Aircraft	5	0

### Public Corruption Cases

	Requested	Obtained
- Dollars	1.708.488	7.285.632
- Arg. Pesos	26.074.021	16.513.075,51
- Properties	283	232
- Cars	1690	92
- Motorcycle vehicle	2	1
- Machinery	0	0
- Boats	8	10
- Aircraft	5	0

On the other hand, early intervention in complex cases allowed the generation of novel judicial precedents in relation to adequate precautionary measures for this type of crime, such as those that affect complex legal structures, aimed at stopping the commission of the crime and preventing obtaining a profit from it. The results obtained in this regard are listed below:

	Requested	Obtained
- Freezing / seizure of bank assets	526	372
- Intervention of legal persons	67	51
- General property inhibition	265	371
- Prohibition of Innovating in Trusts	17	21
- Injunctions	16	15
- Prohibition to innovate Safe Deposit Boxes	5	5
- Embargo / prohibition to innovate of shareholder composition	181	141

Definitive seizures have been obtained in complex cases, within the framework of the technical assistance and collaboration that the Directorate provides to the Federal Prosecutors that act in the trial stages. The detail is presented below:

Item Seized (2017-2019)	Amount
- Real Estate Property	92
- Vehicles	66
- Aircraft	4
- Argentine pesos	2.792.962
- Dollars	1.329.085
- Euros	8.145
- Corporate participations	49
- Bank assets	115

Of the total of the assets definitively seized, it should be noted that numerous cases respond to "civil forfeiture" or seizures without the need

for a criminal conviction (art. 305 PC) that were obtained in cases of money laundering from international drug smuggling.

In general terms, in the period 2017-2019, assets were immobilized abroad according to the following detail:

Item Seized (2017-2019)	Amount
- Real Estate Property	19
- Vehicles	5
- Boats	1
- Dollars	9.974.194,00
- Euros	3.996.777,28
- Bank assets	19

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

The OECD WGB considered Recommendation 4(e) – partially implemented, because support on asset recovery is provided to prosecutors through the PPO’s General Directorate of Asset Recovery and Confiscation (DRADB) in the Public Prosecutor’s Office and General Directorate for Economic and Financial Advice in Investigations (DAFI). The WGB recognized that this should help ensure that confiscation is routinely ordered in foreign bribery cases.

**Questions relevant to the Nine Key Principles on Asset Recovery<sup>1</sup>**

**A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>2</sup>.**

N/A

<sup>1</sup>We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>2</sup>You may refer to principles 1 and 7e in the “Nine Key Principles on Asset recovery” in providing your response.

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

-

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>3</sup>**

In November 2019, the Ibero-American Association of Public Ministries (AIAMP), created the AIAMP´s Working Group on Forfeiture and Domain Extinction, aimed to provide mutual technical and legal assistance for illicit assets recovery among the PPO members. This WG was formally launched last August with the participation in a virtual meeting of the focal points of Andorra, Argentina, Bolivia, Brazil, Colombia, Chile, Spain, Honduras, México, Portugal, Paraguay, and Uruguay.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

-

**A.8. Please provide a brief overview of your country’s experience in the use of existing networks(policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>4</sup>**

The PPO routinely participates in the OECD LEOs meetings, and it is the chair of the OECD Latin-American and Caribbean Law Enforcement Network (LAC-LEN)

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

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<sup>3</sup>You may refer to principle 7b in the “Nine Key Principles on Asset recovery” in providing your response

<sup>4</sup>You may refer to principle 7c in the “Nine Key Principles on Asset recovery” or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response



**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>5</sup>.**

Law No. 26 683 introduced into the NCC the paragraph 7° of article 23, and article 305 which allows the definitive confiscation, without or before the criminal conviction in the case of the forthcoming offenses:

- Terrorist acts,
- Terrorism financing,
- Money laundering,
- Provide and/or use privilege information in securities operations,
- Fraudulent operation over securities

In such cases, however, it is necessary to verify the illegal origin of the assets, or of the criminal facts to which they were linked, and the accused:

- cannot be prosecuted due to death,
- escape,
- prescription or any other reason for suspension or termination of the criminal action,
- or when the defendant has recognized the origin or illicit use of the goods.

On January 22nd, 2019, the Procedural Regime for the Civil Action of Expiration of Ownership was published as Annex I of Decree of necessity and urgency No. 62/2019 (DNU 62/19) (Annex 2). This regime intends to provide the Public Prosecutor's Office (PPO) with the legal instruments suitable to effectively obtain the expiration of ownership of assets that would have been obtained through the commission of a crime, as well as their profits and benefits. Article 5 of the Procedural Regime has a wide scope, allowing for the confiscation of the bribe, any asset in which the amount of the bribe was transformed or converted, partially or totally, and the income, rents, yields, profits and other benefits derived from the previously mentioned assets (whether they be derived from the original bribe or the assets into which they were converted or transformed).

It is an autonomous and independent mechanism of the criminal process, and as it is civil it is of a patrimonial and *inrem* nature. It is autonomous from the criminal case because it does not require a prior conviction, and it can even proceed in the case of a criminal dismissal.

A direct relationship between the assets and the crime is not needed in this action. But it is to have a suspicion based on the commission of a serious crime (listed in article 6 of DNU 62/2019).

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<sup>5</sup>You may refer to principle 4 in the "Nine Key Principles on Asset recovery" in providing your response

Faced with this suspicion, the State may question the ownership of a property incorporated into the defendant's assets after the date of the alleged commission of a crime and that does not reasonably correspond to the income of its holder, possessor or owner, or that represents an unjustified capital increase. These elements allow to consider that they come directly or indirectly from an investigated crime. Faced with the verification of these elements, it is the defendant who will have to prove the lawful origin of his assets. The quality of the defendant subject in the extinction of domain is independent of that of the author or participant of the predicate offense.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

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**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

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**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>6</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>7</sup>**

Yes, the Public Prosecutor's Office (PPO) assumed that in the field of the fight against foreign bribery and organized crime it is essential, not only to address the actions against the perpetrators who took part in a criminal structure, but also against the assets that fund them, as well as the gains generated by crime. In order to ensure the confiscation of such gains it is necessary to take the pertinent measures to secure the assets from the beginning of any investigation.

In this line, General Resolutions PGN No. 129/2009 and No.134/2009, informed in previous instances, were thought. Both are aimed to carry out a comprehensive patrimonial investigation since the beginning of the criminal investigation, as well as the promotion of timely precautionary measures to achieve the preventive freezing of assets.

From the different special prosecutorial units operating within the AG's Office, in coordination with the General Directorate of Asset Recovery and Confiscation (hereinafter DRADB), which was created by Resolution PGN No. 339/2014 and then received a greater status by Resolution PGN

<sup>6</sup>In some jurisdictions, an asset recovery office may fulfil this role.

<sup>7</sup>You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

No. 2636/2015, the PPO it is actively working on the frame of a criminal policy leading to ensure the confiscation from the early stages of any investigations.

In the last couple of years, the DRADB has reinforced its intervention in complex crime cases obtaining results in the identification and seizure of assets. In the framework of its functions aimed to promote a proactive asset recovery policy, in 2017 the DRADB published the "Guideline of Preventive Measures for Asset Recovery"<sup>15</sup>. This guide is presented as a useful tool with the objective of displaying the particularities of the investigation for the recovery of assets, linked to the early adoption of precautionary measures aimed at securing assets during the criminal process. At the same time, it incorporates a theoretical and practical analysis of the multiple challenges that this crucial strategy presents.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

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**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>8</sup>**

N/A

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>9</sup>.**

N/A

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

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<sup>8</sup>You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>9</sup>Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response

## Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>10</sup>

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>11</sup>**

N/A

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>12</sup>**

Argentina has conducted parallel investigations with other jurisdictions in the past years.

The Argentine Public Prosecutor's Office (PPO) has elaborated a guide that summarizes its vision and experiences in joint investigation teams (recently updated), that is available online (in Spanish):

[https://www.fiscales.gob.ar/wp-content/uploads/2020/05/Equipos-conjuntos\\_2020\\_22-5-v3.pdf](https://www.fiscales.gob.ar/wp-content/uploads/2020/05/Equipos-conjuntos_2020_22-5-v3.pdf)

The most important experience until now is a Joint Investigation Team with Spain and Italy.

In a drug-related criminal investigation, Argentina, Spain and Italy signed the extension of the agreement of a joint investigation team between Spanish and Italian authorities, to incorporate the participation of the Argentine authorities.

As a result, a transnational criminal organization was disrupted, in the framework of 73 raids carried out simultaneously in Argentina and Spain, where 35 people were arrested.

Also, the PPO demanded the extinction of property and money ownership of the drug-related criminal organization that operated in

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<sup>10</sup>Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>11</sup>You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>12</sup>You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

Peru, Spain, Italy and Argentina, concerning a total of 190 assets valued at about \$ 800 million that include high-end vehicles, property, jewelry and cash - among others - belonging to the members of the transnational criminal organization.

The PPO is working on the conformation of several JITs, in particular after the entry into force of the *Acuerdo Marco de Cooperación entre los Estados Partes del MERCOSUR y Estados Asociados para la creación de Equipos Conjuntos de Investigación* (Frame Cooperation Agreement of MERCOSUR and associated States for the creation of JITs).

Although the possibility of forming these teams is already provided for in the United Nations Conventions against Transnational Organized Crime and against Corruption, this specific treaty regulates in detail the tool of JITs, facilitating its implementation and operation.

The treaty is available online (in Spanish): <http://servicios.infoleg.gob.ar/infolegInternet/anexos/230000-234999/233016/norma.htm>

Argentina participated in the elaboration of documents in the framework of the Network on Cooperation (REDCOOP) from the Ibero-American Association of Public Ministries (AIAMP), that tend to be further tools to simplify and clarify the implementation and operation of JITs.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

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**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>13</sup>**

The Argentine Public Prosecutor's Office (PPO) has elaborated a guide that summarizes its vision and experiences of the Argentine Republic in spontaneous exchange of information and direct cooperation between institutions, in particular between law enforcement authorities, that is available online (in Spanish): <https://www.mpf.gob.ar/cooperacion-ai/files/2017/09/Gu%C3%ADa-sobre-Intercambio-de-Informaci%C3%B3n-y-Remisi%C3%B3n-de-Informaci%C3%B3n-Espont%C3%A1nea.pdf>

Requests for direct cooperation have grown exponentially since 2017, registering an important increase since the COVID19 pandemic.

<sup>13</sup>You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

The PPO has published a report on the evolution of this tool, available online (in Spanish): [https://www.fiscales.gob.ar/wp-content/uploads/2020/07/Cooperaci%C3%B3n\\_27-20\\_V2.pdf](https://www.fiscales.gob.ar/wp-content/uploads/2020/07/Cooperaci%C3%B3n_27-20_V2.pdf)

In recent years, the PPO signed several cooperation agreements with other Public Ministries. But the main turning point is the cooperation agreement that was signed in the framework of the Ibero-American Association of Public Ministries (AIAMP).

Within the framework of the fight against transnational organized crime, this tool allows the prosecutors who are members of the Public Ministries members of the AIAMP to request and obtain information in an agile and direct way, always within the scope of their respective powers. Such cooperation will be carried out without prejudice to formal legal assistance in criminal matters, which will be provided in accordance with the obligations and principles of international law and in accordance with the internal legislation of each State and the applicable International Treaties or Conventions.

The PPO is an active member of IberRed and the AIAMP's Network on Cooperation (REDCOOP).

The International Cooperation Working Group was created in 2016 at the Lisboa Assembly, with the objective to improve procedures and seek agile and efficient solutions to facilitate criminal judicial assistance and extradition procedures. This group is also in charge of proposing AIAMP tools and means of work. At the XXVII Ordinary General Assembly, held in Asunción (Paraguay) in 2019, it was agreed to convert the Working Group into a Permanent Network.

The AIAMP's REDCOOP published a Use Guide to the Agreement. Argentina participated in the elaboration of the document, which is available online (in

Spanish): <https://www.mpf.gob.ar/cooperacionjuridica/files/2019/11/Gu%C3%ADa-de-Uso-del-Acuerdo-de-Cooperaci%C3%B3n-Interinstitucional-entre-los-Ministerios-P%C3%BAblicos-y-Fiscales-Miembros-de-la-AIAMP.pdf>

Also, the PPO participated in the signing of a bilateral agreement between the Argentine Republic and the Eastern Republic of Uruguay for the disposal of forfeited assets.

## Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

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**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

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**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

N/A

## **B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

N/A

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

-

Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>14</sup>

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>15</sup>**

N/A

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

-

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>16</sup>**

N/A

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

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<sup>14</sup>For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>15</sup>You may refer to principles 4 and 5 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

<sup>16</sup>You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response



Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>17</sup>

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>18</sup>**

N/A

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

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**Holistic questions**

**B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

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**B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

-

**B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

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<sup>17</sup>Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>18</sup>You may refer to principle 3 in the "G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery" in providing your response.

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

Regarding the UNCAC Implementation Review Mechanism, Argentina has completed its First Cycle and has begun the corresponding Second Cycle which is still under development.

The second cycle report is being consolidated and revised, as a new administration took office in December 2019 and several changes were made to the institutional structure of the National Public Administration.

Regarding the last question, Argentina maintains its commitment to make use of all the options in its terms of reference. This has also been expressed in the multilateral meeting between Argentina, the evaluating countries and the UNCAC Secretariat.

- C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

The Argentine Republic is part of the OECD Anti-Bribery Convention since 2001 and was assessed in the framework of the Phase 3bis (follow-up) and the Phase 1bis of the Working Group on Bribery in June 2019.

Furthermore, Argentina is going to have to report to the Working Group on the compliance with certain Recommendations of the Phase 3bis follow-up report in June 2021 and is going to be evaluated in the framework of the Phase 4 in March 2024.

- C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

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# AUSTRALIA

## A. Asset recovery

### A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.

At a Commonwealth level, asset recovery generally takes place under the *Proceeds of Crime Act 2002* (Cth) ([the POC Act](#)), which provides a scheme to trace, restrain and confiscate property that has a sufficient connection to a foreign offence, Commonwealth offence or other offences under Commonwealth legislative power. Australian States and Territories also have similar schemes in their jurisdictions.

The POC Act creates mechanisms for conviction-based confiscation, enabling the recovery of assets associated with a crime after a conviction for that crime is secured, and non-conviction based confiscation, allowing the restraint and confiscation of assets where a link to crime can be established to a civil standard of proof without needing to secure a criminal conviction. Asset confiscation can also be person-directed, targeting the assets under an offender's effective control, or asset directed, targeting an asset linked to crime without needing to identify a specific offender. Authorities can also apply for pecuniary penalty orders to confiscate the value of the benefit a person has derived from crime, ensuring that these benefits can be confiscated even if tainted property cannot be located or if it has been expended or otherwise disposed of.

POC Act investigations are carried out by the Criminal Assets Confiscation Taskforce (CACT), a multi-agency taskforce made up of the Australian Federal Police, Australian Taxation Office, Australian Criminal Intelligence Commission and the Australian Transaction Reports and Analysis Centre. These matters are litigated by the Criminal Assets Litigation team on behalf of the Commissioner of the Australian Federal Police and, in a narrow range of matters, by the Commonwealth Director of Public Prosecutions.

The Official Trustee in Bankruptcy is responsible for preserving the value of seized property and crediting the sale proceeds of confiscated property to the Confiscated Assets Account, from which it is subsequently used for law enforcement, crime prevention, drug treatment and drug diversion programs.

Information relating to asset confiscation cases can also be transmitted in certain circumstances, without the involvement of formal

Government-to-Government requests, on a police-to-police or agency to agency basis.

Section 266A of the POC Act also allows information obtained under the investigation powers in that Act to be proactively provided to a foreign country in certain circumstances related to the investigation and prosecution of serious offences and the recovery of the proceeds of crime.

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

Australia, through the Australian Federal Police (AFP), does not currently keep separate asset recovery statistics based on corruption offences alone. As such, the following statistics relate to all proceeds of crime litigation, not just those with a link to corruption.

As at 30 June 2020, the Commissioner of the AFP was litigating 109 proceeds of crime matters in relation to a variety of crime types, including those linked to corruption. In the 8 year history of the CACT in excess of AUD900m of criminal assets have been restrained, with over AUD250m restrained in the 2019-2020 financial year alone.

Australia is not in a position to provide further statistics.

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

Unexplained wealth laws allow law enforcement to apply to a court to restrain and forfeit wealth that cannot be linked to a legitimate source. These laws exist in all Commonwealth, state and territory jurisdictions and can be a powerful tool in targeting assets linked to corruption.

On 10 December 2018, the National Cooperative Scheme on Unexplained Wealth came into force. The Scheme expands Commonwealth unexplained wealth orders, allowing the Australian Federal Police to use a single unexplained wealth regime to target assets of corrupt entities rather than the patchwork of orders that would otherwise be sought amongst Commonwealth, State and Territory authorities. The Scheme also creates new equitable sharing arrangements to encourage cooperation between domestic law enforcement authorities in asset confiscation cases.

The Scheme also enhances the operation of State and Territory unexplained wealth laws by:

- granting new information-gathering powers allowing State law enforcement to compel the production of information or documents anywhere in Australia through applying for production orders and issuing notices to financial institutions, and
- allowing for the use of lawfully intercepted information in unexplained wealth matters, ensuring that relevant information that has been lawfully intercepted can be used to support unexplained wealth investigations and litigation.

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>19</sup>

### **A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>20</sup>.**

Information relating to proceeds of corruption cases can be transmitted, without the involvement of formal Government-to-Government requests, on a police-to-police or agency to agency basis. Police-to-police assistance may include providing information obtained by the exercise of coercive powers, such as material obtained by search warrant, but this information may not be admissible in a foreign proceeding unless sought through a formal mutual assistance request.

On a regular basis the AFP's CACT engages directly with jurisdictions through a variety of contact points (including CARIN and ARIN-AP (and associated partner networks) or via the AFP International network) to seek information and evidence to further criminal assets investigations and recovery action.

For example, over the past several years CACT have engaged a large country in this manner to seek information in support of domestic criminal assets investigations and restraints (freezing action) as well as in support of proposed MAR/MLA requests. This has included cooperative discussions aimed at identifying appropriate matters for investigation and the development of investigative plans and memorandums of understanding to action the identified targets. This has been followed by the sharing and mutual review of draft applications for asset restraint/freezing and, on at least four occasions, the hosting of mutual operational teams in our respective countries to facilitate operational

<sup>19</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>20</sup> You may refer to principles 1 and 7e in the "Nine Key Principles on Asset recovery" in providing your response.

outcomes. These groups have included Law Enforcement and judicial officers as well as high level executive representation and support. These efforts have restrained more than AUD50 Million in assets held within Australia in the past 18 months.

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

The AFP-led CACT works collaboratively with Australia's international partners to identify and restrain assets in Australia linked to crimes committed overseas, both through informal channels such as police-to-police assistance, ARIN-AP and CARIN, and through formal mutual assistance requests.

There are common problems of restrictions on sharing information outside a formal MAR/MLA process or restrictions on the use of information obtained outside that process. Many jurisdictions have overly complex and/or lengthy processes for the sharing of information. On occasion restrictions mean that information can only be shared with a specific area within a country (normally an area designed to deal with foreign requests for assistance which often have a diplomatic or bureaucratic foundation) and that the information does not filter to law enforcement or asset recovery agencies.

Differences in legal systems between Australia and foreign countries can also be a barrier to mutual assistance. Where Australia requests mutual assistance from a foreign country in an asset confiscation case, this request may be frustrated if the foreign jurisdiction lacks non-conviction based forfeiture, corporate criminal liability or the doctrine of effective control (all of these exist within Australia), or the existence of trusts or trust like structures (all of these legal concepts exist within Australia). A lack of record keeping and retention in foreign countries can also be a limitation.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>21</sup>**

Australia has a well-developed, mature and wide spread international network of operational police and support staff based at Australian embassies and consulates across the globe. This network can be engaged across a wide variety of crime type investigations as well as being a conduit for the dissemination of information and the coordination of training and development programs.

Australia is a long term observer and active participant of the European CARIN network as well as a founding member, steering group member and past president of the ARIN-AP network. ARIN-AP is a regional

<sup>21</sup> You may refer to principle 7b in the "Nine Key Principles on Asset recovery" in providing your response

network of law enforcement and legal practitioners that facilitates the exchange of operational and preliminary asset tracing information, in advance and in support of more formal processes, such as mutual legal assistance. The AFP regularly sends criminal assets investigators and criminal assets litigators to CARIN and ARIN-AP meetings.

Australia is also an observer participant in the Camden Asset Recovery Inter-agency Network, a European network of law enforcement and legal practitioners that facilitates the exchange of operational and preliminary asset tracing information, and exchange of best practice methodology in advance of formal process, such as mutual legal assistance.

Additionally, the AFP hosts the Australian Interpol National Central Bureau and again this network can be engaged across a number of crime types including asset recovery. Within the AFP assets investigation and/or recovery matters are dealt with by our dedicated Asset Recovery Unit - CACT who facilitate ARIN-AP, CARIN, Interpol, Europol, StAR and other focal point communications and international training.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

Australia has long participated in the abovementioned focal points and encountered few barriers or constraints to that participation.

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>22</sup>**

Australia has long standing relationships and regularly engage across operational matters and general information sharing, as noted above. CACT are regularly asked to provide contact points within our region for countries who may not be part of more formal networks such as ARIN-AP. On multiple occasions CACT have been able to provide inter country contact points to facilitate operational outcomes based on our knowledge of the region or by engaging the AFP's international network to identify suitable contact officers. Very often this communication is facilitated despite there being no direct asset recovery action or information open to or relevant to Australian authorities.

<sup>22</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response



**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

Australia has long participated in the abovementioned networks and encountered few barriers or constraints to that participation.

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>23</sup>.**

The POC Act contains a comprehensive regime for investigating, restraining and confiscating the proceeds and instruments of indictable and foreign indictable offences. It provides for non-conviction based confiscation which allows confiscation action to be taken independently of the criminal prosecution process. This includes where a person cannot be prosecuted or has died or absconded (though it is not a requirement of these provisions) and also more broadly where it can be shown on the balance of probabilities that a person has committed a serious offence or that property is the proceeds of an indictable or foreign indictable offence.

The POC Act includes the following non-conviction based powers:

- Person-directed forfeiture—where restrained property can be forfeited where it can be shown on the balance of probabilities that a person has committed a serious offence (including a money laundering offences). Under these provisions, the onus of proof for showing that property is not the proceeds or instrument of crime is born by the suspect.
- Asset-directed forfeiture—where restrained assets can be confiscated on the grounds that they are the proceeds of an indictable offence or foreign indictable offence or the instrument of a serious offence. It is not necessary to show that a particular person committed a particular offence to apply for a forfeiture order under this provision.
- Pecuniary penalty orders—where it can be shown on the balance of probabilities that a person has committed a serious offence.
- Unexplained wealth orders—which require a person to pay the amount determined by the court to be the difference between the person's total wealth and that which has been legitimately acquired (see also A3 above).

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<sup>23</sup> You may refer to principle 4 in the “Nine Key Principles on Asset recovery” in providing your response



Example

On 22 November 2018, the CACT restrained two houses and a commercial property as part of a proceeds of crime investigation into offshore funds allegedly being laundered in Australia by foreign nationals.

It was alleged in court that the assets were purchased by a foreign national using a false identity. The 32-year-old subsequently left Australia and is believed to have relocated to the Caribbean. As such, domestic proceedings were brought under section 19 of the POC Act, alleging that the property was the proceeds and/or instrument of money laundering and giving false or misleading information and documents to a reporting entity contrary to the AML/CTF Act.

In June 2019, the three properties valued at \$4.2 million were forfeited to the Commonwealth by order of the Supreme Court of Victoria.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

Generally, Australia's experience is that non-conviction based restraint and confiscation powers work well. However, if contested, these proceedings can be costly for the proceeds of crime authority to run in certain circumstances (such as where it is necessary to prove that offending has taken place rather than being able to rely on a parallel criminal prosecution to demonstrate this aspect of the non-conviction based proceedings).

Barriers can include difficulties in identifying and verifying beneficial ownership of suspected proceeds, high costs of asset management during the recovery process and problems related to enforcement of non-conviction based confiscation orders in foreign jurisdictions (particularly where these jurisdictions do not have similar orders).

Difficulties can also arise if property or evidence related to non-conviction proceedings is located overseas in a country that is not able to provide assistance with non-conviction based matters.

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

The *Crimes Legislation Amendment (Economic Disruption) Bill 2020* was introduced into Commonwealth Parliament on 2 September 2020.

If passed, the Bill will enhance Commonwealth asset confiscation laws by:

- ensuring that buy-back orders under the POC Act cannot be used by criminal suspects and their associates to buy back property forfeited to the Commonwealth or delay POC Act proceedings
- clarifying that the POC Act permits courts to make orders confiscating the value of a debt, loss or liability that has been avoided, deferred or reduced through criminal offending
- clarifying the operation of the POC Act in relation to the restraint and confiscation of property located overseas
- strengthening information-gathering powers under the POC Act by increasing penalties for non-compliance and clarifying the circumstances in which information gathered under these powers can be disclosed and used, and
- expanding the Official Trustee in Bankruptcy's powers to preserve the value of restrained and confiscated property, gather information and recover costs under the POC Act to allow the Official Trustee to discharge its functions in a more cost-effective manner.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>24</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>25</sup>**

The Criminal Assets Confiscation Taskforce (CACT), the multi-agency taskforce formed in 2011 and led by the Australian Federal Police (AFP), is having a marked impact on recovery in major proceeds of crime cases and continues to actively pursue restraint and forfeiture orders, including in high value and complex cases. The CACT uses a proactive intelligence-led approach for the identification of criminal wealth and employs an innovative approach to asset confiscation where intelligence, operations, legal and other specialist resources from each participating agency work together. It undertakes the vast majority of federal level proceeds of crime investigations and litigation and draws together resources from the AFP, the Australian Criminal Intelligence Commission (ACIC) the Australian Taxation Office (ATO) and the Australian Transaction Reports and Analysis Centre (AUSTRAC).

Commonwealth restraint action is undertaken by the CACT, which has now been fully operational for over eight years. Since its creation, the CACT has sought to more proactively litigate proceeds of crime matters, including utilising and testing the full range of legislative tools provided in the *Proceeds of Crime Act 2002* (Commonwealth) (POC Act). This includes litigating four matters to the High Court of Australia (Australia's highest court).

Additionally, the CACT is increasingly targeting proceeds of foreign offending that have been moved to Australia, including responding to international requests for information and assistance (both via formal

<sup>24</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>25</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

country-to-country requests and via the Camden Asset Recovery Interagency Network (CARIN) and Assets Recovery Interagency Network – Asia Pacific (ARIN-AP)).

Average Commonwealth proceeds of crime recoveries have increased by almost 82% from an average of \$25.7 million per annum in 2015 to an average of approximately \$46.7 million per annum over the period of the 2014/15 to 2017/18 financial years. Average restraint figures have increased by 90% from an average of \$60.8<sup>[1]</sup> million per annum in the four years from 2011 to 2015, to an average of approximately \$115.6 million per annum over the period of the 2014/15 to 2017/18 financial years. The 2019/20 financial year has brought the largest annual amount of assets restrained since the creation of the CACT, with over \$250 million in assets restrained.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

Australia has not encountered any significant issues with the establishment of the Criminal Assets Confiscation Taskforce.

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>26</sup>**

Australia works across the Indo-Pacific region and beyond to support partner country efforts to tackle corruption and improve transparency and accountability. At the bilateral level, we invest in a range of anti-corruption initiatives. The largest of these are with Papua New Guinea (PNG), Solomon Islands, Indonesia and Vanuatu. Further examples of Australia's engagement in the region are below.

In 2020-21, DFAT funds and manages a range of investments at the global and regional level to promote anti-corruption reforms including return of stolen assets, including:

- the UN Pacific Regional Anti-Corruption Project (UN-PRAC), a joint venture of the UN Office on Drugs and Crime (UNODC) and the UN Development Programme (UNDP) which provides expertise and technical assistance to all Pacific Island Countries to implement the UN Convention against Corruption (UNCAC)
- the Stolen Asset Recovery (StAR) Initiative implemented by the World Bank and UNODC

<sup>[1]</sup> Mutual Evaluation Report, p. 64

<sup>26</sup> You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

- a UNODC-implemented program to combat and prevent corruption in South-East Asia and South Asia, particularly through the operation of UNCAC
- a UNDP-implemented corruption prevention program in South-East Asia and South Asia, focused on bringing a diverse range of stakeholders together to take concrete action against corruption
- Transparency International's Asia-Pacific Program
- the Indo-Pacific Justice and Security Program implemented by the Department of Home Affairs, Australian Border Force and the Attorney-General's Department, and
- the U4 Anti-Corruption Resource Centre.

Since 2014, the Department of Home Affairs' Anti-Money Laundering Assistance Team (AMLAT) and AUSTRAC have co delivered ongoing technical assistance and training aimed at supporting PNG to strengthen its financial system against money laundering and other serious crimes and to effectively recover the proceeds of crime, in line with the international Financial Action Task Force (FATF) standards.

For example, AMLAT and AUSTRAC have assisted PNG to pass a comprehensive suite of Anti-Money Laundering/Counter-Terrorism Financing (AML/CTF) laws, which has included the introduction of new powers to confiscate criminal assets, and to build the capacity of PNG to apply those laws. The program is delivered through in-person training workshops and desktop hypotheticals, and remote mentoring assistance, drawing on external subject matter experts where appropriate. Specifically, the training and assistance is delivered to PNG Financial Intelligence Unit officials, law enforcement officers, prosecutors and the asset administrator, to increase their capacity to effectively analyse and disseminate financial intelligence, investigate money laundering and identify and seize criminal assets, restrain criminal assets, and effectively preserve the value of and dispose of confiscated assets. AMLAT and AUSTRAC assists these agencies to develop institutional tools to enhance their AML/CTF framework, such as through the provision of assistance to develop forms and templates, guidance materials and operational manuals.

In addition, AMLAT co-delivers multi-regional training workshops to build the capacity of law enforcement officers, prosecutors and other practitioners to effectively recover confiscated criminal assets. For example, in 2018, AMLAT and Indonesia co-delivered a training workshop for approximately 60 Asset Recovery Interagency Network – Asia Pacific (ARIN-AP) members on increasing the capacity of participants to utilise informal cooperation mechanisms to pursue criminal assets across international borders. In 2019, AMLAT and Mongolia co-delivered a training workshop to ARIN-AP members on the tools and techniques available to identify and respond to criminals obscuring their ownership of proceeds of crime and forfeitable assets.

Both workshops assisted practitioners to explore current methods and trends through a range of case studies and discussion panels involving subject matter expertise from around the world, and to identify best practice measures in identifying, locating, confiscating and repatriating

criminal assets. The workshops provided an opportunity for participants to share their experiences and challenges in effective international cooperation, and to collectively discuss approaches to overcoming barriers.

In addition, Australia regularly presents at the ARIN-AP AGM on aspects of its proceeds of crime regime and relevant case studies.

Further, technical assistance in asset recovery has been delivered through funding and support provided by the Australian Attorney-General's Department to the anti-corruption work of the Pacific Islands Law Officers' Network (PILON). PILON works to strengthen regional collaboration and builds capacity to advance a range of priority law and justice issues, including corruption. Through various working groups, PILON has produced practical resources to assist members with improving capacity to implement and enforce anti-corruption laws, including:

- the *Framework for Prosecuting Corruption in the Pacific: Experiences, Challenges and Lessons Learnt* (2019), which provides a baseline understanding of PILON members' legal frameworks and experiences in prosecuting corruption, including case studies of successful prosecutions of bribery, embezzlement and money laundering offences
- the *PILON-Asia/Pacific Group on Anti Money Laundering Typologies Report: Recovering the Proceeds of Corruption in the Pacific* (2016), which compiles relevant regional case studies on corruption and related money laundering prosecutions and provides recommendations to improve law enforcement and prosecutorial responses to corruption through effective anti-money laundering and proceeds of crime frameworks; and
- *Effective Asset Management: A practical guide to the administration of seized, restrained and confiscated property for Pacific jurisdictions* (2014), which provides the building blocks for the development of property management laws and procedures in proceeds of crime matters.

These regional resources have typically been accompanied by regional workshops and associated training. In 2020, Australia is supporting the PILON Corruption Working Group to update the 2019 *Framework for Prosecution Corruption in the Pacific* and deliver virtual webinars on various topics associated with prosecuting corruption.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>27</sup>.**

Australia has shared information on asset repatriation in response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), “StAR Data Collection: International Asset Recovery Efforts in Corruption Cases, 2010–2019”. Australia has also shared information through existing forums, including the UNCAC Asset Recovery Working Group, the Financial Action Task Force, the OECD Working Group on Bribery in International Business Transactions, CARIN and similar networks. Information on asset recovery cases was provided during Australia’s Fourth Round Mutual Evaluation under the Financial Action Task Force recommendations (2015), the second review cycle of the Mechanism for the Review of the Implementation of the United Nations Convention against Corruption (2018) and Australia’s two-year follow-up to its Phase 4 report under the OECD Anti-Bribery Convention (2019).

In its capacity building role, AMLAT facilitates the sharing of Australia’s experiences and practices on effective asset recovery. For example, in 2019, AMLAT convened a series of in-person meetings between PNG and Australian law enforcement officers, litigators, technical experts and asset administrators. The meetings facilitated the development of institutional tools and practices for PNG to effectively investigate money laundering and confiscate criminal assets, such as structural and procedural processes for case prioritisation, utilisation of evidential material and asset management.

Australia also regularly presents at the ARIN-AP AGM on aspects of its proceeds of crime regime and relevant case studies.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

Relevant case studies often need to be de-identified to make them suitable for release in public fora, especially where there are particular sensitivities or legislative restraints to sharing the data such as where a mutual assistance request has been made or the matter is still before court. This can reduce the detail included, making it harder to convey some of the nuances that arise in relevant cases.

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<sup>27</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), “StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019”. You may refer to principle 9 in the “Nine Key Principles on Asset recovery” in providing your response

## Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>28</sup>

### **A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>29</sup>**

The Attorney-General's Department, which is the Australian Central Authority for mutual legal assistance, regularly updates its website which provides an overview of the mutual assistance process in Australia, including how to make a mutual assistance request to Australia. The website can be accessed at <[www.ag.gov.au](http://www.ag.gov.au)>.

Australia also contributes to StAR guides by providing advice on Australia's processes for asset recovery in the context of mutual legal assistance.

Upon request, the Australian Central Authority also provides timely advice directly to foreign counterparts about Australia's mutual assistance processes. The Australian Central Authority also regularly reviews draft requests and orders prepared by foreign counterparts and provides feedback on these to ensure that, once signed by foreign authorities, they can be actioned as expeditiously as possible by Australian authorities.

### **A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>30</sup>**

For proceeds of crime based actions please see response for Question A4. In addition, the CACT regularly conducts financial investigations to identify relevant assets in Australia in support of proceeds of crime action being taken by foreign authorities. This may result in the registration of

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<sup>28</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>29</sup> You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>30</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response



foreign proceeds of crime orders over those assets, or Australia choosing to take action under its own domestic laws.

There has also been a recent amendment to Australian Securities and Investments Commission (ASIC) search warrant powers that will enable ASIC to share material seized under a warrant obtained under the *Australian Securities and Investments Commission Act 2001* with a law enforcement agency in a foreign country for the purpose of performing a function, or exercising a power, conferred by a law in force in that foreign country. This is broader than the power that exists to share search warrant material under the *Crimes Act 1914*, under which Act ASIC previously obtained its search warrants. ASIC could previously only share that material if it assisted ASIC's investigation. ASIC has not yet used those powers as they only recently came into effect, but we envisage they will be useful in joint, parallel or related prosecutions in coming years.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

Please see responses to Question A5 for a POC Act perspective on constraints and barriers to investigations.

Further, there are legislative constraints that prevent ASIC sharing material obtained during ASIC's investigation when it is for a purpose other than to progress ASIC's investigation. The exercise of ASIC's investigation and evidence gathering powers is limited to offences that ASIC has the power to investigate.

ASIC also faces considerable difficulties in obtaining timely assistance from foreign jurisdictions via formal mutual assistance channels. While agency to agency information can be obtained relatively quickly, if evidence needs to be authenticated for use in a proceeding, there are lengthy timeframes involved in the formal mutual assistance processes.

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>31</sup>**

Although there has been no recent amendments to the *Mutual Assistance in Criminal Matters Act 1987 (Cth)* (the MACMA), this legislation is regularly reviewed by Australian authorities to ensure that it enables Australian authorities to execute requests for asset recovery in a flexible manner. For example, the MACMA provides flexibility by providing the ability for Australia to register foreign restraining, forfeiture

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<sup>31</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response



and pecuniary penalty orders that were issued on a conviction or non-conviction basis.

The Australian Central Authority regularly undertakes a review of its practices with regards to executing incoming requests (including asset recovery requests). The Australian Central Authority is of the view that its current practices in providing assistance is as flexible as possible within the scope of the MACMA.

## Holistic questions

### **A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

The widespread adoption of non-conviction based restraint and forfeiture, and unexplained wealth orders, would assist Australia in cooperating with foreign countries to address high-level corruption, both informally and through the mutual assistance process. For those countries unable to introduce non-conviction based confiscation, Australia would encourage them to amend their regime to allow the broadest possible cooperation with those countries that do have non-conviction based regimes.

### **A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Advocating for the development of non-conviction based restraint and forfeiture would assist in promoting widespread adoption.

### **A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

Australia has nothing further to share.

## B. DENIAL OF SAFE HAVEN

### B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.

All applicants seeking to be granted a visa to Australia must meet the relevant criteria set out in Australia’s migration legislation including character requirements. The character requirements are set out under section 501 of the *Migration Act 1958*. A person would not meet the character requirements if they meet one of the following:

- a substantial criminal record
- convicted of escaping from immigration detention, or convicted for an offence that was committed:
  - while in immigration detention
  - during an escape from immigration detention
  - after an escape, but before being taken into immigration detention again
- been a member of a group or organisation, or had or have an association with a person, group or organisation that the Minister reasonably suspects of being involved in criminal conduct
- the Minister reasonably suspects that a person has been involved in people smuggling, people trafficking, genocide, a war crime, a crime against humanity, a crime involving torture or slavery, or a crime that is of serious international concern, whether or not that person has been convicted of such an offence
- past and present criminal or general conduct shows that an individual is not of good character
- there is a risk that while an individual is in Australia that individual would:
  - engage in criminal conduct
  - harass, molest, intimidate or stalk another person
  - vilify a segment of the Australian community
  - incite discord in the Australian community or in a part of it
  - be a danger to the Australian community or a part of it
- been convicted, found guilty or had a charge proven for, one or more sexually based offences involving a child
- being a subject to an adverse security assessment by the Australian Security Intelligence Organisation
- been a subject to an Interpol notice, from which it is reasonable to infer that that individual is a direct or indirect risk to the Australian community, or a segment of the Australian community
- been convicted of a domestic violence offence or have ever been subject to a domestic violence order.

Applicants also need to satisfy public interest criteria attached to the visa including, for example, proving their identity and providing true information with their application, not being assessed as a risk to Australia's national security, and not being deemed as a person whose presence in Australia is or would be contrary to Australia's foreign policy interests.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

Not applicable.

**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>32</sup>**

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>33</sup>**

Information, graphs and statistics on character cancellation and refusals is available at: <<https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/visa-cancellation>>.

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

Australia has not experienced significant constraints or barriers in the implementation of the policies, legal frameworks and enforcement measures in place for denial of entry in Australia.

<sup>32</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>33</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>34</sup>**

Refer to responses to questions B1 and B3

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

Australia has not identified any constraints or barriers relevant for inclusion in response to this question.

#### **Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>35</sup>**

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>36</sup>**

Policies and program settings are continually reviewed to ensure that migration program integrity is not compromised and the safety and good order of the Australian community is upheld.

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

Australia has not identified any constraints or barriers relevant for inclusion in response to this question.

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<sup>34</sup> You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

<sup>35</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>36</sup> You may refer to principle 3 in the “G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery” in providing your response.

## Holistic questions

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

No.

- B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Not applicable as we have not identified specific gaps or weaknesses.

- B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

No.

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

Australia strongly supports the UNCAC Implementation Review Mechanism and is committed to hosting country visits; involving the private sector, academia and civil society in the review process, including country visits; and publishing the full reports and self-assessment checklists. Australia has involved civil society closely in our first and second cycle reviews. Civil society participation is a crucial part of the review process; civil society stakeholder expertise and views play a key role in assisting governments to combat corruption.

Australia has completed the first cycle review, with the country visit taking place in March 2012. The self-assessment checklist, executive summary and country report have been published.

Australia is close to completion of its second cycle review, with the country visit taking place in April 2018. At this stage, the executive summary has been published. We are working to finalise the second cycle review report.

**C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

Australia is a party to the OECD Anti-Bribery Convention, with the Convention entering into force on 18 December 1999. The OECD Working Group on Bribery adopted the report on Australia's Phase 4 evaluation on 15 December 2017 and the two year follow up report from its Phase 4 evaluation on 11 December 2019. The two year follow up report concluded Australia had fully implemented 6 recommendations, partially implemented 3 recommendations and had not yet implemented 4 recommendations.

**C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

**Corporate whistleblower reforms**

In February 2019, the Australian Parliament passed whistleblower reforms to strengthen protections for corporate and tax whistleblowers who come forward to report on misconduct. The reforms require public and large proprietary companies and registrable superannuation entities to have a whistleblower policy in place.

**Foreign bribery reforms**

In December 2019, the Australian Government introduced legislation into Parliament to strengthen Australia's foreign bribery offences and introduce a deferred prosecution agreement scheme for specified corporate offences related to financial crime. If passed, this legislation will introduce a new corporate offence for 'failure to prevent' foreign bribery, and strengthen the tools available to law enforcement to detect and investigate corporate crime.

# BRAZIL

## A. ASSET RECOVERY

### A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.

According to Article 131 of Brazil's Federal Constitution, the Attorney General's Office (acronym AGU) is responsible for providing legal representation for the Federal Public Administration (the Union) judicially and extrajudicially before courts in Brazil and in foreign jurisdictions.

In that sense, according to Laws [8.429/92](#) and [12.846/2013](#) the Attorney General's Office is the institution responsible for filing a claim before a civil court against natural or legal persons (Law 8.429/92) or legal persons only (Law 12.846/13) to recover assets related to an unlawful conduct carried out against the Union's interests.

Occasionally, the Attorney General's Office can also provide legal representation for the Union in criminal courts in Brazil (as an assistant to the prosecutor, in the interest of the Union), or in a civil or criminal proceeding before a foreign court, as the representative of the Federative Republic of Brazil.

Furthermore, the Brazilian Civil Procedural Code ([Law 13.105/2015](#)) has an entire chapter (Articles 26 to 41) dedicated to international cooperation, which highlights the role of Central Authorities, mutual legal assistance, and provisional measures to be considered in case of a foreign request <[http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2015/lei/l13105.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm)>.

In relation to the high-level national coordination, Brazil counts with a broad and consolidated mechanism that has been in place since 2003, which is **the Brazilian National Strategy Against Corruption and Money Laundering – ENCCLA:**

- It comprises 90 public institutions and 7 other entities linked to the private sector. These institutions are among the most representative in the country in the fight against corruption and money laundering (from the Executive, Legislative and Judiciary branches and from Federal, State and Municipal levels). The decision-making involves the highest managerial levels;
- its working groups are composed of experts with a high level of experience and supported by the head of their institution;
- it is based on a consensus decision-making mechanism, but it is still a "strategy", in the strict meaning of the word. The strategy basically consists of discussing, choosing and working on the implementation of

“actions” to combat corruption and money laundering. At the end of each year, a plenary session revises and approves (or not) the outcomes of the “actions” worked on in the current year by the working groups; and discusses and chooses the “actions” to be worked on in the following year;

- the core of this strategy is to build and maintain an environment that allows a high-level institutional coordination. All of this happens without the existence of a formal strategy plan. This living process of high-level institutional coordination has been taking place since 2003, when the strategy was formally created by placing its executive secretariat within the Ministry of Justice;

- since 2003, ENCCLA has concluded 289 “Actions” (<http://enccla.camara.leg.br/acoes/arquivos/resultados-enccla-2018/plano-diretrizes-combate-corrupcao-completo>; <http://enccla.camara.leg.br/acoes/historico-acoes-enccla>) and achieved important results, such as:

- the creation of the national training program on anti-corruption and AML techniques (“PNLD” - a training program for public officials and private sector. Between 2004 and 2017, more than 17.000 agents were trained - <http://enccla.camara.leg.br/pnld>);
- the implementation of national database on clients of financial institutions (CCS – see more in item 3.2.1);
- the development of the Banking Transactions Investigation System (SIMBA - see more in item 3.2.4), through which all data are transmitted by the financial institutions to the law enforcement agencies, according to a pre-established layout;
- the creation of the laboratory against ML (“LAB-LD”), which uses information technology and a scientific methodology to optimize judicial proceedings in ML cases (<https://www.justica.gov.br/sua-protecao/lavagem-de-dinheiro/LAB-LD>);
- proposals to Brazil’s legislative framework, which have achieved relevant progress regarding organized crime, ML, bank secrecy etc;
- for further information about ENCCLA’s results: <http://enccla.camara.leg.br/resultados>

- Asset recovery is one of the key ENCCLA priority. At least 8 “Actions” targeted this subject:

- *Action 6/2020: To improve tools for disposing of assets seized by judicial order in criminal proceedings, integrating management practices between polices, public prosecutors, public attorneys, the judiciary, and the Ministry of Justice and Public Security*
- *Action 2/2018: To propose improvement in the management of assets seized in criminal proceedings and in actions of administrative improbity*
- *Action 13/2014: To propose mechanisms to ensure the effectiveness of judicial decisions that determine the loss of property*



- *Action 5/2013: To propose the creation of a body in charge of assets subject to security measures administration.*
- *Action 7/2012: To uniform tables of goods seized among the polices.*
- *Action 8/2012: To improve the National System of Seized Goods - SNBA, integrating it with the bases of apprehensions of the Federal Revenue, the Federal Police and at least two civil polices.*
- *Action 9/2012: To standardize and to regulate the procedures for seizure, transportation, custody, convertibility and destination of national and foreign currency and other values*
- *Action 4/2011: To propose the creation of effective mechanisms for the management of seized assets and values and a specific fund to receive assets recovered from money laundering and corruption practices*

ENCCLA's Plenary Meeting, nov 2019.

**<http://enccla.camara.leg.br/noticias/resultados-da-enccla-2019-priorizam-inteligencia-digital-na-analise-de-dados-e-projetos-de-lei-contra-lavagem-1>**

*Law 8.429/92 (Administrative Dishonesty Act)* provides for the anticipated freezing, seizure, and civil confiscation/forfeiture of asset related to unlawful conducts classified as administrative dishonesty, including the ones related to corruption. Link : [http://www.planalto.gov.br/ccivil\\_03/LEIS/L8429.htm](http://www.planalto.gov.br/ccivil_03/LEIS/L8429.htm) (no official translation available. Excerpts can be provided upon request).

*Law 12.846/13 (Anticorruption Act)* provides for the civil liability of legal persons for unlawful conducts against the Public Administration, including the ones related to corruption. Link: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2013/lei/l12846.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12846.htm) (no official translation available. Excerpts can be provided upon request).

*Law no. 13.105/15 (Brazilian Civil Procedural Code)* provides, in Articles 26 to 41, for the general rules for international cooperation, including asset recovery requests. Link: (no official translation available. Excerpts can be provided upon request).

*Law Decree 2.848 (Criminal Code)* provides, in Article 91, for the confiscation/forfeiture of assets after a criminal conviction, which includes criminal proceedings related to corruption. Link: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/del2848compilado.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm) (no official translation available. Excerpts can be provided upon request).

*Law Decree 3.689/41 (Criminal Procedure Code)* provides, in Articles 118 to 144-A, for proceedings such as management and disposal of assets, including the possibility of early disposal of frozen and seized assets, in specific cases, including the ones related to corruption. Link: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/del3689.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/del3689.htm) (no official translation available. Excerpts can be provided upon request).

*Law 9.613/98 (Money Laundering Act)* provides, in Articles 4 to 8, for the management and disposal of assets, including in transnational cases,

bearing in mind that corruption is a predicate offense of the money laundering crime in Brazil. Link: [http://www.planalto.gov.br/ccivil\\_03/LEIS/L9613.htm](http://www.planalto.gov.br/ccivil_03/LEIS/L9613.htm) (No translation available. Excerpts can be provided upon request).

Law 12.683/12 and Law 12.694/12, which allows for the anticipated apprehension of illegal assets;

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

The Department of Assets Recovery and International Legal Cooperation (DRCI) of the Ministry of Justice and Public Security is the Central Authority competent to deal with MLA requests from countries with which Brazil has signed treaties. Internally, DRCI has a specific department to deal with criminal matters (General Coordinator for International Legal Cooperation in Criminal Matters). Inside this area, the cases are divided into two categories: criminal affairs in general and assets recovery, which deals with cases with important quantity of assets (that can lead to the recovery of assets in the future).

DRCI monitors freezing measures obtained abroad and statistics (provided in IO2 responses) on assets recovery. The monitoring system also allows to see the evolution of cases regarding a specific country, in order to promote activities to increase the international cooperation.

DRCI also has a system that permits the constant monitoring of the requests, eventual delays, and the most recurring issues that prevent a successful cooperation. The public officials responsible for managing the system have even remote access to it. Brazil also admits digital signatures, and, in this context, we have already entered into agreement with nine countries to exchange information exclusively by electronic channels (Portugal, France, Italy, USA, Peru, Chile, Canada, Argentina, and Switzerland).

In the same way, the Federal Prosecutor Office counts with a Secretary of International Legal Cooperation (SCI-PGR) to allow for a more efficient and expeditious execution of foreign requests. The SCI monitors important cases and sends a reminder to the foreign country if the request is delayed or taking too much time.

As shown in the statistics, Brazil is more of a requesting country than a requested country. The number of requests in the last four years are:

Number of active and passive requests by type of offense								
Series	Money Laundering		Corruption		Narcotrafficking		Crimes against Tax Order	
Year	Active	Passive	Active	Passive	Active	Passive	Active	Passive
2016	87	51	122	28	152	45	65	20
2017	89	85	62	27	127	47	53	33
2018	149	148	45	57	118	47	44	24
2019	138	120	44	40	69	43	43	8
<b>Total</b>	<b>463</b>	<b>404</b>	<b>273</b>	<b>152</b>	<b>466</b>	<b>182</b>	<b>205</b>	<b>85</b>

### Statistics on International Legal Cooperation

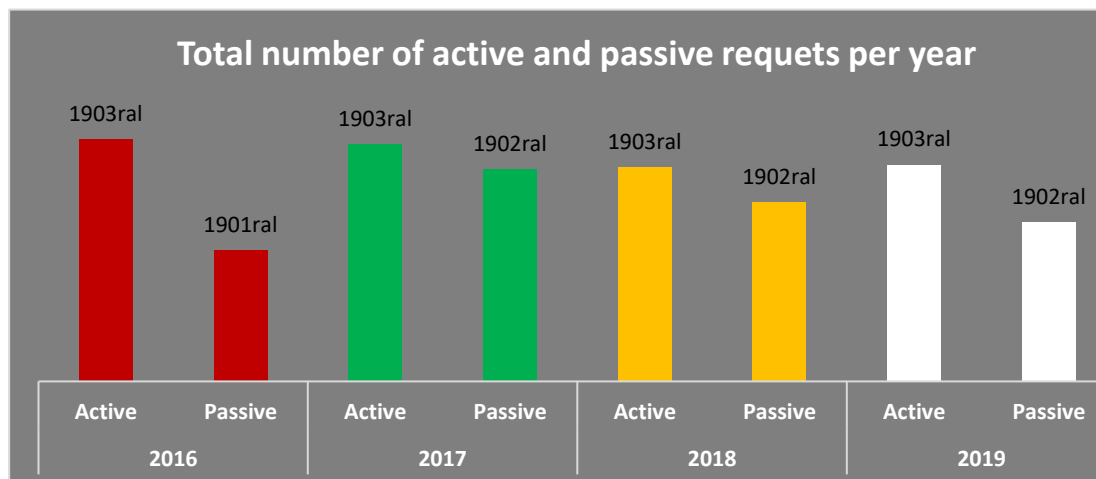
In order to analyze the international legal cooperation carried out by Brazil in recent years, the Central Authority for International Cooperation has carried out a detailed survey of all matters processed from 2016 to date.

#### a) Total number of active and passive requests per Year

Total number of active and passive requests per year							
2016		2017		2018		2019	
Active	Passive	Active	Passive	Active	Passive	Active	Passive
1241	673	1217	1088	1099	919	1110	817

**Data provided by Criminal Matters Department of Assets Recovery and International Legal Cooperation**

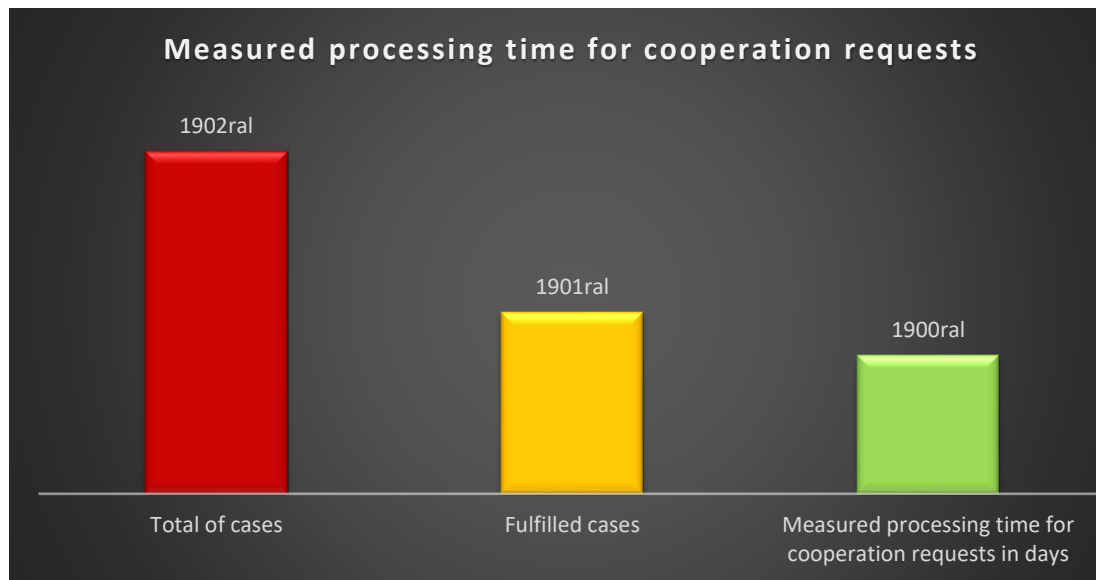
**b) Graphs**



**Data provided by Criminal Matters Department of Assets Recovery and International Legal Cooperation**

**c) Measured processing time for cooperation requests**

As a parameter of statistical information, we used 415 cases of the "car wash operation" out of a total of 785 cases, based on the sampling method. The result showed that the average processing time for cooperation requests is approximately 318 days.



**Data provided by Criminal Matters Department of Assets Recovery and International Legal Cooperation**

**d) Overall percentage of fulfillment by country**

<b>Country</b>	<b>Percentage of fulfilment per country</b>
Germany	57%
Andorra	31%
Antigua and Barbuda	50%
Argentina	13%
Austria	50%
Bahamas	58%
Belgium	33%
Bolivia	50%
Chile	100%
Colombia	14%
Curacao	100%
Denmark	100%
El Salvador	25%
Ecuador	29%
Spain	63%
USA	47%
France	58%
Gibraltar	100%
Guatemala	25%
Netherlands	40%
Honduras	100%
Hong Kong	33%
Cayman Islands	43%
Isles of Man	67%
British Virgin Islands	50%
Ireland	100%
Israel	100%
Italy	33%
Liechtenstein	73%
Luxembourg	50%
Macao	100%

Mexico	25%
Monaco	50%
Norway	33%
Panama	47%
Paraguay	100%
Peru	54%
Portugal	50%
United Kingdom	18%
Dominican Republic	75%
Russia	100%
Singapore	78%
Sweden	75%
Switzerland	87%
Taiwan	100%
Ukraine	200%
Uruguay	65%
Venezuela	100%

**Data provided by Criminal Matters Department of Assets Recovery and International Legal Cooperation**

It is also important to remark that Brazil seeks for provisional measures and confiscation abroad. The following table shows the values regarding seizures and repatriations related to Brazilian requests (based only on MLAs; values related to plea bargain are not included):

<b>Seizures vs. Repatriations (U\$)</b> <b>Cases related to MLA</b>		
<b>Year</b>	<b>Seizures</b>	<b>Repatriations</b>
2016	\$ 29,685,764.56	\$ 54,015,733.45
2017	\$ 286,853,306.76	\$ 36,081,139.66
2018	\$ 188,672,781.70	\$ 31,862,641.86
2019	\$ 130,114,942.29	-----
<b>Total</b>	<b>\$ 635,326,795.31</b>	<b>\$ 121,959,514.97</b>

**Data provided by Criminal Matters Department of Assets Recovery and International Legal Cooperation**

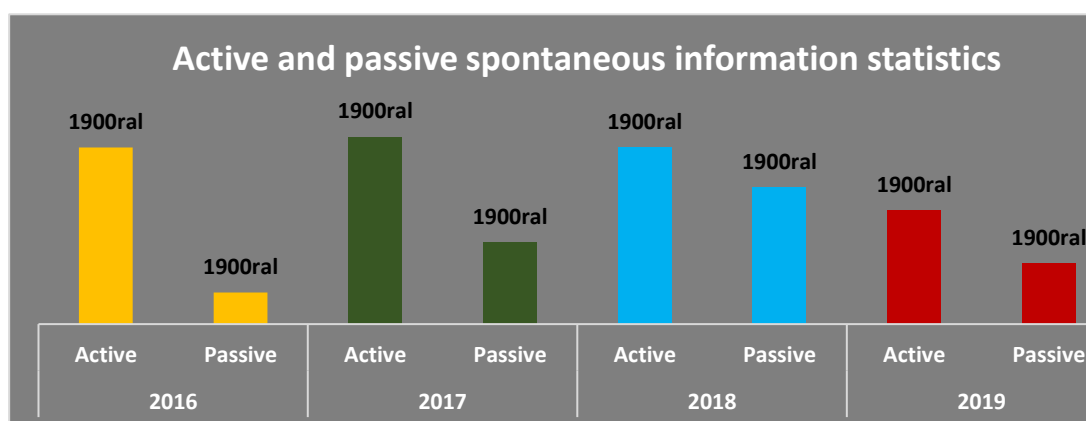
Regarding spontaneous cooperation, it should be noted that the Federal Prosecution Service and Federal Police have resorted on multiple

occasions to the spontaneous forwarding of information to its counterparts abroad.

**e) Active and passive spontaneous information statistics per year**

Active and passive spontaneous information statistics per year							
2016		2017		2018		2019	
Active	Passive	Active	Passive	Active	Passive	Active	Passive
67	12	71	31	67	52	43	23

**f) Graphs**



<https://www.justica.gov.br/sua-protecao/cooperacao-internacional/estatisticas>

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

Since the last FATF mutual evaluation report in the third round, Brazil has had significant improvements in the legal and operational level.

In the legal framework, Brazil amended the ML law, Law 9613, which determines that any criminal offense can be a predicate offence for ML.

In 2015, Brazil also approved the new procedural code, Law 13.105, which has a chapter dedicated to international legal cooperation (Articles 26 to 41).

In this sense, Brazil counts with a broad framework to provide mutual legal assistance (MLA), which may be provided in accordance with bilateral and multilateral treaties ratified by the country, and in the absence of such treaties, based on the principle of reciprocity.

Requests for international legal assistance can be based on a multilateral convention or a bilateral agreement on criminal matter, provided that they are duly signed and ratified by the States and validly incorporated into the respective domestic legislation. In such cases, these international treaties provide that the processing of requests will take place directly through the Central Authorities of the countries, eliminating the need to transmit them through diplomatic channels.

Brazil has signed 12 multilateral treaties that can base MLA requests.

In addition to multilateral treaties, Brazil also expanded its bilateral agreements to 21 jurisdictions (Belgium, Canada, People's Republic of China, Colombia, Republic of Korea, Cuba, Spain, United States, France, Italy, Jordan, Honduras, Mexico, Nigeria, Panama, Peru, United Kingdom of Great Britain, Switzerland, Suriname, Turkey, and the Ukraine).

However, when there are no agreements or conventions in force, it does not necessarily mean that Brazil is not able to provide mutual legal assistance. In these situations, the legal basis for MLA requests used most commonly is the principle of reciprocity, giving guarantees that in similar situations, if necessary, Brazil will also comply with any foreign requests.

Article 26, Paragraph 1 of Civil Procedural Code establishes that in the absence of a treaty, international legal cooperation may take place on the basis of reciprocity, expressed through diplomatic channels.

In fact, if not prohibited by Law, and based in bilateral, multilateral agreements or reciprocity, Brazil can provide the widest measures possible of international cooperation in relation to non-confiscation procedures. See Articles 27, VI and 26, §1º of the Civil Procedural Code.

According to § 4 of the Article 26 of the Civil Procedural Code, the Ministry of Justice performs the functions of central authority in the absence of a specific designation. In most multilateral treaties, including the Vienna, Palermo and Mérida Conventions, the Department of Assets Recovery and International Legal Cooperation of the National Secretariat of Justice, Ministry of Justice (DRCI) is the central authority.

According to the Art. 26 of the Procedural Code, the MLA shall observe:

- I - respect for the guarantees of due legal process in the requesting State;
- II - equal treatment between nationals and foreigners, whether or not they reside in Brazil, in relation to access to justice and the processing of cases, ensuring legal assistance to the needy;
- III - procedural advertising, except in cases of secrecy provided for in Brazilian law or in the requesting State;
- IV - the existence of a central authority for receiving and transmitting requests for cooperation;



Article 27 of the Procedural Code establishes the scope of the international cooperation. In this sense, the international cooperation can be used to the following measures:

- I - summons, subpoena and judicial and extrajudicial notification;
- II - collecting evidence and obtaining information;
- III - ratification and compliance with the decision;
- IV - granting of urgent and provisional judicial measure;
- V - international legal assistance;
- VI - any other judicial or extrajudicial measure not prohibited by Brazilian law.

In this context, all provisional measures of Criminal Procedural Code are available for international cooperation. In this context, the freezing of the assets, the foreclosure and the legal mortgage are the types of provisional measure that are regulated in the Code of Criminal Procedure (Articles 125 to 144-A) and available in the framework of the international cooperation according with the treaty in which the request is based or in its absence, by reciprocity.

In the same way, Chapter XI of the Criminal Procedural Code (Articles 240 to 250) establishes the authority for the Law Enforcement Authorities (LEA) to search and apprehend anything found or obtained by criminal means.

In practice all provisional measures, if it fulfils the legal standard, can be performed in a short time and without previous knowledge.

According to Brazilian AML Law, the provisional matters:

“Article 4 The judge may, ex officio, upon request made by the Public Prosecution or by the Police Chief, in this case after consulting with the Public Prosecution within twenty four hours, if there is sufficient evidence of a criminal act, order precautionary measures on assets, rights and valuables belonging to the individual under investigation or to the defendant, or in the name of interposed people, who are instrumentalities, product or proceeds of crimes set forth in this Law or of predicate offenses.

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>37</sup>

### **A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>38</sup>.**

A very good example for proactive MLA has been the work developed with several jurisdictions in the Car Wash case framework.

In this sense, Brazil established a specific task force and has developed joint work with some countries (Switzerland and Peru, for instance) in order to share, receive, treat and investigate the elements linked with those criminal activities, based on evidences obtained in different jurisdictions and shared by international cooperation channels.

In turn, AGU is developing minimum procedural standards to support its local and specialized units (acronyms GRAP and GRAAL, respectively) when asset recovery is necessary, as well as mapping pre-existing cases in which additional measures for international cooperation need to be adopted or updated according to current circumstances.

### **A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

The different legal frameworks concerning civil and administrative proceedings, such as distinct approaches regarding requirements for MLARs among various counterparts, are a barrier. International cooperation is still excessively focused on criminal approaches despite its generally known limitations. Even bilaterally, mutual legal assistance requests exclusively based on Art. 43.1 of the UNCAC are often refused.

Brazil believes that international cooperation based on investigative, prosecutorial, civil, judicial and administrative proceedings must increase and be available in different jurisdictions, regardless their official designation in the requesting or requested country. Even though Brazil has a very powerful legal framework in civil and administrative matters to reconstitute assets in corruption cases, the international legal cooperation in those matters is still a challenge worldwide.

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<sup>37</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
- Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
- Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.

Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>38</sup> You may refer to principles 1 and 7e in the “Nine Key Principles on Asset recovery” in providing your response.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>39</sup>**

- Brazil has mechanisms that allow the Financial Intelligence Unit (COAF), the Federal Prosecutor's Office, and police authorities to cooperate quickly with foreign counterparts in relation to money laundering crimes and their previous crimes, including financing of terrorism.
- The Federal Police is part of the International Criminal Police Organization (INTERPOL).
- The Central Authority (DRCI), Federal Prosecutor's Office and Federal Police are part of the Ibero-American Network of International Legal Cooperation (IberRed) that allows the exchange of information between contact points of central authorities, prosecution services and judicial authorities of the 22 countries that make up the Iberoamerican Community of Nations.
- DRCI, the Federal Police and Federal Prosecutor's Office, through its three contact points of the Gafilat Asset Recovery Network (RRAG), can exchange informal information on assets and people with the 17 countries that include GAFILAT members, Spain, France, El Salvador, and the Principality of Andorra. Those mechanisms contain the possibility of offering a broad range of cooperation, as RRAG is part of the ARINs and linked to CARIN and others regional networks.
- The Attorney General's Office is a co-founder member of the Latin-American Association of Attorney General's Offices (acronym ALAP, in Spanish and Portuguese), established in 2018, functioning as an informal network of communications between peers in Latin America, that has as one of its goals to facilitate asset recovery, according to Art. 2.1, "f", of its Statute.
- The Federal Prosecutor's Office has signed bilateral framework agreements for inter-institutional cooperation with other Public Prosecutors to promote the exchange of non-formal information in the international arena: with Spain, Argentina, Chile, Paraguay and Uruguay.
- Also within the scope of the AIAMP (Ibero-America) that links us with Argentina, Uruguay, Paraguay, Bolivia, Chile, Ecuador, Peru, Spain, Panama, Cuba, El Salvador, Guatemala, Colombia, Honduras, Mexico, Portugal, the Dominican Republic; and REMPM (Mercosur) signed by Argentina, Uruguay, Paraguay, Bolivia, Chile, Ecuador, Peru.

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<sup>39</sup> You may refer to principle 7b in the "Nine Key Principles on Asset recovery" in providing your response

Spontaneous referral of information by the Federal Police and Federal Prosecutor's Office have been used on multiple occasions.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

Informal and peer-to-peer communication is still a rather unknown tool to the offices of the Attorney General that participate in the ALAP network. The unfamiliarity as to what constitutes this tool and its aims; what is allowed to be shared with your peer in another country; the use of such information and other questions related to the network is the major barrier to render the peer-to-peer communication more usual.

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>40</sup>**

An example of this informal information between law enforcement agencies in international cooperation is provided through the GAFILAT Asset Recovery Network (RRAG). This network was created with the aim of facilitating the exchange of information and primarily strengthening mechanisms to identify and locate assets before activating mutual legal assistance mechanisms.

The RRAG contributes to the identification and eventual recovery of assets that have been transferred to other jurisdictions. An electronic platform is used to carry out the exchange of information, ensuring the protection and security of the requests and responses generated in each of the member countries.

As such, Brazil is able to exchange information with member countries of the Network, using for this purpose a secure Electronic Platform, developed expressly for this purpose. Likewise, as a member of the RRAG, Brazil is also able to exchange informal information with other information

<sup>40</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

networks that exist worldwide (CARIN, ARIN-AP, ARINSA, ARIN-CARIB, etc).

From 2015 to December 31, 2019, Brazil has responded to 93 requests and received information from 23 requests, in cases including ML and corruption.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

The constant change of countries' focal points is an issue that sometimes makes it difficult to establish the necessary knowledge of these networks and confidence for its correct use.

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>41</sup>.**

If non-conviction-based (NCB) confiscation is broadly interpreted, so as to include any sort of non-criminal confiscation, the Brazilian Civil Procedure Code constitute a broad and general basis for asset recovery cases, including providing specific outlines regarding international cooperation and involved authorities, in accordance with the need for multiple avenues. If NCB is restricted solely to lawsuits pursuing assets and property (*in rem* lawsuits), cases are considerably narrow, as set forth in the Brazilian Civil Code.

In Brazil, Laws 8.429/92 (Improbity Law) and 12.846/2013 (Anticorruption Law) regulate procedures allowing the use of non-conviction-based confiscation. The first one is aimed at natural and legal persons that performed an illicit act against the public administration, and the second one is aimed exclusively at legal persons responsible for committing acts of corruption.

These procedures are completely independent from criminal procedures and are not subject to any condition to be filed as lawsuits within the Judiciary branch. They also have the advantage of going forward regardless of personal circumstances, such as the death, flight or absence of the suspect, or other reason of failure to prosecute in criminal proceedings. In other words, a criminal prosecution can end due to many personal reasons regarding the suspect, or even to the limitation period of the crime, whilst the Brazilian civil lawsuits (specially the one of administrative improbity) can be processed regardless of those events.

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<sup>41</sup> You may refer to principle 4 in the "Nine Key Principles on Asset recovery" in providing your response

Based on Brazil's experience, non-conviction-based confiscation should be used in any situation and be treated as an independent proceeding apart from the criminal prosecution. Therefore, it should not be subjected to any condition for its use, such as the death, flight, absence of the suspect, or even have its proceedings in any way influenced by the outcomes of the criminal prosecution, unless proven innocent.

According to data from the Proactive Performance Report, from the Attorney General's Office (AGU), the effective recovery of assets resulting from the performance of the executive bodies of the Federal Attorney General's Office in 2019, according to data extracted from the SIAFI system, reached the amount of R \$ 554,060,123.82, almost 20% higher than last year, which was the previous record (R \$ 461,910,000.00).

These numbers could have been even greater, considering that the year 2019 was characterized as a year of transition from the structuring of the proactive action to the reformulation resulting from Ordinance No. 10, of May 16, 2019, with the creation of the Regional Groups, by the Solicitor's General Office, a branch of AGU.

Another important point to mention refers to the joint action of AGU with the Comptroller General of the Union in the scope of leniency agreements. The partnership between these ministries resulted in the signing of 11 (eleven) agreements with companies investigated for the practice of harmful acts foreseen in the Anticorruption Law (Law n° 12.846 / 2013), administrative illicit provided for in the Public Procurement Law (Law n° 8.666 / 1993) and, also, illegal acts provided for in the law of administrative improbity (Law n° 8,429 / 1992)

As of December 2019, legal entities signing leniency agreements agreed to pay BRL 13.67 billion in fines, damages and illicit enrichment, with BRL 3,126,240,810.26 effectively paid. Another 22 (twenty-two) leniency agreements are currently in progress.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

Unfortunately, the implementation of NCB mechanisms is still a challenge in international legal cooperation. Only a few countries cooperate and even in those cases the mechanisms are much less powerful in terms of freezing or confiscating measures. Brazil observes a lack of knowledge by its counterparts of the functioning of such proceedings within the Brazilian legal framework, despite their clear jurisdictional nature. It is paramount that countries progressively enhance their capacity to adequately and broadly cooperate in civil and administrative matters to recover assets. The improvement of flows and steps for the recovery of assets taking into consideration the Brazilian legal framework is also desirable among national agencies.

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

The use of NCB mechanisms, as remarked above, has been very important internally to recover assets in corruption cases. Laws 8.429/92 and 12.846/2013 regulate the procedures for non-conviction-based confiscation, being the former aimed at natural and legal persons that performed an illicit act against the public administration, and the latter exclusively at legal persons responsible for committing acts of corruption.

The Attorney General's Office (AGU) has conducted studies to establish regular and simplified data and information flows within investigative and judicial proceedings whenever asset recovery is needed or foreseen. The Anti-Corruption Department within AGU also set up a specialized Asset Recovery Lab (acronym LABRA).

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>42</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>43</sup>**

N/A

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

N/A

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>44</sup>**

As remarked, Brazil has been engaged in joint work with several jurisdictions in the Car Wash corruption probe. In this sense, the experiences and use of financial investigation techniques have been shared with other countries.

<sup>42</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>43</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>44</sup> You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>45</sup>.**

Yes, since 2005, Brazil collects data and statistics regarding assets recovered based on international legal cooperation. Our statistics are made available and also shared with international organizations.

The following table shows the values regarding seizures and repatriations related to Brazilian requests (based only on MLAs; values related to plea bargain are not included):

<b>Seizures vs. Repatriations (U\$)</b> <b>Cases related to MLA</b>		
<b>Year</b>	<b>Seizures</b>	<b>Repatriations</b>
2016	\$ 29,685,764.56	\$ 54,015,733.45
2017	\$ 286,853,306.76	\$ 36,081,139.66
2018	\$ 188,672,781.70	\$ 31,862,641.86
2019	\$ 130,114,942.29	-----
<b>Total</b>	<b>\$ 635,326,795.31</b>	<b>\$ 121,959,514.97</b>

**Data provided by Criminal Matters Department of Assets Recovery and International Legal Cooperation**

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

The collection of data for generating statistics is a challenge in Brazil. The information must come from the judicial authority. As a federal state, Brazil needs a national digital system to receive the parsed data, ensuring the completeness of the data transmitted and accuracy of information.

<sup>45</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response



## Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>46</sup>

### **A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>47</sup>**

Within the scope of its competences, DRCI has as one of its attributions to carry out the dissemination and clarification on topics related to international legal cooperation. For this purpose, the DRCI makes available on its website technical information on the applicable legislation, compiles the normative acts and international treaties in force on the matter, provides online forms with guidelines to facilitate the preparation of requests, disseminates statistics of its performance, in addition to providing guidance material, practical manuals and publications on the topic of international cooperation.

In addition, the DRCI, after studies and research on the subject, prepared a Manual for International Legal Cooperation in criminal matters (<https://www.justica.gov.br/sua-protecao/lavagem-de-dinheiro/institucional-2/publicacoes/files/manual-penal-online-final-2.pdf>), updated in 2019, with the objective of providing a model that serves as a reference for the preparation of requests for international legal cooperation in criminal matters.

Currently, the referred Manual of International Legal Cooperation encompasses multilateral and bilateral treaties in criminal matters as a legal basis for the formulation of requests for international legal cooperation, and among the various attributions assigned to it, it provides constant support and guidance to the competent Brazilian authorities that need international legal assistance for their police investigations and prosecutions.

In addition, in relation to guidance on procedures, DRCI provides electronic forms with completed templates, updated and adapted year by year, with the objective of providing a reference model for preparing requests for international legal cooperation in civil and criminal matters.

The forms were made based on the common requirements set forth in agreements and conventions on legal assistance signed and ratified by Brazil, condensing, in a single descriptive document, all the legal, formal and material requirements that must be carefully clarified by the Brazilian requesting authorities when elaborating a request for international legal

<sup>46</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>47</sup> You may refer to principle 3 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

cooperation, whether sent in the form of a letter rogatory or direct assistance.

This measure aims to facilitate the preparation of international legal cooperation requests, in addition to making the processing of such requests more agile and effective. The initiative allows DRCL to verify the technical and formal adequacy of the documents before forwarding it to foreign authorities, thus reducing the possibility of requests being returned without fulfilment.

It is important to note, however, that electronic forms only guide the correct completion of required mandatory information, in addition to providing examples. In the end, the request must follow the normal procedure of a request for cooperation, with the signature of the judicial authorities and the physical routing via post.

The Department also conducts regular training for public agents through the National Program for the Diffusion of International Legal Cooperation (Grotius Brasil), holding seminars, training and working groups, in addition to publishing monthly the electronic newsletter *Cooperação em Pauta*, with technical and scientific information on the subject of international legal cooperation in civil and criminal matters.

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>48</sup>**

According to the Code of Civil Procedure, in the part that provides for the general guidelines for international cooperation, spontaneity in the transmission of information to foreign authorities is enshrined, that is, this is a guiding element of Brazil's international legal cooperation process.

It should be noted that Brazilian authorities have on several occasions resorted to sharing spontaneous information to their counterparts abroad and that they have also received information from foreign authorities, as shown by the statistics of active and passive spontaneous information per year:

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<sup>48</sup> You may refer to principle 4 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

f) Active and passive spontaneous information statistics per year

Active and passive spontaneous information statistics per year							
2016		2017		2018		2019	
Active	Passive	Active	Passive	Active	Passive	Active	Passive
67	12	71	31	67	52	43	23

Regarding joint investigation teams, if not prohibited by law, and based on bilateral, multilateral or reciprocity agreements, Brazil can provide the broadest possible measures for international cooperation in relation to non-confiscation-based procedures. See Articles 27, VI and 26, §1 of the Civil Procedure Code.

As noted, international legal cooperation in Brazil is linked to the treaties on which the request is based. In this sense, the Vienna Convention, Art. 9.1, "c", Art. 19 of the Palermo Convention and Art. 19 of the Mérida Convention establish the possibility of implementing a joint investigation. In practice, Brazil has already carried out three multi-jurisdictional investigations with two different jurisdictions, and others are under negotiation or consideration.

In addition, even in the absence of a bilateral or multilateral agreement, Brazil is able to provide cooperation based on reciprocity.

In Mercosur, Brazil ratified the Framework Cooperation Agreement between the States Parties to MERCOSUR and Associated States for the Creation of Joint Investigation Teams (multisectoral investigations), adopted by the meeting of the MERCOSUR Ministers of Justice (RMJ) and approved by the CMC / DEC N ° 22/2010, of August 2, 2010.

We consider the formation of task forces of various agencies in specific areas to be extremely relevant in cases of great complexity and high risk. For example, the Car Wash Task Force includes the participation of several institutions and exchanges information with dozens of countries, having blocked and repatriated hundreds of millions of dollars.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

In JIT, issues with the applicable legal framework, jurisdiction, and procedural and operational mechanisms to obtain data are important matters that require further discussion.

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>49</sup>**

As described above, the existing mechanisms contain the possibility of offering a broad range of cooperation, including financial intelligence information and the use of informal networks (RRAG, linked to CARIN). There are no limitations in this regard.

In fact, if not prohibited by Law, and based in bilateral, multilateral agreements or reciprocity, Brazil can provide the widest measures possible of international cooperation, including non-confiscation-based procedures. See Articles 27, VI and 26, §1º of the Civil Procedural Code.

### Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

Yes. Brazil has longtime highlighted innumerous constraints regarding asset recovery when based on civil and administrative proceedings, as unfortunately we are still facing important limitations in this regard. Brazil also understands that one the most difficult phases of a transnational asset recovery case is the initial investigation on assets of a person or company in another country. Gathering such information from other jurisdictions, even regarding publicly available information, poses a considerable constraint that can impair the asset recovery case from the beginning.

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

The G20 can foster discussions regarding how to improve informal cooperation between countries all over the world. The group could even discuss the creation of a central network on the world bearing in mind successful experiences such as Interpol and regional networks such as CARIN, GAFILAT and similar around the world.

The group could also stress the importance and international responsibility of countries to adequately cooperate in NCB procedures

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<sup>49</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

defined broadly, so as to encompass investigative, prosecutorial, civil, judicial and administrative proceedings, regardless their official designation in the requesting or requested country.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

The existing processes and procedures for the fight against corruption and money laundering today in Brazil are in an important stage of maturation, after more than 20 years of the Brazilian National Strategy to Combat Corruption and Money Laundering. Nevertheless, many steps have yet to be taken.

Recently, AGU established the Asset Recovery Lab (LABRA), which constitutes an important and efficient tool for asset tracing and effective recovery.

Brazil is also preparing the National Risk Assessment – ANR, which is an important step towards a national diagnosis and to have clear indicators of the way forward.

In any case, reducing the time of criminal procedures and continuing to improve investigation processes in complex crimes remain necessary to the fight against corruption and the organized crime in general.

**B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

Brazil enacted a new and comprehensive Migration Law (Law 13,445 of 2017), which replaced and updated the former legislation on this area. While maintaining the general principles for denial of entry into Brazilian territory, Law 13,445 adopted new provisions aiming at ensuring compliance with international commitments and obligations. Article 45 of the aforementioned law allows Brazilian authorities to deny entry to a person who acted in a manner contrary to the principles established within the Federal Constitution or "whose name has been included in a list of restrictions through a judicial order or a commitment made by Brazil in an international forum". In that sense, the Brazilian framework allows for the denial of safe haven to corrupt persons, where appropriate.

It should be noted that the Brazilian legislation contains general provisions establishing the cases in which Brazilian authorities can deny entry to foreigners but does not include specific provisions on the denial of entry of foreign corrupt officials.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

As mentioned above, Brazil has updated its Migration Law (Law 13,445) to allow for the denial of entry of persons who acted in a manner contrary to the principles established within the Federal Constitution or whose name has been included in a list of restrictions through a judicial order or a commitment made by Brazil in an international forum, including corruption.

**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>50</sup>**

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>51</sup>**

N/A

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

N/A

<sup>50</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>51</sup> You may refer to principles 4 and 5 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>52</sup>**

N/A

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

N/A

**Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>53</sup>**

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>54</sup>**

N/A

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

N/A

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<sup>52</sup> You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

<sup>53</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>54</sup> You may refer to principle 3 in the “G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery” in providing your response.

## Holistic questions

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

N/A

- B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

N/A

- B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

N/A

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

Brazil is currently under review in the Second Cycle of evaluation of the Implementation Review Mechanism of the United Nations Convention Against Corruption (UNCAC). Brazil has already completed the self-assessment checklist on the implementation of Chapters II and V of UNCAC, with information received from nearly 15 different offices and bodies committed with the fight against corruption in the country.

Brazil was ready to welcome the delegations from Mexico, Portugal, and UNODC officials for the Country Visit, set to take place in March 2020. However, the experts' *in loco* visit had to be postponed as a consequence of the COVID-19 outbreak.



Seeking to speed up the process of completing the Second Cycle Review, Brazil is now working on answering the questions and comments made by the experts during the desk review phase. We understand that clarifying and giving as much information as we can beforehand will make the Country Visit more objective. Brazil also believes that by doing so, the process of having the Executive Summary finalized will certainly be accomplished more quickly.

Brazil is highly committed to conducting a transparent and inclusive review process. The self-assessment checklist and full country reports, as well as related documents, are published at UNODC's country profile [website](#). Brazil is also organizing a confidential session during the Country Visit for the experts to meet with a few Brazilian NGOs to establish a dialogue with non-governmental stakeholders.

**C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

Brazil signed the OECD Anti-Bribery Convention on 17 December 1997 and enacted the implementing domestic legislation on 11 June 2002.

Brazil has already been subject to three phases of evaluation by the peer-review mechanism. The Phase 3 evaluation took place in 2014, with a follow-up progress report presented in 2017 (country reports are available [here](#)). Phase 4 is scheduled to happen in 2022. According to internal monitoring data, still not ratified by the OECD Secretariat, Brazil has implemented nearly 75% of all the recommendations received from the review mechanism since Phase 1.

**C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

N/A

## CANADA

### A. ASSET RECOVERY

#### A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.

Canada has both criminal and civil (non-conviction-based) regimes to confiscate assets related to criminal misconduct.

At the federal level, the Seized Property Management Directorate (SPMD) is the agency that manages assets seized and confiscated pursuant to a criminal conviction (<https://www.tpsgc-pwgsc.gc.ca/app-acq/gbs-spm/index-eng.html>). SPMD manages assets seized pursuant to the *Criminal Code of Canada* (<https://laws-lois.justice.gc.ca/eng/acts/c-46/>), the *Controlled Drugs and Substances Act* (<https://laws-lois.justice.gc.ca/eng/acts/c-38.8/>), and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (<https://lois-laws.justice.gc.ca/eng/acts/P-24.501/>).

Non-conviction-based civil forfeiture is administered at the provincial level. The management of these assets rests with the provincial prosecution services.

In Canada, conviction-based asset recovery requests from foreign partners are administered through the general regime for mutual legal assistance pursuant bilateral treaties and multi-lateral conventions. These bilateral treaties and conventions are enabled by domestic legislation, specifically the *Mutual Legal Assistance in Criminal Matters Act* (MLACMA) (<https://laws-lois.justice.gc.ca/eng/acts/m-13.6/index.html>).

Mutual legal assistance requests are administered by the Canadian central authority, that is, the International Assistance Group (IAG) at the Department of Justice Canada.

Once a request for forfeiture or confiscation is successful, those confiscated assets are shared with the Requesting States pursuant to a bilateral sharing agreement, negotiated between Canada and the Requesting State.

Canada, specifically the Canada Border Services Agency (CBSA), also confiscates undeclared currency and monetary instruments from travelers entering and exiting the country when there are reasonable grounds to suspect these undeclared items are from criminal activity.

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

Statistics current to 2015 regarding mutual legal assistance requests, including but not exclusive to asset recovery requests, can be found at page 106 and following of Canada’s 4<sup>th</sup> Round Financial Action Task Force (FATF) Mutual Evaluation Report published in 2016 (<http://www.fatf-gafi.org/media/fatf/documents/reports/reports/mer4/MER-Canada-2016.pdf>).

Statistics current to 2015 on asset recovery in Canada, including but not exclusive to mutual legal assistance requests seeking asset recovery, can be found at page 55 and following of the FATF Mutual Evaluation Report.

Statistics from 2015 to present concerning asset recovery-related mutual legal assistance requests are presented below:

MLA Request	Received/Made	Executed	Ongoing	Withdrawn	Rejected as incomplete/insufficient	Attempted Execution, unsuccessful
Incoming	50	13	22	2	6	7
Outgoing	18	6	10	2	0	0

Incoming requests that are rejected as incomplete or insufficient typically lacked details or documents identifying the assets sought and the legal authority for the requested seizure or confiscation. Follow-up inquiries with the requesting country for the identifying information did not yield the information necessary to act on the requests.

Attempted but unsuccessful incoming requests typically involved requests that misidentified the assets sought or cases wherein the assets were relocated to another jurisdiction before the execution of the asset recovery order could be realized.

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

In the decision of the Ontario Court of Appeal in *Canada (Attorney General) v. Georgiou*, 2018 ONCA 320 (<https://www.canlii.org/en/on/onca/doc/2018/2018onca320/2018onca320.html?resultIndex=3>), the Court of Appeal for Ontario upheld the direct enforcement in Canada of a restraint order made as part of United States (US) criminal proceedings. The restraint order was directed at a bank account in Canada, ordered restrained in the US, as substitute assets in satisfaction of forfeiture of the proceeds of fraud-related offences. The Court of Appeal for Ontario held that Canada has the ability under the MLACMA to enforce foreign orders for the restraint of proceeds of crime against property of equivalent value or substitute assets, as permitted under foreign law. This can be done even though there is no corresponding ability under Canadian criminal law to enforce domestic restraint orders against property of equivalent value or substitute assets. In Canada, if a restraint or forfeiture order cannot be realized against the proceeds of crime or offence-related property, there is no ability to restrain or forfeit substitute assets or property of equivalent value in lieu of the proceeds of crime or offence-related property. Rather, a fine can be imposed in the amount of the restraint or forfeiture.

Please see our response in A2 for the link to the most current FATF Mutual Evaluation Report for Canada.

**Questions relevant to the Nine Key Principles on Asset Recovery<sup>55</sup>**

**A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to**

<sup>55</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>56</sup>.

Law enforcement agencies to respond.

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

Law enforcement agencies to respond.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>57</sup>**

The RCMP has their Anti-Corruption Division and law enforcement can always be contacted via Interpol who will direct the foreign law enforcement agency to assist.

In the case of formal communication in conviction-based asset forfeiture cases, the IAG has established focal points of contact in both corruption and asset recovery matters in order to facilitate and expedite the execution of such requests.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

Law enforcement agencies to respond.

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>58</sup>**

Law enforcement agencies to respond.

<sup>56</sup> You may refer to principles 1 and 7e in the "Nine Key Principles on Asset recovery" in providing your response.

<sup>57</sup> You may refer to principle 7b in the "Nine Key Principles on Asset recovery" in providing your response

<sup>58</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

Law enforcement agencies to respond.

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>59</sup>.**

There is no ability to enforce non-conviction-based asset confiscation orders under MLACMA or under Canada's domestic criminal law and procedure. Nevertheless, as mentioned above, there are civil recovery mechanisms in Canadian provinces that, depending on the provincial legislation involved, would allow for the civil enforcement of foreign non-conviction based confiscation orders. The foreign partner must retain private counsel in the relevant province in order to engage the relevant regime (for an example of legislation administering a provincial civil forfeiture regime, see the *Civil Remedies Act* of the Province of Ontario at <https://www.ontario.ca/laws/statute/01r28>).

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

The Government of Canada plays no role in provincial civil forfeiture cases.

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

In addition to the recent decision by the Ontario Court of Appeal in *Georgiou*, discussed above, which allows for equivalent asset confiscation in some cases of mutual legal assistance, the law concerning beneficial ownership has recently evolved as well. Effective June 13, 2019, the *Canada Business Corporations Act* (<https://laws-lois.justice.gc.ca/eng/acts/C-44/>) was amended to require federal non-distributing corporations to identify individuals with "significant control" over the corporation. An individual with significant control is an individual:

<sup>59</sup> You may refer to principle 4 in the "Nine Key Principles on Asset recovery" in providing your response

1. who is the registered or beneficial owner of, or has direct or indirect control or direction over a significant number of shares, that is, any number of shares that:
  - (a) carry 25 per cent or more of the voting rights attached to all of the corporation's outstanding voting shares or
  - (b) is equal to 25 per cent or more of all of the corporation's outstanding shares measured by fair market value; or
2. who has any direct or indirect influence that, if exercised, would result in control in fact of the corporation; or
3. to whom prescribed circumstances (which are yet to be determined by regulation) apply.

Two or more individuals with joint ownership of a significant number of shares are each considered to be an individual with significant control.

In order to identify individuals with significant control, each federal non-distributing corporation is required to maintain a New Register containing:

1. their name, date of birth and latest known address;
2. their jurisdiction of residence for tax purposes;
3. the date on which the individuals became or ceased to be individuals with significant control;
4. a description of how the individuals qualify as individuals with significant control, including their right, title and interest in and to shares of the corporation;
5. other prescribed information to be set forth in upcoming regulations; and
6. steps taken by the corporation to identify all individuals with significant control and to ensure that information in the New Register is accurate, complete and up-to-date.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>60</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>61</sup>**

Canada's Integrated Proceeds of Crime (IPOC) Initiative (<https://www.publicsafety.gc.ca/cnt/cntrng-crm/rgnzd-crm/ntgrtd-prcde-crm-en.aspx>) aims at the disruption, dismantling, and incapacitation of organized criminal groups by targeting their illicit proceeds and assets. It brings together the Canada Border Services Agency (CBSA), the Canada Revenue Agency (CRA), the Public Prosecution Service of Canada (PPSC), Public Safety Canada (PSC), the Forensic Accounting Management Group at Public Services and Procurement Canada (PSPC), and the RCMP, which cooperate and share information to facilitate investigations.

<sup>60</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>61</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

The RCMP's Federal Policing Serious and Organized Crime/Financial Crime Teams target the proceeds of organized crime for seizure.

To assist with international requests for asset recovery, the IAG maintains subject matter experts and focal contacts on asset recovery, sharing agreements, and corruption-related requests. These focal points facilitate and assist in expediting the MLA process.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

Law enforcement agencies to respond.

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>62</sup>**

The IAG provides regular training to foreign authorities in how to meet the legal requirements in making requests to Canada for conviction-based forfeiture. The Canadian Central Authority regularly participates in international fora to engage with foreign prosecutors, law enforcement agencies and central authorities in order to provide guidance and exchange best practices in the recovery of assets.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>63</sup>.**

With respect to asset recovery mutual legal assistance requests, the IAG maintains statistics and information in order to, *inter alia*, demonstrate the functionality of the system. Updated information and statistics are provided periodically to the FATF for evaluation.

Canada participates in information sharing through the various reporting mechanisms of, *inter alia*, the Organization of American States, the UNCAC Asset Recovery Working Group, the OECD and the G20 Working Group.

<sup>62</sup> You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>63</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response



**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

One major issue is the lack of standardization between countries in how to interpret and present such data. Accordingly, comparisons between jurisdictions and evaluations done by foreign assessors can suffer from a lack of precision and overly subjective analyses.

Another barrier in sharing such data is the mutual expectation of confidentiality between states in assisting in international criminal cooperation requests, therefore case specific data cannot be publicly shared outside of direct communication with the Requesting State.

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>64</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>65</sup>**

The IAG maintains current and publicly available guidance in making MLA requests to Canada (<https://www.justice.gc.ca/eng/cj-jp/emla-eej/mlatocan-ejaucan.html>). Counsel at the IAG regularly provide general and request-specific guidance to foreign partners seeking to make MLA requests that comply with Canadian legal requirements. The IAG also consults regularly and on an *ad hoc* basis with foreign partners on Canada's mutual legal assistance regime. Similar guidance is also provided through Canada's engagement with StAR and the G20.

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>66</sup>**

Law enforcement agencies to respond.

<sup>64</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>65</sup> You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>66</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

Law enforcement agencies to respond.

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>67</sup>**

Canada has not developed or amended domestic legislation in recent years to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions. However, we refer the reader to the discussions above concerning beneficial ownership amendments to the *Canada Business Corporations Act* and the Court of Appeal for Ontario's decision in *Georgiou*.

### Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

We refer the reader to Canada's latest FATF Mutual Evaluation Report (<http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf>) especially concerning relevant strengths and weaknesses identified at pages 55-61, 108-115, 123-125, and 197-198.

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Nothing further to add.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

Nothing further to add.

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<sup>67</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

## B. DENIAL OF SAFE HAVEN

- B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

Law enforcement agencies to respond.

- B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

Law enforcement agencies to respond.

### Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>68</sup>

- B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>69</sup>**

Law enforcement agencies to respond.

- B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

Law enforcement agencies to respond.

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<sup>68</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>69</sup> You may refer to principles 4 and 5 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>70</sup>**

Law enforcement agencies to respond.

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

Law enforcement agencies to respond.

#### Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>71</sup>

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>72</sup>**

Law enforcement agencies to respond.

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

Law enforcement agencies to respond.

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<sup>70</sup> You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

<sup>71</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>72</sup> You may refer to principle 3 in the “G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery” in providing your response.

## HOLISTIC QUESTIONS

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

Law enforcement agencies to respond.

- B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Law enforcement agencies to respond.

- B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

Law enforcement agencies to respond.

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

The executive summary and full first cycle review report are available on the UNODC Country Profile Page for Canada.

<https://www.unodc.org/unodc/treaties/CAC/countryprofile/CountryProfile.html?code=CAN>

A country visit, agreed to by Canada, was conducted from 21 to 24 October 2013. During the country visit, the reviewing experts met with representatives of civil society, including GOPAC, Transparency International, the Canadian Bar Association and Bennett Jones LLP.

The second cycle of Canada's review started in July 2020.

- C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

As a State Party to the OECD Convention, Canada is committed to, and actively participates in, the peer review mechanism as a lead examiner, evaluated country, and member of the OECD Working Group on Bribery. The Working Group's Phase 4 peer review of Canada is scheduled to be presented to the Working Group in June 2023.

- C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

None at the moment.

## CHINA

### A. ASSET RECOVERY

- A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

China has been making unswerving efforts in recovering assets.

In terms of general framework, asset recovery related to corruption offences falls within the jurisdiction of National Commission of Supervision (NCS). In 2014, China launched the "Skynet Operation" dedicated to bringing back corrupt persons and assets abroad. The Fugitive Repatriation and Asset Recovery (FRAR) Office was set up under the Central Anti-Corruption Coordination Group, which brings together officials from supervisory, police, foreign affairs, FIU, judicial and other relevant agencies who have responsibilities related to recovering assets. In recent years, local offices have also been established to make the efforts more tailored to different situations. The members of the office

meet regularly to make work plans, exchange information and discuss specific cases.

In terms of legal framework, China acceded to the UNCAC in 2005, and permit the UNCAC to be used as a legal basis for international asset recovery cooperation. Further efforts have been taken in recent years. China has enacted the special procedures for confiscating illegal proceeds in 2012 and the procedures for trial in absentia in 2018. In October 2018, the *Law for International MLA in Criminal Matters of the People's Republic of China* was enacted.

In terms of international cooperation, China has been actively promoting anti-corruption law enforcement cooperation with foreign counterparts. For example, China and the U.S. have held Anti-Corruption Working Group Meeting annually on a rotation basis since 2005; China and Australia have signed MOU on anti-corruption law enforcement cooperation; China and Thailand have agreed on enhancing anti-corruption law enforcement in bilateral MOU. China has also been participating in the international discussion on how to better cooperate on corrupt persons and asset recovery in various mechanisms such as UNCAC, G20 and APEC. To join efforts against the transnational flow of corruption, China has regularly conducted training programs for developing countries with similar challenges since 2017.

[http://www.ccdi.gov.cn/toutu/202007/t20200730\\_222905.html](http://www.ccdi.gov.cn/toutu/202007/t20200730_222905.html)

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

China's intensive efforts have generated tangible results. From 2014 to June 2020, China has recovered illegal assets worth of 19.65 billion RMB (approximately 2.9 billion USD). 7,831 people were brought back to China from over 120 countries and regions. Among them, 2,075 people were public officials, and 60 people were on the list of 100 most wanted persons with the Interpol red-notice.

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

In March 2018, the *Supervision Law of the People's Republic of China* was enacted and the National Commission of Supervision (NCS) established accordingly. According to the *Supervision Law*, the NCS is responsible

for coordinating China's anti-corruption cooperation with other countries and international organizations, including the recovery of corruption proceeds. The NCS has promulgated specific regulations on the work of supervisory organs at both central and local levels, making requirements and standardizing procedures on recovery of corruption proceeds.

In October 2018, China has enacted the *Law for International MLA in Criminal Matters*, which provides further legal basis for China's anti-corruption law enforcement with other countries. The *Law for International MLA in Criminal Matters* designated the NCS as a competent authority for MLA in corruption related offence. China has also adopted the special procedures for confiscating illegal proceeds in 2012, and the procedures for trial in absentia in 2018.

Since its establishment in 2018, the NCS has signed 11 cooperation MOUs with its foreign counterparts and international organizations. By now, China has signed 169 extradition treaties, MLA agreements, and asset recovery agreements with 81 countries. Agreements on financial intelligence exchange have been signed between China and 56 other countries and regions.

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>73</sup>

### **A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>74</sup>.**

Yes. China has engaged in the proactive pursuit of cases since 2014 when the Skynet Operation was launched. The NCS has cooperated with foreign counterparts in bringing back corrupt persons and assets from abroad. Anti-corruption law practitioners actively participate in multilateral and bilateral cooperation on specific cases. MLA requests are both sent and received where necessary.

A prominent case is the LI Huabo case. LI Huabo, suspect on China's 100 most wanted persons with the Interpol red-notice, managed to transfer illegal assets worth of 29 million RMB yuan from China to Singapore. By working actively with the Singaporean counterparts, China successfully recovered the stolen assets. .

<sup>73</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
- Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
- Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.

Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>74</sup> You may refer to principles 1 and 7e in the "Nine Key Principles on Asset recovery" in providing your response.



**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

There are different constraints in different stages of the asset recovery work. Tracing and locating the stolen assets is often challenging because the methods to transfer them are becoming more and more complicated, while sometimes key information and timely assistance cannot be obtained due to various reasons such as bank secrecy regulations.

Lack of flexibility in freezing and confiscating assets poses another constraint. Due to legal differences, it's often difficult to request foreign countries to enforce confiscation orders of Chinese courts. It is also difficult to secure the recognition of non-conviction based asset recovery orders overseas.

Another constraint is posed by the low efficiency of MLA cooperation. It always takes months and even years for our practitioners to get response from foreign jurisdictions on our requests.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>75</sup>**

In China, under most bilateral agreements, Ministry of Justice is the central authority for receiving and handling MLA requests, and relevant authorities, including the NCS and the Ministry of Public Security, are competent authorities. The NCS is also authorized to process MLA requests raised with the UNCAC as the legal basis. All the information can be found in UNODC Directory of Competent National Authorities.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

N/A

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<sup>75</sup> You may refer to principle 7b in the "Nine Key Principles on Asset recovery" in providing your response

**A.8. Please provide a brief overview of your country’s experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>76</sup>**

China has been actively using existing networks such as the UNCAC and the Interpol to facilitate multi-jurisdictional cooperation on asset recovery. In other multilateral and regional mechanisms such as the G20 and APEC, China has been making efforts over the years to promote the establishment of law enforcement cooperation platforms. For example, the APEC network of the Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET) started its operation in 2014 and well functions as a cooperation platform for APEC economies.

China has frequently used the above mechanisms in anti-corruption law enforcement cooperation. For example, China turns to the Interpol for the issuance of warrants when suspects fled or transferred illegal assets abroad. China also routinely attends the annual meeting of the APEC ACT-NET since its coming into being, where law practitioners from APEC economies make acquainted with each other, exchange experiences and discuss cases.

China holds the view that the multilateral platforms play an important role in promoting anti-corruption law enforcement cooperation, because they not only provide occasion for law enforcement practitioners to develop cooperation network, but also serve as platforms where interested parties can discuss specific cases.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

The multilateral networks cannot facilitate timely, regular and direct contacts for law practitioners, which sometimes results in low efficiency of law enforcement cooperation. Multilateral commitments are not enough to serve as legal basis for MLA cooperation as bilateral agreement is still required in some countries for MLA cooperation.

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<sup>76</sup> You may refer to principle 7c in the “Nine Key Principles on Asset recovery” or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>77</sup>.**

China allows for non-conviction based (NCB) confiscation for asset recovery purposes. NCB methods apply under certain condition, where, in a case regarding a serious crime such as embezzlement, bribery, or terrorist activities, a criminal suspect or defendant escapes and cannot be present in court after being wanted for a year, or a criminal suspect or defendant dies, if his or her illegal income and other property involved in the case shall be recovered in accordance with *the Criminal Law*. For example, China has confiscated the illegal assets located in China of a corrupt suspect, Peng Xufeng, who had fled overseas.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

Due to legal differences, some countries do not allow for NCB confiscation, or they have very strict requirements when they are asked to recognize or enforce foreign confiscation orders.

The evidential standards in different countries are not the same for NCB techniques.

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

China has adopted the special procedures for confiscating illegal proceeds in 2012. The evidential standard is higher than a civil standard but lower than that required for a criminal conviction. The special procedures prove useful when the assets were held in or laundered outside of China while the suspects or criminals absconded or deceased.

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<sup>77</sup> You may refer to principle 4 in the “Nine Key Principles on Asset recovery” in providing your response

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>78</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>79</sup>**

Yes. In 2014, China set up the Fugitive Repatriation and Asset Recovery Office under the Central Anti-Corruption Coordination Group. This Office brings together officials from the supervisory , police, foreign affairs, FIU, judicial and other relevant agencies who have responsibilities related to recovering assets. These agencies cooperate with each other on asset recovery matters, with the National Commission of Supervision taking the lead in the recovering of corruption proceeds. Such office is also established in each province.

The specialized task-force proves effective in the work on corrupt persons and assets. From 2014 to June 2020, China has recovered illegal assets worth of 19.65 billion yuan (approximately 2.9 billion USD).

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

N/A

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>80</sup>**

Yes. China is actively providing technical assistance to other jurisdictions on building up expertise in asset recovery. For example, in March 2018, together with the National Anti-Corruption Commission of Thailand and the UNODC, China held a Training Workshop on Asset Recovery under the APEC Network of Anti-Corruption Authorities and Law Enforcement Agencies. Experts from relevant economies and international organizations were invited as speakers to share experience. Anti-corruption authorities and law enforcement agencies from APEC economies and other interested economies were invited as participants to share best practices, improve capacity building and enhance collaboration on asset recovery. By taking a practical perspective, this workshop added value to other international initiatives on asset recovery through best practice sharing in investigative tools and effective methods such as drafting MLA requests, collecting and providing electronic evidence, tracing illegal money flows, and managing

<sup>78</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>79</sup> You may refer to principle 6 in the “Nine Key Principles on Asset recovery” in providing your response

<sup>80</sup> You may refer to principle 8 in the “Nine Key Principles on Asset recovery” in providing your response

confiscated assets, in order to help build more efficient cross-border anti-corruption cooperation.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>81</sup>.**

Yes. China has been collecting information and data on cases on corrupt persons and asset recovery. Relevant information is shared under existing fora such as the UNCAC, G20, APEC and etc. For example, China has provided information on 2 successful asset recovery cases to StAR initiative. One of the case (Yan's case) was incorporated in the report *DIRECT ENFORCEMENT OF FOREIGN CONFISCATION ORDERS* by the StAR.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

N/A

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>82</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>83</sup>**

Yes, China provides accessible information regarding procedural requirements for MLA. The *Law for International MLA in Criminal Matters of the People's Republic of China* was enacted in October 2018, which has provided clear and detailed information about procedural requirements for MLA in China.

<sup>81</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>82</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>83</sup> You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

[http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-10/26/content\\_2064576.htm](http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-10/26/content_2064576.htm)

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>84</sup>**

Yes. Under the China-U.S. Anti-Corruption Working Group, China and the U.S. have conducted joint investigation in corruption cases. For example, a Chinese corrupt suspect, Xu Chaofan, fled to the U.S. in 2001. Under parallel investigation of China and the U.S., the latter sent investigators to China to collect evidence. China has also provided materials to the U.S. as requested. With joint efforts of the two sides, Xu was sentenced to 25-year imprisonment by U.S. court in 2009, and was repatriated to China in 2018.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

To set up mechanism for bilateral anti-corruption and law-enforcement requires the participation of different agencies. It is difficult to coordinate both domestic agencies and foreign agencies at the same time because of the difference in the official responsibility and capacity of those agencies.

Sometimes the procedures for parallel investigations are complex due to different legal requirements, which may affect the efficiency of the investigation.

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>85</sup>**

Yes. The *Law for International MLA in Criminal Matters of the People's Republic of China* has clear stipulation on flexibility. For example, article 1 of the general provisions stipulates that, without violating the basic

<sup>84</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>85</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

principles of the laws of the People's Republic of China, the 2 parties involved could discuss on the signing authority, the language of the request and relevant materials, time limit for handling and working procedures or proceed with the work in accordance with bilateral MLA agreements. Article 49 of the law stipulates that for assets that foreign countries asked China to confiscate and return, if the foreign country has made a request of sharing of such assets, the amount and proportion of assets to be shared could be discussed by the 2 countries.

## Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

MLA cooperation is often slow in practice. We call for higher efficiency in MLA and more flexible alternatives such as informal cooperation.

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

G20 countries shall re-activate the Denial of Entry law enforcement network, which can further provide opportunities for networking of anti-corruption practitioners. G20 countries shall also participate in the Riyadh initiative which aims to build a direct, informal cooperation platform among anti-corruption practitioners worldwide. Commitment to enhance cooperation and improve efficiency shall be communicated to the international community via key G20 deliverable such as the leaders' communique.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

China is working hard to establish cooperation agreements with other countries and set up working mechanisms with more countries to enhance cooperation.

China has set the year 2019 and 2020 as the year for asset recovery respectively. Domestically, the NCS has enhanced collaboration with judicial, law enforcement and financial agencies to prevent stolen assets from being concealed and transferred abroad. Internationally, the NCS has conducted cooperation with foreign counterparts to better identify, seize, freeze, and return stolen assets, so that they can be traced and brought back to their legitimate owners. While making full use of

existing legal channels, we are also exploring non-criminal tools for asset recovery.

## **B. DENIAL OF SAFE HAVEN**

- B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

*The Law of the People's Republic of China on Exit and Entry Administration* serves as the major legislation on denial of entry. Article 12 of the law lists situations where Chinese citizens shall be denied exit while article 21 and 25 stipulate situations where foreign citizens shall be denied the issuance of a visa or entry into China.

According to the law, criminal activities, including corrupt practices or offenses, will trigger decisions on denial of entry.

- B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

China has been making efforts to weave a tight network to prevent corrupt persons from escaping from justice. A joint work mechanism has been set up between the anti-corruption, immigration and police authorities. As a result, when the anti-corruption agency detects that a corrupt suspect would possibly flee abroad, the information can be immediately transferred to the immigration administration agency, and the latter would trigger DOE process.



## Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>86</sup>

### **B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>87</sup>**

In terms of denying entry of foreign suspects, the National Immigration Administration works closely with relevant domestic departments as well as its foreign counterparts. If there are bilateral agreements between Chinese and foreign border control authorities, the information of possible entry of suspects or criminals would be exchanged and trigger DOE action. The National Immigration Administration also cooperates with the INTERPOL through its China center.

Due to data protection legislation, the National Immigration Administration does not publicize statistics on individual cases.

### **B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

The efficiency of information exchange among jurisdictions needs further improvement. Especially for urgent cases, delayed information exchange sometimes results in failed DOE action.

### **B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>88</sup>**

China cannot comment on individual cases.

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<sup>86</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>87</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

<sup>88</sup> You may refer to principles 6 & 7 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

N/A

#### Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>89</sup>

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>90</sup>**

Yes. Immigration programs or policies are periodically and continually reviewed to detect loopholes which may be utilized by persons seeking safe haven for themselves and their proceeds of crime. The National Immigration Administration collaborates with customs, anti-corruption, trade and investment and other relevant authorities to ensure that integrity in immigration program is upheld.

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

N/A

#### Holistic questions

**B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

The G20 ACWG can further address the risks for trans-border flow of corruption where immigration programs are abused by corrupt persons. When the immigration programs are abused, illegal flow of corrupt persons and the stolen assets cannot stop, and such activities would

<sup>89</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>90</sup> You may refer to principle 3 in the "G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery" in providing your response.

further encourage other corrupt persons to make use of the loop-holes in the immigration or entry system.

**B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

The G20 ACWG shall set “corruption and investment immigration” as a topic for discussion at future meetings and generate concrete actions or guidance for G20 countries to follow.

**B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

N/A

**C. GENERAL QUESTIONS**

**C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

China strongly supports the UNCAC Implementation Review Mechanism. China has completed the first cycle of the UNCAC Implementation Review Mechanism and is being reviewed under the second cycle. In the first cycle, China has hosted country visits, and the private sector, academia and civil society were invited to participate in the country visits.

**C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

Though China is not a Party to the OECD Anti-Bribery Convention, it attaches great importance to the fight against all types of corruption including foreign bribery. Our leader has demonstrated strong political will to investigate and punish both the bribe-takers and the bribe-givers. China has criminalized foreign bribery in 2011, and worked closely with other stakeholders to raise anti-foreign bribery awareness in both public and private sectors. In 2016 and 2018, the NCS and the OECD WGB have jointly held 2 round-tables on how to better fight against foreign bribery.

**C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

**Oversight on poverty reduction program.**

Poverty reduction is a high priority for China as a country with 1.4 billion people. The central government has been dedicating efforts in reducing poverty in China and large funds have been allocated to poverty reduction programs. As this work involves large sums of relief funds and intensive interaction between public officials and those poverty-stricken people who are more vulnerable to corruption, comprehensive oversight is key to the success of the program. China has integrated an oversight mechanism into poverty reduction programs at the very beginning and is continually making efforts to ensure transparency and integrity throughout the program. For example, the use of poverty alleviation fund is publicized online to receive public scrutiny. Electronic ID system is established and widely applied to ensure the relief fund goes to its rightful owners.

**Building on clean business environment.**

China has been striving to build a clean business environment both domestically and abroad. International cooperation in this regard is enhanced, as China has convened several fora on clean business environment in recent years, with the Beijing Initiative for the Clean Silk Road raised by China together with other stakeholders. China has also worked closely with business partners and international organizations such as UNODC, WBG and IMF to raise the awareness and enhance capacity building against corruption in business operation. Anti-corruption education and training is provided to Chinese enterprises operating both in and outside of China.

## EU

### G20 Anti-Corruption Working Group

EUROPEAN UNION ANSWER TO THE ACWG ACCOUNTABILITY REPORT QUESTIONNAIRE 2020

#### ASSET RECOVERY – Relevance: A

##### ***Regulation (EU) 1805/2018 on the mutual recognition of freezing and confiscation orders***

Regulation 1805/2018 on the mutual recognition of freezing and confiscation orders, was adopted in 2018 and will be directly applicable from December 2020. This Regulation will facilitate cross border cooperation by providing for the mutual recognition and execution of freezing and confiscation orders in different EU Member States. The Regulation will also significantly speed up cross-border cooperation, as it sets strict time limits for the recognition and execution of orders. This will address the issues linked to the implementation of the existing instruments, which have led to insufficient mutual recognition, and will contribute to making the EU more secure by combating the financing of crime, including terrorist activities. The general principle of mutual recognition will prevail: all judicial freezing and confiscation decisions in criminal matters taken in one Member State will normally be directly recognised and enforced by another Member State. The Regulation only sets out a limited number of grounds for non-recognition and non-execution, including a ground for non-recognition based on fundamental rights (but under very strict conditions).

##### ***Directive (EU) 2019/1153 facilitating the use of financial and other information for the prevention, detection, investigation and prosecution of certain criminal offences***

The Directive facilitating the use of financial and other information, adopted in June this year, will provide law enforcement authorities with speedy access to financial information, which is key for successful investigations into organised crime. The Directive will provide law enforcement authorities with a direct access to information contained in centralised bank account registries. The Member States are required to include their national Asset Recovery Offices among the competent authorities to which such direct access will be granted. The Directive will also enhance the exchange of financial information between law enforcement authorities and Financial Intelligence Units, and speed up access of Europol to financial information. The Directive will have to be transposed in all Member States by 1 August 2021.

**Directive 2014/42/EU**, the “Confiscation Directive,” harmonises rules on freezing and confiscation across the EU Member States. Building upon the lessons learned from Framework Decision 2005/212/JHA and Framework Decision 2006/783/JHA, which firstly introduced asset confiscation at EU level and mutual recognition of confiscation orders respectively, the 2014 Confiscation Directive introduced in particular provisions on third party confiscation, extended confiscation, non-conviction based confiscation, strict safeguards, ensuring that rights of parties,

affected by the freezing or confiscation proceedings are upheld, detection and tracing of property even after a final conviction, and management of frozen and confiscated property.

### ***European Union Agency for Criminal Justice Cooperation (Eurojust)***

The new Regulation, which started to apply in December 2019, strengthens Eurojust's mission to coordinate and support cooperation between investigating and prosecuting authorities of Member States. With this reform Eurojust became officially the European Agency for Criminal Justice Cooperation. In addition, the College of national members, Prosecutors from all Member States, which will now be able to focus more on operational work, get more leeway in the fighting increasing cross-border crime, such as money laundering, terrorism and organised crime.

Source: Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA.

In October 2019, the Directive to establish common minimum standards for the protection of whistleblowers in the EU was adopted. The EU also adopted in 2019 provisions to reduce obstacles to accessing and exchanging financial information for the purposes of combating serious crime and terrorism and the revision of minimum rules on the definition of criminal offences and sanctions related to money laundering. The EU continues to support private sector and civil society initiatives under the Internal Security Fund, the European Structural and Cohesion Funds and the Structural Reform Support Programme.

### ***European Public Prosecutor's Office (EPPO)***

The Regulation establishing the European Public Prosecutor's Office (EPPO) under enhanced cooperation was adopted in October 2017. Currently 22 EU Member States are taking part in the enhanced cooperation. The legal basis and the rules for setting up the EPPO are laid down in Article 86 of the Treaty on the Functioning of the EU (TFEU). The EPPO will have competence to tackle passive and active corruption as defined in Article 4(2) of Directive 2017/1371. The setting up of the EPPO is advancing and the Office is expected to assume its investigative and prosecutorial tasks soon.

Source: Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')

## **Relevance: Question A3**

The Directive 2019/1153 on the use of financial information to fight serious crimes will substantially speed up access to financial information for law enforcement authorities and Asset Recovery Offices, step up the cooperation between law enforcement authorities and Financial Intelligence Units (FIUs) and at facilitating the exchange of information between FIUs.

The mentioned Regulation (EU) 2018/1805 on mutual recognition of freezing and confiscation orders is a significant milestone in the area of asset recovery in the

EU. It will significantly enhance cross border cooperation between EU Member States.

The Security Union Strategy 2020-2024 reiterates that anti-money laundering remains a priority for the European Union. Work is in fact under way to assess options to enhance the EU's framework for anti-money laundering and countering terrorist financing. The Commission will also assess the potential for greater harmonisation of the EU asset recovery regimes. This assessment will cover both, the Confiscation Directive and the Council Decision on Asset Recovery Offices.

The EU strengthened the anti-money laundering framework by adopting Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU. The Directive entered into force on 9 July 2018; Member states have begun transposing the provisions on 10 January 2020. The directive primarily seeks to strengthen the fight against terrorist financing, setting out a series of measures that increase transparency of financial transactions. More specifically, the new legislation:

- increases transparency about who really owns companies and trusts to prevent money laundering and terrorist financing via opaque structures;
- improves the work of Financial Intelligence Units with better access to information through centralised bank account registers;
- tackles terrorist financing risks linked to anonymous use of virtual currencies and of pre-paid instruments;
- improves the cooperation and exchange of information between anti-money laundering supervisors and with the European Central Bank;
- broadens the criteria for assessing high-risk third countries and ensure a common high level of safeguards for financial flows from such countries;
- mandates the setting up of 27 national registers for beneficial ownership information, and requires those registers to be interconnected through a unique interface at Union level;
- mandates the setting up of 27 national registers for bank account data

Source: [Directive \(EU\) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive \(EU\) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.](#)

## Relevance: A6-A8

Following **Decision 2007/845/JHA** requiring EU Member States to set up National **Asset Recovery Offices (AROs)** in their territories, the Commission launched an informal platform to further enhance EU-level cooperation and to facilitate information exchanges and best practices (Asset Recovery Offices Platform). Most exchanges are undertaken through **SIENA**, the Secure Information Exchange Network Application, managed by EUROPOL. EUROPOL's



Strategy 2020+ further calls for the roll-out and development of SIENA by advancing information management architecture.

The AROs set in the Member States coordinate with Europol and Eurojust for joint investigations. In particular, the Economic Crime Centre at Europol has been opened recently. The Centre complements the work undertaken within the EU Policy cycle / EMPACT (European Multidisciplinary Platform Against Criminal Threats), in particular with regard to work on the priority areas “Criminal Finances, Money Laundering and Asset Recovery”. The centre exists for exchange of data and support of concrete investigation. EUROPOL hosts the secretariat of the Camden Asset Recovery Inter-Agency Network (CARIN) and the permanent secretariat of the Anti-Money Laundering Operational Informal Network (AMON). The cooperation therefore takes place constantly. The European Union further provides support to the CARIN secretariat and to the AMONA secretariat through funding.

### Relevance: A10

**Directive 2014/42/EU** envisages cases of non-conviction based confiscation under Articles 4(2), 5 and 6. Staff Working Document **SWD(2019) 1050** FINAL was published in April 2019, analysing the extent of non-conviction based confiscation measures in the European Union.

### Relevance: A 14

The Commission Staff Working Document ‘Comprehensive Assessment of EU Security Policy’ **SWD(2017) 278** final identified a set of barriers and constraints that Asset Recovery Offices in the EU encounter in sharing data for the purposes of transnational asset recovery cooperation. Among these: (i) the need to provide the AROs with swift access to a minimum set of data. (ii) The need to exchange information via SIENA to enable the swift and secure communication of crime-related information. (iii) The need to enhance AROs powers (for example, urgent freezing powers and the ability to trace assets following a final criminal conviction) and (iv) the need to set fixed and strict time limits within which an Asset Recovery Office must respond to a request by a counterpart were identified.

The report from the Commission to the European Parliament and the Council of 2 June 2020 on asset recovery and confiscation: Ensuring that crime does not pay (COM(2020) 217 final) finds that in the recent years, the EU has made considerable efforts to assist financial investigations and harmonise the legislation on confiscation in the Member States. The adoption of the Directive has led to substantive progress in the Member States’ asset recovery frameworks. 24 out of 26 Member States, bound by the Directive, adopted new legislation since 2014 in order to ensure that their legislation is up to the high standards, required by the Directive. The overall level of implementation of the Directive across the EU can be considered as satisfactory.

The general improvement in Member States’ legal frameworks on asset recovery is also reflected in the positive rating that they received in the evaluations they underwent according to the standards of the FATF. So far, 16 Member States that



had to transpose the Directive have been evaluated and they were all found to be fully or largely compliant with the standard relating to freezing and confiscation.

The analysis conducted in this report demonstrates that there is room for further progress in the area of asset recovery in the EU. The Commission will therefore assess the potential for greater harmonisation of the EU asset recovery regimes with a view to further strengthen the competent authorities' capacity to ensure that crime does not pay.

### **Relevance: A 16**

In the regular meetings of the EU Asset Recovery Offices Platform, information and best practices on asset recovery are shared. The CARIN Presidency is on a regular basis invited to these meetings. The EU Commission is also participating in the UNCAC Asset Recovery Working Group.

Further exchanges take place via Europol's Financial Crime Information Centre (FCIC) is a secure web platform for law enforcement practitioners dealing with money laundering, asset recovery and financial intelligence.

### **Relevance: C**

#### **Relevance: G20 High Level Principles for Effective Protection of Whistleblowers**

In recent years, the EU legislator had acknowledged the need for whistleblower protection as a part of the toolkit for strengthening the enforcement of EU law and introduced some elements of protection and reporting channels in a few sector-specific Union acts, mainly in the financial services area. However, protection was still very limited and sectorial and did not cover all the key areas where insufficient whistleblower protection leads to under-reporting of breaches of EU law that may result in serious harm to the public interest. Similarly, most Member States offer protection only in a piecemeal way and the level of protection varies. The lack of sufficient and consistent protection at EU and national level results in underreporting by whistleblowers which in turn translates into 'missed opportunities' in detecting and preventing breaches of EU law and weakens the effectiveness of its enforcement.

In 2019, the EU adopted new legislation on the protection of whistleblowers. Directive 2019/1937 - Directive on the protection of persons who report breaches of Union law - entered into force on 17 December. EU Member States will have until December 2021 years to transpose the new rules in their national laws.

These rules set out common EU standards ensuring a high level of protection for whistleblowers in all the EU Member States. The Directive covers a large number of key EU policy areas, ranging from data protection to product, food and transport safety, environmental protection, public health and nuclear safety. The new rules will enrich the EU toolkit in the fight against corruption, by contributing to the effective application of EU rules on public procurement, financial services, anti-money laundering and counter-terrorist financing and to the prevention and deterrence of fraud and other illegal activities affecting the EU's financial interests.

The Directive provides for the protection against retaliation of persons working both in the public and private sector who report or make a public disclosure about a breach of EU law that falls within its scope. Whistleblowers are encouraged to report first internally where the breach can be addressed effectively internally and where they consider that there is no risk of retaliation. They remain nonetheless protected under the Directive if they decide to report directly externally, to competent authorities. As a general rule, however, whistleblowers have to report to competent authorities first before disclosing publicly the information they possess.

The Directive further aims at ensuring that: potential whistleblowers have clear reporting channels available both internally (within an organisation) and externally (to a competent authority); competent authorities are obliged to follow up diligently on reports received and give feedback to whistleblowers; retaliation in its various forms is prohibited and punished; if whistleblowers do suffer retaliation, they have adequate remedial measures at their disposal.

At the same time, the Directive provides for safeguards to: protect responsible whistleblowing genuinely intended to safeguard the public interest; proactively discourage malicious whistleblowing and prevent unjustified reputational damage; and fully respect the rights of defense of those concerned by the reports.

# FRANCE

## A. Asset recovery

**A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

The French national framework of Asset recovery involves the following governmental bodies :

- **Directorate for criminal affairs and pardons** (DACG, Direction des Affaires Criminelles et des Graces): this directorate drafts laws and regulation regarding criminal justice, including anti-corruption and asset recovery. The office for mutual legal assistance (MLA) in criminal matters is also part of this Directorate and is in charge, outside the European Union, to receive and pre-analyse foreign MLA requests before sending them to the French judicial authorities for their execution.
- **The National Financial Prosecution Office** (Parquet National Financier): prosecution office for Financial Crimes, specialized in complex financial crimes, including cases of transnational corruption and money laundering.
- **The French Asset Recovery Agency (AGRASC)**: governmental agency for management and recovery of seized and confiscated asset, is an asset management office, created in order to improve criminal asset management and to provide the courts with legal and technical assistance. AGRASC executes the seizures and the settlement of assets seized. The agency also enforces domestic confiscations orders and can also enforce MLA requests related to seizures and confiscations, after approval of this MLA by a judicial authority.

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

Statistics only concerning corruption and mutual legal assistance cases about criminal assets seized and frozen are the followings :

2018 : number of cases 13 ; number of assets seized 227 among witch 111 bank accounts (1 571 880,46 €) and 17 properties;

2019 : number of cases 6 ; number of assets seized 59 among witch 13 bank accounts (104 016,7 €) and one boat, 3 cars and 3 properties;

2020 onwards: number of case 1; number of assets seized 9 among witch 4 bank accounts (25 834, 06 €), 3 financial assets 26 739, 76 € and 170 150 € in cash.

Statistics about criminal assets confiscated are the following :

- For the benefits of France : 2018 : number of case 1; number of assets 7 among witch 5 bank accounts and 2 properties ; 2019 : 2 cases ; 46 assets confiscated ; 2020 : 4 cases ; 27 assets confiscated ;

For the benefits of foreign countries: 2019 : number of case 1; number of assets 1.

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

France has been implementing a proactive policy in the area of assets seizure and forfeiture.

**The law of 6th December 2013**, article 2-23 of the Criminal procedure Code allows registered anticorruption associations recognized to be of public utility, to bring legal actions before criminal courts in the area of breaches of integrity offenses. **This is a useful tool improving the asset recovery framework.** Moreover, as a result of a law of 18th November 2016, foundations recognized to be of public utility are also allowed to bring such actions before criminal courts.

**Law 2016-731 of 3rd June 2016** strengthening the fight against organized crime, terrorism, the financing of the latter and strengthening criminal procedure effectiveness and guarantees completed the existing asset recovery system. It shortened the time period before actually destroying the assets and simplified the conditions for assets allocation before judgment. It also improved the provisions on victims compensation

**Circular of 20th March 2017** on seizure and forfeiture of criminal assets complemented the abovementioned law and reminded that the French Ministry of Justice strongly prioritizes a systematic inclusion of the patrimonial dimension of the investigations.

**In an administrative wire dated 11th April 2018**, the Ministry of Justice requested the Prosecutors and General Prosecutors' offices to appoint a **contact point on seizure and forfeiture** aiming to be the main contact point for the Asset Recovery Agency (AGRASC) in courts and to circulate

best practices inside the courts. These prosecutors gathered with Asset Recovery Agency and Ministry of Justice representatives on 11th and 12th September 2019 in view of presenting the network of contact points, and emphasizing on the best practices to circulate, as well as presenting applicable case-law and tools for seals management

**Law 2019-222 of 23rd March 2019** planning the Justice System for 2019-2022 time-period harmonized and simplified the special seizure decisions system in the investigations framework.

The Ministry of Justice also designed a wide range of practical tools in view of raising awareness among seizure and forfeiture actors as follows :

- **Updating in 2017 the Methodological Guide on Seizure and Forfeiture** first drafted in 2015. This guide presents a set of applicable rules in domestic law as well as in the framework of mutual legal assistance ;
- **Designing in 2017 a guide on the fight against organized crime**, dealing, among other items with money-laundering, and dedicating a whole section to sanctions in the area of money-laundering with an emphasis on additional financial sanctions;
- Feeding a FAQ section on the basis of the questions raised by courts to the Ministry of Justice central authority, including a sub-section dedicated to seizure and forfeiture.

**At the moment**, a parliamentary committee is tasked with elaborating an efficient **mechanism to allow the** return of confiscated assets to the benefit of victim populations.

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>91</sup>

**A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>92</sup>.**

No.

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

Not applicable.

<sup>91</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>92</sup> You may refer to principles 1 and 7e in the “Nine Key Principles on Asset recovery” in providing your response.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>93</sup>**

Yes. See A3 response.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

No specific constraints or barriers were encountered.

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>94</sup>**

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>95</sup>.**

The French judicial system regarding asset recovery is based on criminal conviction: - **confiscation is usually ordered on the basis of a declaration of guilt by a court. Confiscation therefore constitutes a criminal sanction pronounced in addition to imprisonment and/or fine. The range of asset liable to confiscation in those circumstances is very large,**

<sup>93</sup> You may refer to principle 7b in the "Nine Key Principles on Asset recovery" in providing your response

<sup>94</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

<sup>95</sup> You may refer to principle 4 in the "Nine Key Principles on Asset recovery" in providing your response

due to mechanisms of extended confiscation and reverse of the burden of proof.

The French legislation nevertheless admits the possibility of non-based confiscation **when the investigation does not lead to prosecution, in the following cases :**

- **the return of assets is likely to endanger people or property**
- **the assets seized are the direct or indirect product of the offense (article 41-4 of the French Criminal Procedure Code).**

**The legal effects of such a decision of non-return, ordered by the prosecutor, and which can be challenged before the Court of Appeal, are similar to a confiscation.**

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

Not applicable.

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

Not applicable.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>96</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>97</sup>**

France established different specialized asset recovery teams of investigators :

**1/ The Criminal Assets Identification Platform (PIAC)** was created in September 2005, within the central office for the repression of serious financial crime (OCRGDF) of the central direction of the judicial **police** (DCPJ).

PIAC is first a **national** judicial police **investigation** service. This unit has the power to conduct property investigations under the supervision of a judicial authority. As such, it conducts investigations relating to the identification of complex criminal assets with, in the majority of cases, an international dimension.

<sup>96</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>97</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

In addition, as the reference unit for asset identification, PIAC is required to provide **training** for police and gendarmes in this area. It also provides daily technical, legal and operational **advice** and runs an intranet site.

PIAC **centralizes all information** related to the detection of criminal assets throughout France and abroad. It compiles data and provides monthly, quarterly and annual indicators to assess the performance of investigative services in identifying criminal assets.

On April 8, 2009, PIAC was designated as **the asset recovery office** for France by European bodies and the focal point of various international cooperation networks dedicated to the identification of criminal assets.

Finally, PIAC runs **a network of 250 "PIAC correspondents"** appointed throughout the country to promote the identification of illicit heritage and the dissemination of methods and techniques in this area.

Today, it has around **fifteen investigators** from both the national police and the national gendarmerie.

2/Otherwise, the **gendarmerie** now has more than **950 investigators** trained in the detection of unjustified assets forming a **territorially network**.

3/Finally, Interministerial Research Groups (GIR) were created in 2002 with mission to fight against the underground economy and all forms of delinquency associated with it: trafficking (drugs, vehicles, counterfeits, stolen objects, weapons, drugs, etc.), hidden work, non-justification of resources, tax and social fraud, economic and financial delinquency (concealment, money laundering, fraud, bankruptcy, abuse of corporate assets, etc.).

Based on a multidisciplinary approach and the exchange of information between administrations, GIRs constitute **dedicated training courses** which intervene directly in the patrimonial aspect of cases, **in support and for the benefit of the investigation services in charge of the investigation direction**.

GIR can be engaged in the framework of judicial inquiries on targeted objectives or determined sites, against all forms of delinquency and criminality.

The asset survey carried out by the GIR thus aims, through short, medium, or even long-term investigations, to seek **consistency** between legal income, assets and the lifestyle of a natural or legal person.

The multidisciplinary approach thus constitutes the essential added value of GIR, making it possible to tackle the financial resources of offenders on a lasting basis by capturing their assets, seizing the illicit proceeds arising from their lucrative activities and confiscating criminal assets.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

Not applicable.



**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>98</sup>**

The French Asset Recovery Agency (AGRASC) has provided support to various asset recovery officers and agencies in third countries through seminars.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>99</sup>.**

Not applicable.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

Not applicable.

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>100</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>101</sup>**

This year, France responded to several orders initiated by the StAR network and notably participated in the “StAR initiative on the direct enforcement of foreign confiscation orders” project. If information relating to requests for assistance is not directly available on

<sup>98</sup> You may refer to principle 8 in the “Nine Key Principles on Asset recovery” in providing your response

<sup>99</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), “StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019”. You may refer to principle 9 in the “Nine Key Principles on Asset recovery” in providing your response

<sup>100</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>101</sup> You may refer to principle 3 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

the website of the Ministry of Justice, the office for international criminal assistance systematically responds to requests from its foreign counterparts who may inquire about the formal and legal conditions required by the French judicial authorities for the execution of a mutual assistance request.

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>102</sup>**

Since 2016, French judicial authorities have concluded three joint investigation teams concerning acts of corruption.

One of them ultimately led to the signing of a “convention judiciaire d’intérêt public” ie a transaction between the judicial authority and the company. The publication in the media of this transaction, allowed the opening of several investigations in several countries and the possibility for the French judicial authority to share, under certain conditions, some evidences that were obtained thanks to the joint investigation team.

Apart from joint investigation teams, parallel investigations are quite common and can lead to a spontaneous exchange of information between French and foreign judicial authorities and feed into the respective national proceedings.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

Parallel investigations may require that the perimeter of prosecution (suspects, offences...) by each country be clearly defined and it may prove necessary to formalize an agreement between the two parties to avoid any difficulties later.

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<sup>102</sup> You may refer to principle 4 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>103</sup>**

No.

## **Holistic questions**

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

No

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Not applicable.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

No.

## **B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the "Denial of Entry Arrangements in G20 DoEEN Member States" (2017) publication, and outline any relevant updates.**

As responded in the 2017 accountability report, under French law, one has to distinguish between short stay and long stay visas. The EU has set up a common visa policy for short stays, i.e. stays up to three months, which is

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<sup>103</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

applied through the delivery of "Schengen visas". France belongs to the Schengen area and applies the Visa code for short stays. Threat to public order is a general ground for denial. The EU may lead bilateral negotiations on free access to the Schengen Area. These negotiations are based on the progress made by the countries concerned in implementing major reforms in areas such as rule of law strengthening, combating organized crime or corruption. There is an information sharing system within the Schengen zone: the Schengen Information System.

There also is a national database gathering information on wanted or convicted persons (the national convicted person's data file). This database focusses on final convictions. Data are transferred to the SIS. Therefore, there is a complete information sharing system within the Schengen Zone. Long-stay visas remain under national competence. For long stays visas, the relevant set of rules are compiled under the "Code de l'entrée et du séjour des étrangers et du droit d'asile en France" (Code on aliens entry, stay and asylum). Threat to public order is also a general ground for denial. For further information, you may have a look at the French Code on aliens entry, stay and asylum on the following link : <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158>

You can also the EU Directorate General for Migration and Home Affairs website : [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/index_en.htm)

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

Not applicable.

**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>104</sup>**

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>105</sup>**

Not applicable.

<sup>104</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>105</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

Not applicable.

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>106</sup>**

Not applicable.

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

Not applicable.

**Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>107</sup>**

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>108</sup>**

Not applicable.

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<sup>106</sup> You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

<sup>107</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>108</sup> You may refer to principle 3 in the “G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery” in providing your response.

- B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

Not applicable.

### Holistic questions

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

Not applicable.

- B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Not applicable.

- B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

Not applicable.

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

France concluded the first cycle of review by the UNCAC. The second cycle is ongoing.

**C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

Yes, France joined the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2000.

In 2014, the working group on Bribery (WGB) report evaluated and detailed the progress made by France to implement the OECD Anti-Bribery Convention since its Phase 3 report in 2012.

France's Phase 4 Report will take place in 2021. The report will detail achievements and challenges in respect to implementation and enforcement of the OECD Anti-Bribery Convention, as well as progress made since the Phase 3 evaluation.

**C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

The strategy for repressing foreign bribery has recently been outlined by instructions from the Minister of Justice, actualizing and expanding previous orientations, by a circular of 2 June 2020 on penal policy in the area of international corruption. The circular recalls the central role that the National Financial Prosecutor's Office plays in this area, then presents the principles that should guide legal action at the stage of detection, investigations, prosecution and sanction of international corruption and related offences.

See A3 response.

# GERMANY

## A. ASSET RECOVERY

### A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.

The national legal framework of asset recovery in Germany has been reformed extensively in 2017, partly in order to transpose EU Directive 2014/42 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union. The new provisions introduced in sections 73 et seq. of the German Criminal Code (CC) make the confiscation of the proceeds of crimes mandatory in cases in which the offender has obtained assets from or through the crime the offender is prosecuted for (section 73(1) CC). In addition to the mandatory confiscation of assets (section 73(1) CC), Germany has established non-conviction-based optional confiscation (section 76a (1), (2) CC, also see Q A10). The extended confiscation of assets derived from a different crime is also possible (section 73a StGB). The prosecution services are granted a margin of discretion in deciding whether to take preliminary measures to secure confiscation of assets already at the stage of investigations pursuant to sections 111b et seq. of the German Code of Criminal Procedure (CCP).

Any injured party, including a state, may claim victim compensation during enforcement proceedings. The criminal court judgment determines their status as injured party and the damage incurred; a civil law title or special judicial admission is not required. Notice is given to aggrieved persons (section 459i CCP).

The legal basis for providing legal assistance, including asset recovery cases, is the “Act on International Cooperation in Criminal Matters” (Gesetz über die internationale Rechtshilfe in Strafsachen, IRG).

With respect to mutual legal assistance involving third countries, a number of international treaties take precedence over the German legislation:

International treaties involving asset recovery include the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 including its Additional Protocols and the Council of Europe Convention



on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005 as well as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988, the United Nations Convention against Transnational Organized Crime of 15 November 2000 (UNTOC) and the United Nations Convention against Corruption of 31 October 2003 (UNCAC), which have likewise been signed and ratified by Germany.

The main EU legislation applicable to asset recovery is the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (Framework Decision on Freezing Orders) and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (Framework Decision on Confiscation Orders). It has been implemented directly by way of the Act on International Cooperation in Criminal Matters (IRG) as with other areas of mutual legal assistance.

If a judicial authority of another EU member state wishes to request Germany to freeze or confiscate assets, it completes the template certificate which is annexed to the Framework Decision on Freezing Orders or the Framework Decision on Confiscation Orders respectively and sends it to the competent public prosecutor's office in Germany accompanied with the underlying court order (temporary freezing order or final confiscation order) and a translation of the certificate. This template is identical in all EU member states and languages. The Framework Decision on Freezing Orders provides for direct contact between the judicial authorities involved in order to simplify and expedite matters. Contact details of the competent authority in the other EU member state can be found on the Internet by using the EJN Judicial Atlas on the webpage of the European Judicial Network (EJN). The German EJN contact points can also assist in establishing a contact between the competent judicial authorities. If the amount obtained from the execution of the confiscation order exceeds 10.000 EUR, 50 % of the amount obtained from the execution of the confiscation order are transferred to the state issuing the confiscation order. Otherwise the amount obtained shall accrue to the executing state.

From 19 December 2020, the Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (the Freezing and Confiscation Regulation) will be directly applicable in the context of cooperation with EU Member States (except for Denmark and Ireland); cf. Article 288(2) of the Treaty on the Functioning of the European Union.

The Freezing and Confiscation Regulation will replace the Framework Decisions on freezing and confiscation orders within the scope of its applicability. The Regulation aims to ensure that freezing and confiscation orders are implemented between Member States with the same speed and urgency as national orders are. In urgent cases, the executing authority is to start taking the necessary execution measures no later than 48 hours after the decision on recognition was made. The decision on the recognition and execution of the confiscation order must be taken no later than 45 days after receipt of the request. Orders must be executed without delay.

Pursuant to section 59 of the Act on International Cooperation in Criminal Matters (IRG), legal assistance in tracing assets may be offered to the requesting country in the same scope as would be available to national authorities. Such assistance covers laundered property from, proceeds from, instrumentalities used in, and instrumentalities intended for use in the commission or preparation of money laundering, predicate offences or terrorist financing, or property of corresponding value. Queries of registries are among the methods used in Germany to trace bank deposits and research various types of companies, vehicles and real estate, for example.

In addition to the Act on International Cooperation in Criminal Matters (IRG), the general provisions of Germany's criminal procedure legislation apply to the execution of legal assistance measures. The legal framework provided enables action to be taken to trace assets any time there are grounds for suspicion of illegal activity (an "initial suspicion"), i.e. if there are factual indications that a prosecutable offence may have been committed (section 152 CPC).

For example, requests may involve a seizure of property in order to secure its confiscation or render it unusable, or an attachment order to secure value confiscation in accordance with the domestic Criminal Procedure Code.

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

Regarding incoming MLA requests for execution of freezing orders originating from the countries encompassed by the EU Freezing and Confiscation Regulation, German police and customs provided

assistance in 86 proceedings with 93 affected parties in 2017 and 64 proceedings with 65 affected parties in 2018.

Since 2017, in order to comply with art. 11 of EU Directive 2014/42/EU, the German Federal statistics office started compiling data on executed confiscation orders per year as well as the value of the confiscated assets. Between 2017 and 2019 the number of executed confiscation orders per year has tripled from 19 484 orders in 2017 to 61 681 orders in 2019.

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

Please cf. A1.

The last evaluation by the FATF was carried out more than 10 years ago and took place in 2009. Currently (2020/2021) Germany is being reviewed again by the FATF. The results are expected in 2021.

In the area of mutual legal assistance, the IRG implemented in particular the two framework decisions on freezing and confiscation mentioned above (A1) (entry into force of the amendments on 17 July 2015).

As also mentioned above (A1), these two framework decisions will be replaced in December 2020 by the immediately applicable new EU Regulation on Seizure and Confiscation. A corresponding alignment of the IRG will enter into force simultaneously in December 2020.

In the 2019 UNCAC Implementation Review report, the Review Group has thoroughly reviewed the German legal framework for international cooperation in the field of asset recovery and issued recommendations for a better implementation of the relevant UNCAC provisions. For further information please refer to the report:

<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/17-18December2019/V1911805e.pdf>.

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>109</sup>

<sup>109</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

**A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>110</sup>.**

The Act on International Cooperation in Criminal Matters (IRG) provides for the possibility of data transfer without a request for legal assistance (so-called spontaneous exchange of information) and this option is used by German prosecution authorities.

On the level with third countries, only public prosecutors' offices and courts are authorized to spontaneously exchange information (§ 61 a IRG).

At EU level, other authorities (such as police authorities) are also authorized (§ 92 c IRG).

In one example case, the ARO Contact Point of another EU Member State approached the German ARO Contact Point at the Federal Office of Justice (FOJ) and requested that a German public prosecutor's office provisionally secure assets - namely possible credit balances on a bank account as well as the contents of a safe deposit box - even before a request for mutual legal assistance was transferred. Such a procedure is possible under the IRG (§ 67 IRG). The request of the other EU country was complied with, the FOJ sent the facts and the request to the competent public prosecutor's office, which then took the requested measures before the request was received.

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

Digitalisation profoundly affects the criminal justice field, acting both as a catalyst of cross-border criminal activity and an effective tool to fight organised crime. In recent years, the European Union has taken steps to modernise the information systems used by law enforcement officials in the respective Member States, to better enable cross-border cooperation in criminal cases. In particular, EU Law enforcement authorities, including Europol, eu-Lisa and Frontex, are equipped with state-of-the-art digital (ICT) tools for gathering and sharing information, and can exchange and process operational data in a structured, encrypted, fully automated and interoperable way. However, in an international context secure online communication still awaits further improvement, since

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<sup>110</sup> You may refer to principles 1 and 7e in the "Nine Key Principles on Asset recovery" in providing your response.

practitioners regard it as a key to enhance and accelerate mutual legal assistance.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>111</sup>**

At international level, the Federal Office of Justice (Bundesamt für Justiz - FOJ) and the Federal Criminal Police Office (Bundeskriminalamt - BKA) were entrusted with the function of an Asset Recovery Office under EU law and represent Germany in international networks on asset recovery (e.g. CARIN – Camden Asset Recovery Inter-Agency Network). In this context, the FOJ and the BKA provide assistance for law enforcement in Germany and serve as focal points for foreign law enforcement.

Germany is also a member of the Stolen Assets Recovery Initiative (StAR).

In addition, Germany has set up a dedicated judicial contact point at the FOJ; the contact point is part of the EU network of Asset Recovery Offices (AROs). The contact point staff have specialist knowledge and experience, enabling them to provide advice and act as intermediaries for domestic and foreign authorities and thus to provide effective support for cross border asset recovery.

Furthermore, Germany provides assistance to other EU countries via the European Union Agency for Criminal Justice Cooperation (Eurojust) with a legal officer seconded to the Eurojust headquarter in The Hague (Netherlands). Eurojust assists prosecutors and other investigators from EU Member States in cases of serious crime where that crime affects two or more Member States, or requires prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities, Europol, the European Public Prosecutors' Office and the European Anti-Fraud Office (OLAF).

At the national level, Germany has set up asset recovery offices at the federal level (with the BKA) and at Länder level (with the Länder criminal police offices) as well as with local police authorities. As special units for conducting investigations involving assets, the asset recovery offices are able to access central registers and enable prompt handling of international requests.

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<sup>111</sup> You may refer to principle 7b in the "Nine Key Principles on Asset recovery" in providing your response

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

The German Contact point of the ARO-network (FOJ) is not aware of any restrictions that may have existed when the judicial contact point of the ARO or CARIN network was established at the FOJ.

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>112</sup>**

In addition to its function as an ARO contact point and the experience it has gained through this, the FOJ has so far gained experience within the cooperation with the CARIN network.

As far as judicial inquiries were concerned, primarily general questions about German law and the possibilities of asset recovery under German law were asked and answered. Most frequently, these questions were based on information from the central registers in which any assets in Germany are recorded.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

The FOJ reports the following: When using the CARIN network, the basic problem is that it is an informal network. On the one hand, there are no secure channels for transmitting inquiries or requests, at least in the judicial sector. On the other hand, information containing personal data can only be transmitted in response to an "informal" request from abroad under certain conditions.

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<sup>112</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>113</sup>.**

Germany is able to provide legal assistance to other countries within the framework of non-conviction based confiscation (NCB). Comprehensive, national provisions on non-conviction based confiscation were created as part of the 2017 reform of asset recovery law. The relevant provision in German law (section 76a (4) CC) provides for the independent confiscation of assets of unclear origin, irrespective of whether evidence exists that a specific offence has been committed, provided the court is convinced that the property stems from an unlawful act pursuant to sections 435 and 437 CCP).

In addition, German law also permits independent confiscation orders if, for reasons of fact or reasons of law, no specific person can be prosecuted or convicted (section 76a (1) CC) The aforementioned provision is applicable in particular in situations where the perpetrator is unknown, or where the perpetrator cannot be convicted for reasons of death, flight, absence from the country or unfitness to stand trial. Independent confiscation orders are also permitted if conviction is no longer possible due to the statute of limitations (section 76a (2) CC). In addition, independent confiscation is possible if the imposition of a penalty has been dispensed with or if the proceedings have been terminated (section 76a (3) CC).

An order for the confiscation of assets issued by a foreign civil court can be executed in Germany, provided such confiscation order was issued against the background of a previous criminal offence.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

The execution of incoming requests for enforcement of NCB confiscation judgements has so far been difficult due to major differences in the national legal systems of the participating States. In each individual case, however, an attempt is made to find an appropriate solution, which is regularly successful.

Requests for enforcement of an NCB confiscation decision by a civil court have until recently caused considerable difficulties in Germany, but

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<sup>113</sup> You may refer to principle 4 in the “Nine Key Principles on Asset recovery” in providing your response

experience to date suggests that these difficulties have been resolved with the 2017 reform of the domestic asset recovery law.

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

Please cf. A1 und A10

As explained above (A1), within the Framework Decisions on Freezing and Confiscation Orders will be replaced by the Freezing and Confiscation Regulation for the EU member states except Ireland and Denmark from 19 December 2020.

The Freezing and Confiscation Regulation will retain the current practical procedures for handling requests (with standardized templates and direct transmission between the judicial authorities involved) while enhancing the procedure. Key features of the Freezing and Confiscation Regulation are even closer communication between the competent national authorities involved while stipulating timelines for urgent cases (see A1 above) as well as a giving priority to victims' rights to compensation and restitution.

Like the Framework Directives on Freezing and Confiscation Orders, the Freezing and Confiscation Regulation allows uniform cross-border enforcement against legal entities. Freezing or confiscation order issued against a legal entity will be executed even if the domestic law of the executing state does not provide for criminal liability of legal entities. This acknowledges that it is not uncommon in practice for foreign legal entities to be involved in unlawful property transfers.

The German Bundestag (federal parliament) is currently debating a bill of amendment which will add sec. 96a to 96e to the German Act on International Cooperation in Criminal Matters (AICCM) and is supposed to enter into force until 19 December 2020. These provisions will complement the Freezing and Confiscation Regulation (see A1 above). The AICCM amendment will ensure to benefit of the Freezing and Confiscation Regulation to its full extent.



**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>114</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>115</sup>**

Some Lander (i.e., constituent states of the Federal Republic of Germany) have set up central offices for the management and disposal of seized and confiscated assets at the public prosecutor generals' offices dealing with asset recovery issues, or have designated special prosecution offices that focus on complex asset recovery cases (e.g. "Zentrale Organisationsstelle für Vermögensabschöpfung in Northrine Westphalia" (ZOV) - <https://www.justiz.nrw.de/JM/schwerpunkte/zov/index.php> and "Zentralstelle für die Bekämpfung der Organisierten Kriminalität und der Geldwäsche" (ZOK) in Frankfurt/Hessen <https://staatsanwaltschaften.hessen.de/staatsanwaltschaften/gsta-frankfurt-am-main/aufgabengebiete/zentralstelle-f%C3%BCr-die-bek%C3%A4mpfung-der> ).

These authorities have a pool of experts from various branches of service, e.g. public prosecutors and investigators. The employees are able to conduct high-profile proceedings of so-called independent confiscation and they can assist the local public prosecutor offices in processing mutual legal assistance proceedings involving cross-border asset recovery, in combating economic crime and corruption, as well as in high-profile proceedings involving organized crime. They also can have the task of helping to coordinate cooperation between the public prosecutor's offices and the Central Office for Financial Transaction Investigations, which is responsible for reporting suspected money laundering.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

n/a

<sup>114</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>115</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>116</sup>**

In line with UNCAC, Germany addresses the global challenges of illicit financial flows and the recovery of ill-gotten gains of corruption and crime more generally. Germany supports developing, implementing and sharing best practices in financial investigations and asset recovery.

For example, in East Africa, financial investigations in Kenya are strengthened through the support of Multi-Agency-Teams, comprising stakeholders from various agencies, such as prosecution service, police, asset recovery experts, and customs. Best practices are also shared in the Asset Recovery Inter-Agency Network for Eastern Africa (ARIN-EA), with the aim of regionally upscaling this approach. ARIN-EA is also supported in its institutional development and the work of its structures (Annual General Meeting, Secretariat). A training on virtual assets (e.g. cryptocurrencies) and their freezing, confiscation, and forfeiture was conducted for ARIN-EA experts.

In West Africa, German development cooperation delivers technical assistance to the corresponding network ARIN-WA. ARIN-WA is currently supported in the development and implementation of an overall strategy and an action plan.

In North Africa, Tunisian and German experts exchanged experiences and worked together to improve their cooperation through enhanced mutual legal assistance (MLA) procedures.

A Europe-Africa Dialogue on Asset Recovery was initiated by Germany in 2018. The annual dialogue brings together decision-makers and practitioners, with the aim of building trust, promoting coherent policy approaches, exchanging best practice, and addressing operational questions as appropriate.

In South-Eastern Europe, Asset Recovery and Asset Management Offices are supported in North Macedonia and Albania, and capacity-building activities related to their institutional and legal frameworks conducted. In North Macedonia, for example, governmental partners are supported in a legal assessment of the Asset Recovery Office, and in the further development of the draft Law on Asset Recovery.

In Peru, the regional GAFILAT Asset Recovery Network (RRAG) is supported in its institutional development and regional dissemination of

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<sup>116</sup> You may refer to principle 8 in the “Nine Key Principles on Asset recovery” in providing your response

good practice. Moreover, the Peruvian asset management agency PRONABI is assisted in the development of a guide on “Management of intangible Assets”.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>117</sup>.**

Germany values to exchange information in various existing forums and takes part in international events on asset recovery.

The Federal Office of Justice and the Federal Criminal Police Office (BKA) represent Germany in the international networks for asset recovery. They are the German judicial and police contact point in the CARIN network and use this basis actively for sharing information.

For example, the FOJ takes part in annual meetings of the CARIN-network with representatives from other countries. During these meetings, complex and problematic cases are discussed and possible solutions are debated, which is very helpful for the participants in working on their own cases. For example, at the CARIN Annual Meeting 2019, the FOJ discussed the complex case in connection with the Expo exhibition in Astana 2017 with the representative from Kazakhstan. Furthermore, a complex case was also discussed with the representatives from Mongolia during the same meeting, whereupon corresponding requests for legal assistance could be initiated.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

The gathering of statistics requires considerable time and resources. One of the reasons for this is that, due to the federal system in Germany, the 16 German constituent states (Laender) are responsible for criminal prosecution and asset recovery themselves and all data must then be collected centrally.

Network cooperation is highly appreciated, but is also very time-consuming. In order to work out precisely these particularities of the legal systems, extensive explanations are required not only with regard

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<sup>117</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), “StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019”. You may refer to principle 9 in the “Nine Key Principles on Asset recovery” in providing your response

to the facts of the case, but also to the relevant legal provisions in the respective state.

## Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>118</sup>

### **A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>119</sup>**

Germany provides accessible information on the requirements for mutual legal assistance requests.

A brochure entitled "Asset Recovery in German Law" is available on the StAR Alliance website at

<https://star.worldbank.org/sites/star/files/Asset-Recovery-in-German-Law-%28German%29.pdf> The brochure is currently being updated.

In addition, as a member of the PC-OC (Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters) of the Council of Europe, Germany is providing information about the procedural requirements in the categories MLA (<https://rm.coe.int/germany-mla-tsp-2019/1680975633>), extradition (<https://rm.coe.int/germany-extradition-2019/1680977c98>) and other.

Furthermore, Germany provides information for MLA on the EJM website: <https://www.ejm-crimjust.europa.eu/ejm/ToolsCountry/EN/0/277> Different helpful tools like the EJM-atlas are available in different languages.

<sup>118</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>119</sup> You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>120</sup>**

In appropriate cases, Germany conducts parallel proceedings with other countries. The legal basis for the establishment of joint investigation teams can be found in the IRG as well as in international treaties and agreements at the level of the EU, the Council of Europe and the United Nations. In the past five years, German law enforcement authorities have often been involved in or established joint investigation teams (JITs) with several other countries within the EU and outside the EU. Substantial assets were successfully secured and confiscated during the JITs.

The following figures are known to the FOJ from the last five years on the establishment of JITs with German participation:

2020: 4 (until now, plus 16 drafts under evaluation).

2019: 12

2018: 17

2017: 12

2016: 9

However, there are no official statistics on Germany's participation in JITs.

By way of police information exchange, the German Federal Police Office (BKA) has also transferred data in extracts from the so-called " to a large number of EU member states, but also to third countries. It is not known here whether the foreign states have carried out asset absorption measures based on this data.

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<sup>120</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

Data on experience with JITs are not available at the Federal Ministry of Justice and Consumer Protection in Germany, because criminal prosecution is the responsibility of the Länder.

However, the following case shows very clearly how successful the setting up of the mechanism of a JIT has been on the "coordinated crackdown on 'Ndrangheta mafia in Europe":

<http://www.eurojust.europa.eu/press/PressReleases/Pages/2018/2018-12-05b.aspx>. Unique joint investigation by judiciary and police forces in the Netherlands, Italy, Germany and Belgium culminated in the largest coordinated joint action against an organised criminal group to date in Europe.

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>121</sup>**

Cf. A1 and A10

The implementation of the Freezing and Confiscation Regulation (see A1 and A12 above) will add to the assistance provided on EU level. This is complemented by a material reform of domestic rules on asset recovery implemented in 2017 (also see A1). With regard to a cross-border context notably non-conviction based confiscations have been introduced.

## Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

As already mentioned above (A11), the challenges are posed by the fact that the national asset recovery laws in various countries are still at very different stages of development. In some states, recent reforms have created a very progressive legal basis for asset recovery. In other states, reforms are yet to be initiated.

<sup>121</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

In Germany, the Directive 2014/41/EU of the European Parliament and of the Council on the European Investigation Order in Criminal Matters of 3 April 2014 applies in particular to requests for the cross-border collection of evidence in criminal investigations. Within its scope of application, it supersedes the previous international treaties. The Directive provides for a formalized procedure, e.g. by obliging all member states to use uniform forms, and a strict time limit regime.

The German legal practice works very successfully with the European Investigation Order. The number of incoming and outgoing requests has increased significantly since the entry into force of the Directive in Germany. The use of the standard forms, which are available in all languages of the EU member states, contributes to this development.

## **B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

Germany conducts border checks within the framework provided by Schengen law. In doing so, it gives the highest priority to ensuring public security and order.

Germany has played an active role in the Denial of Entry Experts Network (DoEEN) by contributing information and comments and transmitting questionnaires (for example on the legal basis for action). Germany is in favor of a separation between visa issues and mutual assistance in criminal matters.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>122</sup>**

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>123</sup>**

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>124</sup>**

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<sup>122</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>123</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

<sup>124</sup> You may refer to principles 6 & 7 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response



**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

**Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>125</sup>**

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>126</sup>**

In its report of 23.01.2019 on “Investor Citizenship and Residence Schemes in the European Union”, the European Commission identified some EU member states with programmes to open the door to naturalization or obtaining residence permits against investment.

Thus, in April 2019, the European Commission set up a round of experts with the involvement of the EU Member States to establish, among other things, common security standards.

So far, four meetings have taken place, the last one in December 2019.

Germany is actively involved in the work of the Expert Group.

The European Commission (Directorate General JUST) aims to continue the work of the Group of Experts. In 2020, “a Common set of Security checks” policy paper was originally to be finalised and practical implementation initiated.

The Expert Group would also examine the external dimension of the Golden visas in greater detail. This applies to third countries, which have visa-exempt access to the EU and, in some cases, also have rules on the naturalisation of investments.

Background:

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<sup>125</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>126</sup> You may refer to principle 3 in the “G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery” in providing your response.

Link:

[https://ec.europa.eu/info/sites/info/files/com\\_2019\\_12\\_final\\_report.pdf](https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf)

- B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

### Holistic questions

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

- B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

- B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

Germany completed both cycles and made public the executive summaries of both reviews as well as its self-assessment checklist. In

both cycles Germany hosted country visits and involved the private sector, academia and civil society, including by inviting them to the country visits.

The full reports will be made public after they are finalized. Germany remains committed to making use: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists

**C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

Yes. Germany was evaluated by the OECD in Phase 4 of the evaluation process in June 2018. The regular written follow-up report will be discussed in December 2020.

**C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

## INDIA

### A. ASSET RECOVERY

**A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

1. India has signed the United Nations Convention Against Corruption (UNCAC) on 9th December, 2005, and has ratified it on 9th May, 2011.

While ratifying the Convention, the Government of the Republic of India has declared that international cooperation for mutual legal assistance under Articles 45 and 46 of the UNCAC shall be afforded through applicable bilateral Agreements, and where the mutual legal assistance sought is not covered by a bilateral agreement with the requesting State, it shall on reciprocal basis, be provided under the provisions of the Convention.

2. As on 1st January, 2020, the Government of India has entered into 42 bilateral Mutual Legal Assistance Treaties (MLAT) for providing international cooperation and assistance in criminal matters. The assistance under MLAT includes locating, restraining and forfeiting the instruments and proceeds of crime. Thus, in case of countries with which India has a MLAT, the assistance in recovery and return of assets is provided under the MLAT and in other cases, it is provided under the provisions of UNCAC. India can also provide assistance to countries/jurisdictions with which there is no agreement on the basis of reciprocity
3. The domestic law in India has wide ranging provisions for providing assistance for tracing, attachment, seizure, freezing, forfeiture/confiscation and repatriation of assets to comply with various obligations under UNCAC and MLATs. These provisions are contained in the Criminal Procedure Code, 1973 (Cr. PC) and the Prevention of Money Laundering Act, 2002 (PMLA).
4. The Central Bureau of Investigation (CBI) is the specialized agency in India at the federal level for investigation of cases of corruption under the Prevention of Corruption Act, 1988. The Central Bureau of Investigation has branches across the country and is a premier investigative agency dealing with high profile anti-corruption investigations, bank fraud investigations, economic offences and special crimes. CBI provides international asset recovery assistance and may be approached through the Central Authority i.e Ministry of Home Affairs.
5. Chapter-VIIA of the Cr. PC containing sections 105A to 105L is a self-contained code for providing a wide range of assistance in tracing, identifying, attaching, seizing and forfeiture of property, if a request in this regard is received from a country/jurisdiction with which there exists a bilateral/multilateral treaty or on the basis of reciprocity.

Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence ( inducing criminal offences of corruption), it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J of Criminal Procedure Code. There is no per-requisite of conviction.

Where the Court has made an order for attachment or forfeiture of any property under Sub-Section (1) of 105-C CrPC, and such property

is suspected to be in a contracting State, the Court may issue a letter of request to a Court or an authority in the contracting State for execution of such order.

As per section 105-C of Criminal Procedure Code where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J CrPC.

6. The 2018 amendments have added Chapter IV-A to the Prevention of Corruption Act, 1988 titled "Attachment and Forfeiture of Property". This has further strengthened legal provisions for attachment, administration of attached property and execution of order of attachment or confiscation of properties procured by corruption offences under the Prevention of Corruption Act, 1988.
7. Fugitive Economic Offenders Act, 2018 has been enacted to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts. The act provides for attachment of property of a fugitive economic offenders, non conviction based confiscation of such offender's property and disentitlement of the offender from defending any civil claim.
8. Similar and even wider provisions for assistance for tracing, identifying, attachment, seizure, freezing, confiscation and return of property has been provided under PMLA. Section 60(2) of the PMLA provides that where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment, seizure, freezing or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under a corresponding law committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of PMLA.
9. The term "contracting State" has been defined in section 55(a) to mean any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise. This would include countries with which bilateral agreements such as MLATs and multilateral agreements such as UNCAC has been entered into and countries/jurisdictions to whom assistance can be provided based on reciprocity.
10. The term "corresponding law" has been defined in section 2(ia) to mean any law of any foreign country corresponding to any of the provisions of PMLA or dealing with offences in that country corresponding to any of the scheduled offences. The term "property" has been defined in section 2(v) to mean any property or

assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located. The term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences.

11. The "scheduled offences" are specified in Schedule to the PMLA and includes a wide range of predicate offences. Thus, the assistance for asset recovery and return is not restricted to offences of money laundering but also includes assistance in case of any criminal offence in other country. These include the following offences under the Prevention of Corruption Act, 1988

- Section 7: Offence relating to public servant being bribed
- Section 7A: Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence
- Section 8: Offence relating to bribing of a public servant
- Section 9: Offence relating to bribing a public servant by a commercial organization
- Section 10: Person in charge of commercial organization to be guilty of offence
- Section 11: Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant
- Section 12: Punishment for abetment of offences
- Section 13: Criminal misconduct by a public servant
- Section 14: Punishment for habitual offender

12. Under section 60(2) of the PMLA, as stated above, the Central Government on receipt of the request may forward the request to the "Director", who as per notification issued on 1st July, 2005, is the Director, Directorate of Enforcement. Thus, unlike Cr. PC, where the request is forwarded for execution to a Court, under PMLA, the request is executed by Director, Directorate of Enforcement, which is an executive authority. Further, as in the case of Cr. PC, it is not necessary that a request is made by a Court in the Contracting State. The requests for assistance can be made by "an authority" which would mean an officer investigating the criminal offence or an Adjudicating Authority or any other competent authority in the Contracting State

13. Section 60(3) of the PMLA provides that the Director on receipt of the request from the Central Government, may direct any authority under the PMLA to take all steps necessary for tracing and identifying such property. Section 60(4) provides that these steps may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any

bank or public financial institutions or any other relevant matters. Section 60(5) provides that the authority so directed under section 60(3) shall carry out the inquiry, investigation or survey

14. Section 60(6) provides that the provisions of PMLA relating to attachment, adjudication, confiscation and vesting of property in the Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property
15. Chapter-III of the PMLA has provisions for attachment, adjudication and confiscation of "proceeds of crime" from an offence of money laundering in India and these provisions would also be applicable in cases where request for assistance has been received from a foreign jurisdiction. Chapter-V of the PMLA vests substantial powers on the authorities entrusted with the responsibility of investigation and prosecution of money laundering offence in India and the same powers would also be available to them for survey, searches and seizure when a request for assistance is received from a foreign jurisdiction
16. Section 60(7) of the PMLA states that when any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of PMLA, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property
17. Section 61 of the PMLA provides that every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf
18. The Central Government for the purposes of Cr. PC and PMLA is the IS-II Division of the Ministry of Home Affairs (MHA) which is designated as the "Central Point of Contact" for bilateral treaties such as MLATs and multilateral treaties such as UNCAC. The request for assistance for recovery of assets and its return is received by the Central Authority i.e. IS-II Division of the MHA which examines whether the request is complete and fit to be executed in India. In case the request is found to be fit for execution, the Central Authority sends it for execution through AD (IPCC), CBI to the Interpol Liaison Officers (ILO), of State/UTs or the law enforcement agency concerned such as the Directorate of Enforcement. Whenever the Central Authority of India decides that the request



should be refused or postponed for the execution, it promptly intimates the same to the Requesting Country.

19. The Ministry of Home Affairs issues detailed guidelines on procedures to be followed on mutual legal assistance in criminal matters including on how to handle the incoming requests. This guideline/notification has been issued as per Chapter-VIIA of the Cr. PC and section 61 of the PMLA and the latest guideline issued on 4th December, 2019, is available in the public domain.

[http://164.100.117.97/WriteReadData/userfiles/ISII\\_ComprehensiveGuidelinesMutualLegalAssistance\\_17122019.pdf](http://164.100.117.97/WriteReadData/userfiles/ISII_ComprehensiveGuidelinesMutualLegalAssistance_17122019.pdf)

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

STAR DATA COLLECTION: INTERNATIONAL ASSET RECOVERY EFFORTS IN CORRUPTION CASES, 2010–2019 for statistical details.

A few examples of assistance provided by India for recovery and return of assets are summarized below

(a) A request for confiscation and return of property has been received from USA. In this case, the Court of Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, India, passed an order on 12.3.2019 in Case No. 152/Misc./2019, on an application made by the State, through CBI (Central Bureau of Investigation), ACB (Anti Corruption Bureau), Mumbai, as per Article 17 of the MLAT between India and USA for the repatriation of the proceeds of crime. As per the details available in the order, the accused were charged in the Western District of Washington with bank fraud and other offenses, in violation of US criminal statute. On 21.7.2006, the accused, in plea agreement, pleaded guilty of bank fraud and agreed to pay USD 2,190,209.71 in restitution. The accused admitted in the plea agreement that they had devised and executed the bank fraud scheme and agreed to the forfeiture of any or all the property real or persona, constituting or derived from any proceeds, they obtained directly or indirectly as a result of the bank fraud scheme. In judgment dated 20.10.2006, the accused were sentenced to prison term of 46 months and ordered to pay USD 2,153,637.90 in restitution. On a request from US Authorities on 28.10.2006, the CBI, ACB, Mumbai carried out the investigation, identified the bank accounts held by the accused in India and requested the bank authorities to freeze the operations. The US Authorities through a request dated 25.6.2008 requested for repatriation of the crime proceeds deposited in the bank account which pertains to crime committed by the accused in United States. After the above-mentioned order by the Mumbai Court, the amount standing in the bank



accounts along with interest was transferred to the bank accounts specified by the US Authorities in June, 2019

(b) Natarajan R Venkataraman was sentenced to 15 years in Prison by a New York Court in July, 2008, for siphoning off Government Money to the tune of USD 9 million, most of which was intended to help identify victims of 9/11 attacks. He was also ordered to pay USD 2.97 million in restitution and forfeiture. On request of US Authorities, the amounts standing in his bank accounts in State Bank of India was frozen and was returned to the bank accounts specified by US Authorities to the tune of USD 223,630.85 on 3.6.2011 and USD 381,444.23 on 14.10.2015

(c) Alok Dhanda was jailed at Newcastle Crown Court in 2014 on the grounds that he convinced victims they were buying property in India but actually spent their investments on gambling, holidays and an extravagant lifestyle. On the request of UK Authorities, two fixed deposits with State Bank of India amounting to INR 8,041,463 and INR 8,278, were frozen. The Special Judge, North Goa, Panaji, through an order dated 28.11.2019, on an application made by Central Bureau of Investigation, Anti Corruption Branch, Goa, for execution of supplementary letter of request issued by Crown Prosecution Service, UK Central Authority, ordered that the above-mentioned fixed deposits, along with interest, may be transferred to the account of HM Courts and Tribunal Service. The Central Bureau of Investigation has written to the State Bank of India for transfer of funds and the bank has referred the matter to their legal department (position as on June, 2020)

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

The Mutual Evaluation Report of India by FATF/APG was adopted on 24<sup>th</sup> June, 2010 and it is available in public domain at <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20India%20full.pdf>.

The 8<sup>th</sup> follow up report and progress on action plan adopted by FATF in June, 2013 is available in public domain at [http://www.fatf-gafi.org/media/fatf/documents/reports/mer/India\\_FUR8\\_2013.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer/India_FUR8_2013.pdf).

The executive summary under the UNCAC Implementation Review Mechanism for the first cycle published on 2<sup>nd</sup> July, 2020, is at <https://uncaccoalition.org/wp-content/uploads/V2003403e.pdf>

Key updates to the asset recovery and mutual legal assistance framework related to corruption and money laundering are summarized below

- The Prevention of Corruption Act, 1988 (P.C. Act) has been amended in 2018 to strengthen the legislative and administrative framework to curb corruption. The amendments include the following

- The term “undue advantage” has been defined to mean any gratification whatever, other than legal remuneration, not being limited to gratifications measurable in monetary terms implying that even non-monetary considerations such as gifts and favors are also covered
- For addressing supply side of bribery and corruption, it has been provided that any person who gives or promises to give an undue advantage to another person or persons, with intention to induce a public servant to perform improperly a public duty or to reward such public servant for the improper performance of public duty shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both. This would, however, not apply where a person is compelled to give such undue advantage
- The concept of corporate liability has been introduced by defining the term “commercial organization” to mean not just a company or partnership incorporated in India and carrying on business in India or outside India, but also a body or partnership incorporated or formed outside India but carrying on business in India. Specific provisions for offences committed by commercial organizations and persons associated with it has been introduced providing that if a commercial organization commits any of the offences listed out in the P.C. Act with the intention to obtain or retain business or obtain or retain an advantage in the conduct of its business, then such commercial organization shall be punishable with fine. Further, if such an offence is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the organization, then such person shall also be prosecuted under the P.C. Act.
- Timelines for completion of trial for corruption cases have been specified
- Punishment has been increased from a minimum imprisonment term of six months to three years, and from a maximum of five years to seven years, with or without fine. Punishment for abetment of offences has also been increased by the same quantum.
- The scope of “predicate offence” under the PMLA have been expanded to include several additional offences under the P.C. Act
- It has been provided that save as otherwise provided under PMLA, the provisions of the Criminal Law Amendment Ordinance, 1944 shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under the P.C. Act.

Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence ( inducing criminal offences of corruption), it may make an order of attachment or

forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J of Criminal Procedure Code. There is no pre-requisite of conviction.

As per section 105-C of Criminal Procedure Code where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J CrPC.

India has Mutual Legal Assistance Treaties with several countries involving provisions for making request made for assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the Requested State by whatever means are appropriate. This assistance may include giving effect to an order made by a court or other competent authority in the Requesting State or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested State.

Few Instances:

**i) TREATY BETWEEN THE REPUBLIC OF INDIA AND AUSTRALIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

ARTICLE 20(3) The Requested State shall, to the extent permitted by its law, give effect a final order forfeiting or confiscating the proceeds or instruments of crime made by a court of the Requesting State.

**ii) AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE KINGDOM OF BAHRAIN ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

Article 12(2)

A request may be made for assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the Requested State by whatever means are appropriate. This assistance may include giving effect to an order made by a court or other competent authority in the Requesting State or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested State.

**iii) TREATY BETWEEN THE REPUBLIC OF INDIA AND THE RUSSIAN FEDERATION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

Article 12(2)

A request may be made for assistance in securing the forfeiture or confiscation of proceeds of crime, including funds for purposes of terrorism. Such assistance shall be given in accordance with the law of the Requested Party by whatever means appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting Party or submitting the request to a competent authority of

the Requested Party for the purpose of seeking a forfeiture or confiscation order in the Requested Party.

**iv) TREATY BETWEEN THE REPUBLIC OF INDIA AND THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ON**

**MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

Article 15(5)

The Requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds or instruments of crime made by the Requesting State or take other appropriate action to secure the proceeds or instruments of crime following a request by the Requesting State.

- Lokpal and Lokayuktas Act, 2013 has been enacted which provides for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto. The body of Lokpal has been statutory envisaged to bring in place a more effective mechanism to receive complaints against public servants including high functionaries and to inquire into them and take follow up action to effectively curb corruption. With the appointment of its Chairperson, a former Supreme Court Judge and 8 other members including four judicial members, the institution of Lokpal has been operationalized and will be instrumental in checking big ticket corruption by operating within statutory timelines.
- Recognizing the limitations of the Income-tax Act, 1961, etc. in dealing with black money stashed abroad, the Government of India enacted a comprehensive and a more stringent new law [Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015] that has come into force w.e.f. 01.07.2015. Its salient features are as under:
  - Separate taxation of undisclosed foreign income and assets
  - More stringent concealment penalties (equal to three times the amount of tax payable)
  - Rigorous imprisonment up-to 10 years with fine for willful attempt to evade taxes, etc. in relation to undisclosed foreign income/assets
  - The offence of tax evasion under the new law has been made non-compoundable
  - Most importantly, for the first time, this law has included the offence of willful attempt to evade tax etc. in relation to undisclosed foreign income/assets as a Scheduled Offence under the Prevention of Money-laundering Act, 2002 (PMLA) enabling attachment and confiscation of the proceeds of crime of willful attempt to evade such tax, etc. i.e. the black money stashed abroad, eventually leading to recovery of such undisclosed foreign income and assets/black money stashed abroad. Further, PMLA has been amended through the Finance Act, 2015 enabling

attachment and confiscation of property equivalent in value held within the country.

- The Benami Transactions (Prohibition) Act, 1988 (old Act) has been on the statute book since more than 28 years, the same could not be made operational. With a view to providing effective regime for prohibition of benami transactions, the old Act was amended and renamed as Prohibition of Benami Property Transactions Act, 1988 (PBPT Act) which came into effect from 1<sup>st</sup> November, 2016. The PBPT Act defines benami transactions, prohibits them and further provides that violation of the PBPT Act is punishable with imprisonment and fine. The major consequences under the Act include confiscation of any property which is subject matter of Benami transaction and rigorous imprisonment up-to date 7 years and fine up-to 25% of the fair market value of the property. An appellate mechanism has been provided under the PBPT Act in the form of Adjudicating Authority and Appellate Tribunal.
- Through Finance (No.2) Act, 2019, with effect from 1.8.2019, several amendments have been made in the Prevention of Money Laundering Act, 2002 (PMLA) with a view to strengthen its provisions which includes the following
  - A clarificatory Explanation was added in section 3 of the PMLA to clarify that a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely (a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever. Thus, after this amendment, it is not necessary that for committing an offence of money laundering, the person concerned should project or claim the proceeds of crime as untainted property, it is enough if he is directly or indirectly involved in any process of activity connected with the proceeds of crime including its concealment, possession, acquisition or use.
  - It has also been clarified through an amendment in section 3 of the PMLA that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever. Thus, it has been clarified that the money laundering cannot be interpreted as a one-time, instantaneous offence that ceases with the concealment or possession or acquisition or use or projection of the proceeds of crime as untainted property or claiming it as untainted. A person shall be considered guilty of the offence of money laundering for as long as the said person is enjoying the "proceeds of crime".
  - Section 2(u) of the PMLA defines "proceeds of crime" and through a clarificatory Explanation, for the removal of doubts, it has been

clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence. Thus, the scope of the expression "proceeds of crime" has been widened significantly and would not only include properties derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence. Thus, the money laundering offences can be investigated independently without necessarily requiring investigation of predicate offence.

- Through an amendment in section 17 and 18 of the PMLA, it has been provided that the powers of search and seizure and search of persons would not be contingent upon forwarding a report to the Magistrate under section 157 of the Criminal Procedure Code, 1973, or filing of a Prosecution Complaint by the predicate agency
- An amendment in section 44 of the PMLA was carried out to clarify for the removal of doubts that the jurisdiction of the Special Court, while dealing with an offence under the PMLA, will not be dependent upon any order passed in respect of the scheduled offence. Thus, even if an accused is discharged/acquitted from scheduled offence, the trial for the offence of money laundering will continue. This also means that while proving the property is the proceed of crime, it is not necessary that a person be convicted of a predicate offence.
- It has been clarified through an amendment in section 45 of the PMLA for the removal of doubts, that the offence of money laundering are cognizable and non-bailable offences and thus the officers of the Enforcement Directorate have the powers to arrest subject to certain conditions
- Earlier, in 2018, an amendment in PMLA has been made to state that if the "proceeds of crime" have been taken or held outside India, then the property equivalent in value held within the country or abroad will be considered as the "proceeds of crime".
- The Fugitive Economic Offenders Act (FEOA) has been enacted in 2018 for taking measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdictions of Indian Courts. The law defines "fugitive economic offender" as any individual against whom a warrant for arrest in relation to Scheduled Offence has been issued by any court in India and who has left the country so as to avoid criminal prosecution, or being abroad, refuses to return to face criminal prosecution. This law lays down measures to empower authorities to attach and confiscate proceeds of crime and properties associated with economic offenders in the event of such offenders becoming fugitives from the law enforcing authorities and judicial processes, if

the amount involved is more than INR 1 billion. This law makes two special provision:

- Confiscation of all properties which are proceeds of crime, and personal properties owned by such fugitive economic offender and allowing disposal of all such properties through a court procedure.
- Judicial recourse may be debarred till such time as the fugitive economic offender submits to the court. The court or a tribunal, in any civil proceeding before it, may disallow such individual, who has been declared as a fugitive economic offender from putting forward or defending any civil claim.

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>127</sup>

### **A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>128</sup>.**

Yes. The agencies investigating corruption and money laundering cases reach out to their counterpart in other countries at an informal level. The Central Bureau of Investigation (CBI) is also the National Central Bureau (NCB) in India for INTERPOL and facilitates informal cooperation among law enforcement agencies including in corruption cases through INTERPOL channels. The agency also has an International police cooperation unit. Requests related to asset freezing are sent regularly through INTERPOL channels. CBI also facilitates international asset recovery efforts through the Global Focal Points Network of StAR-INTERPOL. Informal cooperation through International Police Liaison Officers based in India is also facilitated by International Police Cooperation Unit of CBI at New Delhi. The Directorate of Enforcement has informal cooperation for asset recovery with CARIN Network including ARIN-AP. In few cases, the officers in the enforcement agencies has established direct contacts both before and after making the mutual legal assistance (MLA) requests and LRs. Informal cooperation for the purposes of intelligence has also been obtained through Embassies/Liaison Officers of law enforcement agencies.

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<sup>127</sup>We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>128</sup>You may refer to principles 1 and 7e in the “Nine Key Principles on Asset recovery” in providing your response.



**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

The barriers/constraints include the following

- The international financial system enables rapid transfer of finances across financial centres in different international jurisdictions. Rapid identification, interception and freezing of assets across jurisdictions is vital for pausing liquidation of proceeds of crime in corruption cases. There are delays and impediments in formal channels of Mutual Legal assistance with fast identification and rapid freezing of assets which are proceeds of crime. It will be beneficial to utilize existing channels like INTERPOL for assistance with rapid identification of assets and take up rapid freezing at an initial stage. This may be followed up with formal MLA request for asset recovery.
- Identification of the agency/officers for providing the assistance on an informal basis/peer-to-peer outreach
- Lack of clarity of the legal basis in domestic and international legislative and regulatory framework for facilitating informal cooperation both at pre and post MLA stage
- Not having bilateral or multilateral MoUs between respective agencies in a standardized format
- Information obtained through informal channels may not have any evidentiary value

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>129</sup>**

For formal communication in all criminal matters, the IS-II Division of the Ministry of Home Affairs (MHA) is the focal point of contact which is designated as the “Central Point of Contact” for bilateral treaties such as MLATs and multilateral treaties such as UNCAC. The Central Bureau of Investigation (CBI) is also the National Central Bureau (NCB) in India for INTERPOL and facilitates informal cooperation among law enforcement agencies including in corruption cases through INTERPOL channels. The agency also has an International police cooperation unit. CBI is also a focal point for international assistance through StAR-INTERPOL Global Focal Points Network. To strengthen this network, India had hosted Sixth Global Focal Point Conference on Asset Recovery for facilitating formal and informal cooperation among international asset recovery practitioners. The Directorate of Enforcement has informal cooperation for asset recovery with CARIN Network including ARIN-AP.

<sup>129</sup>You may refer to principle 7b in the “Nine Key Principles on Asset recovery” in providing your response



**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

The Central Bureau of Investigation (CBI) is also the National Central Bureau (NCB) in India for INTERPOL and facilitates informal cooperation among law enforcement agencies including in corruption cases through INTERPOL channels. The agency also has an International police cooperation unit. CBI is also a focal point for international assistance through StAR-INTERPOL Global Focal Points Network. To strengthen this network, India had hosted Sixth Global Focal Point Conference on Asset Recovery for facilitating formal and informal cooperation among international asset recovery practitioners. Some of the barriers include:

- i) Rigidities of legal systems and long delays in receipt of assistance from some international jurisdictions for request for rapid asset freezing and initiation of asset recovery proceedings.
- ii) Identification and Authentication of assets and establishing their links with proceeds of crime can be difficult if sufficient assistance is not rendered by international focal points.
- iii) Assistance of Focal points is needed to navigate the legal framework for asset recovery and adherence of legal pre requisites across international jurisdictions for asset recovery.

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>130</sup>**

Representatives of Law Enforcement Agencies dealing with corruption and money laundering, i.e., Central Bureau of Investigation and Directorate of Enforcement attend meetings and workshops organized by UNCAC COSP and its subsidiary bodies, Interpol/StAR etc. India is one of the active members of INTERPOL and provide widest range of assistance in criminal matters through the network of National Central Bureau. The sixth Global Focal Point Conference on Asset Recovery was conducted by CBI in New Delhi in 2015 and large number of international practitioners in asset recovery had participated. Informal assistance for identification of assets is also provided through CARIN Network. In order to promote agency to agency cooperation in corruption investigations, the CBI has

<sup>130</sup>You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

signed a MoU with the Anti-Corruption Commission of Bangladesh on 8<sup>th</sup> February, 2019. The CBI and the Directorate of Enforcement may enter into more such agency to agency cooperation agreements in future.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

To add dynamism and rapidity to the international asset recovery efforts, there is immediate need to have a continuing working arrangement among agencies and expert practitioners involved in investigation and prosecution of anti-corruption cases and recovery of assets. Agency-to-Agency cooperation amongst Law Enforcement Agencies dealing with Corruption and Money Laundering is not well established. Strengthening Agency-to-Agency cooperation amongst Law Enforcement Agencies dealing with Corruption and Money Laundering will facilitate faster information sharing and operational action on asset recovery. Such a cooperation at a bilateral, multilateral or regional level would promote faster information exchange, criminal intelligence sharing, evidence collection, forming joint investigation teams and for curtailing and confiscating proceeds of crime from corruption and money laundering.

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>131</sup>.**

Under the Indian laws, generally the assets can be confiscated/forfeited only after conclusion of criminal trial and conviction. However, under certain situations, assets can be confiscated/forfeited without conviction as explained below.

**Criminal Procedure Code.**

Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence ( inducing criminal offences of corruption), it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J of Criminal Procedure Code. There is no per-requisite of conviction.

Where the Court has made an order for attachment or forfeiture of any property under Sub-Section (1) of 105-C CrPC, and such property is suspected to be in a contracting State, the Court may issue a letter of request to a Court or an authority in the contracting State for execution of such order.

<sup>131</sup>You may refer to principle 4 in the “Nine Key Principles on Asset recovery” in providing your response

As per section 105-C of Criminal Procedure Code where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J CrPC.

**Instances:**

1. A request was made from US Authorities on the basis of Bilateral Mutual Assistance Treaty for remission of crime proceeds back to USA from the accounts of the subject. CBI acted way of freezing of bank accounts through court orders as per Indian Law. Subsequently, an amount of US \$ 1410 and US \$ 71550 have been transferred on 26.06.2019 from India (Indusland Bank) to the bank account in Wells Fargo Bank through SWIFT transfer as per the request of US Authorities in accordance with Article 17 of Bilateral Treaty and Chapter VII A of CrPC.
2. A request was made from US Authorities for Assistance on the basis of Bilateral Mutual Assistance Treaty in restraining, forfeiting and returning to the US more than \$ 5,00,000 from the account of State bank of India, Bangalore. CBI acted on the request and on 03.06.2011, US \$ 223,630.85 remitted to the designated US Account in furtherance with the request made by US Authorities. Further, on 14.10.2015 total US \$ 3,81,444.23 remitted to designated US account.
3. A request was made from UK Authorities to give full legal effect to a restraint order and in this case to freeze all money – property and bank accounts held in India. Request was made on the basis of Bilateral Agreement between India and U.K., UNTOC and UNCAC. CBI took steps on the request of the UK Authorities. The Hon'ble Court of Special Judge at North Goa vide Order dt. 28.11.2019 directed for transfer of two fixed deposit receipts totaling to Rs 80,41,463/- and an amount of Rs 8,278/- held in the bank account of SBI in the name of subject along with interest to the account of HM Courts & Tribunal Service.

The Fugitive Economic Offenders Act, 2018 (FEOA) has the provisions for attachment and confiscation of the "proceeds of crime". The objective of FEOA is "to provide for measures to deter economic offenders from evading the process of law in India". It focuses on certain specified economic ("scheduled") offences (as included in the schedule), the value involved wherein exceeds the minimum threshold (Rs. one billion), the focus of attachment leading to confiscation, upon declaration of a person as "fugitive economic offender" being on the "proceeds of crime". The definition of the expression "proceeds of crime" under this law is similar to that of identical clause in the Prevention of Money Laundering Act, 2002 (PMLA). A person is declared fugitive economic offender if the special court finds that a warrant for his arrest in relation to a scheduled offence having been issued by any court in India he "has left India so as to avoid criminal prosecution" or being abroad "refuses to return" to India "to face

criminal prosecution". The property which can be attached and confiscated under this law would be the one acquired by the "proceeds of crime" or the value thereof, it including benami property held in India or abroad, even if such property were to be not "owned by the fugitive economic offender".

After the court declares, by an order in writing, that an individual is a fugitive economic offender, it may order that the proceeds of crime in India or abroad, whether or not such property is owned by the fugitive economic offender and any other property or Benami property in India or abroad, owned by the fugitive economic offender stand confiscated to the Central Government.

Under the FEOA, the confiscation of property is not dependent on conviction of the accused and the only condition is that he is declared as a "fugitive economic offender", which has been defined in section 2(f) to mean "any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who (i) has left India so as to avoid criminal prosecution; or (ii) being abroad, refuses to return to India to face criminal prosecution.". Thus, the confiscation under the FEOA is a non-conviction based confiscation.

The Directorate of Enforcement has filed application under Fugitive Economic Offenders Act, 2018, against eleven persons as on 1.9.2020. The Special Court in Mumbai has already declared two persons as fugitives (Vijay Malaya in January, 2019 and Nirav Modi in December, 2019). Further, the Special Court, Mumbai, in June, 2020, has ordered confiscation of assets of Nirav Modi of about INR 327 crores, which is a case of non-conviction based asset confiscation.

Section 8(5) of the Prevention of Money Laundering Act, 2002 (PMLA) provides that where on conclusion of a trial of an offence under the PMLA, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government. Thus, normally confiscation of any property involved in money-laundering can take place only after the conclusion of trial by the Special Court. However, section 8(7) of the PMLA provides that where the trial under the PMLA cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director may pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it. Thus, in exceptional cases, and in accordance with Article 54(1)(c) of the UNCAC, property can be confiscated "without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases."

The Directorate of Enforcement has confiscated "proceeds of crime" without conviction of the accused by applying section 8(7) of the PMLA. A case study in this regard is presented as under:

- On 3<sup>rd</sup> February, 2006, a person namely Nasir Shafi Mir S/o Sh. Mohd Shafi Mir R/o Lal Bazar, Bursha Mohalla, Srinagar (J & K) was apprehended near D - 146, Defence Colony and on his personal search the following items were recovered (i) 2 KGs black granulated coloured explosive RDX concealed in double black coloured polythence bag, (ii) one ABCD Electronic timer; (iii) One Detonator, (iv) One Pistol make "Star" with magazine made in China by Narinco Cal 30 Mause, (v) six live cartridges of 30 caliber, (vi) 10 bundles of rupees 1000 notes each containing 100 notes (Rs. 1 million) and (vii) Rs. 4.5 million in a blue coloured Airbag from the front seat of the Car on which the said Nasir Shafi Mir came to the said place.
- On interrogation, Nasir Shafi Mir disclosed that he was working for a banned militant organization Hizbul Muzahideen and for Mir WaizUmmar Farooq, Chief of Hurriyat Conference, J & K; that, on the direction of one Sayed Salahuddin, Chief of Hizbul Muzahideen terrorists outfit, the consignment of explosive was delivered to him on 02.02.2006 by one Latif and the same was to be delivered by him to one Zahoor of Hiz-bulMuzahideen from the place where he was apprehended.
- On his further interrogation, it was revealed by him that he had collected the consignment of Rs. 5.5 million from a hawala operator and out of the same, he was to deliver Rs. 1 million to Zahoor along with the recovered explosive, Arms and Ammunition and 4 million was to be sent to J & K for disbursement to various outfits and the remaining Rs. 500,000 was for his own expenses
- During investigation it was revealed that Sh. Nasir Mir was working for a banned militant organization Hizbul Muzahideen and also for Mir WaizUmmar Farooq, Chief of Hurriyat Conference, J & K.
- Rupees 5.5 million recovered and seized on 3<sup>rd</sup> February, 2006 from Nasir Shafi Mir was received through an un-authorized and un-recognized channel i.e. Hawala Operator from Connaught Place Area of New Delhi. This amount, obtained/concealed/acquired/taken into possession by Sh. Nasir Shafi Mir, was meant for commission of terrorist activities relating to scheduled offence of PMLA. Hence, the said amount of Rs. 5.5 million became "proceeds of crime".
- A prosecution complaint was filed on 18<sup>th</sup> March, 2014 in the special court of PMLA. Through an order dated 23<sup>rd</sup> February, 2016, the Hon'ble Judge confiscated the amount of Rs. 5.5 million under section 8(7) of the PMLA and directed the special cell of Delhi Police to hand over the seized currency to the Directorate of Enforcement as the accused is a Proclaimed Offender
- The seized Currency amounting to Rs. 5.5 million was taken over from Special Cell, Delhi Police on 16<sup>th</sup> September, 2016 and the said amount was deposited in the Bank Account of the Joint Director, Delhi Zonal Office

- The accused has not been convicted but still the proceeds of crime stands confiscated to the Central Government and thus this case is an example of non-conviction-based confiscation as contemplated in Article 54(1)(c) of the UNCAC

Under both PMLA and FEOA, corruption offences are scheduled or predicate offence which includes the following offences under the Prevention of Corruption Act, 1988

- Section 7: Offence relating to public servant being bribed
- Section 7A: Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence
- Section 8: Offence relating to bribing of a public servant
- Section 9: Offence relating to bribing a public servant by a commercial organization
- Section 10: Person in charge of commercial organization to be guilty of offence
- Section 11: Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant
- Section 12: Punishment for abetment of offences
- Section 13: Criminal misconduct by a public servant
- Section 14: Punishment for habitual offender

Section 5 of the Benami Property Transactions Act, 1988 (Benami Act) provides that any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government. The "benami property" means, as per section 2(8) of the Benami Act, a property which is "the subject matter of a benami transaction" and also includes the proceeds from such property. The expression "benami transaction" is defined in section 2(9) of the Benami Act to connote a transaction or an arrangement where the property is transferred to or held by one person while the consideration for the same is provided or paid by another, it being held for the "immediate or future benefit" of the latter, subject to certain exceptions. If the Adjudicating Authority has held any property as benami property, the Adjudicating Authority under section 27 of the Benami Act, shall after giving an opportunity of hearing to the concerned person, pass an order to confiscate the attached property. Since the order of confiscation is passed by the Adjudicating Authority and not by the Special Court, confiscation is not dependent on the conviction of the accused and thus it is also a non-conviction based confiscation.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

- i) Insufficient details substantiating the request are provided by Requesting Jurisdiction which may create impediments in obtaining requisite court orders.

ii) Lack of sufficient reciprocity in rendering similar assistance by several international jurisdictions when asset recovery requests are made.

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

As explained in answer to A3, The Prevention of Corruption Act, 1988 (P.C. Act) has been amended in 2018 to strengthen the legislative and administrative framework to curb corruption. The provisions of Fugitive Economic Offenders Act, 2018, Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the Benami Transactions (Prohibition) Act, 1988, are the new measures implemented by India and which may be considered by the group for adoption.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>132</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>133</sup>**

The Central Bureau of Investigation or the CBI is the specialized agency in India at the federal level for investigation of cases of corruption under the Prevention of Corruption Act, 1988. The CBI has branches across the country and is a premier investigative agency dealing with high profile anti-corruption investigations, bank fraud investigations, economic offences and special crimes. CBI has been rendering international asset recovery assistance and carried out successful repatriation of assets back to Requesting Countries. CBI also renders assistance through police to police channels via the International Police Cooperation Unit and is also the focal point for StaR-INTERPOL Global Focal Points Network.

The Directorate of Enforcement is entrusted with the responsibility of administration and enforcement of the PMLA including investigation into the offence of money laundering, filing of prosecution complaint before the special court against the accused, attachment and confiscation of property involved in money laundering and carrying out international cooperation with competent authorities in foreign jurisdictions including for recovery of assets.

The requests for international asset recovery to foreign countries are made by CBI in corruption cases, the Directorate of Enforcement in cases related to money laundering and by the Central Board of Direct Taxes in cases related to tax crimes.

International asset recovery requests received by means of Letter Rogatory or Mutual Legal Assistance request in criminal matters relating

<sup>132</sup>In some jurisdictions, an asset recovery office may fulfil this role.

<sup>133</sup>You may refer to principle 6 in the “Nine Key Principles on Asset recovery” in providing your response



to corruption cases are usually forwarded by Ministry of Home Affairs to Central Bureau of Investigation for execution. In cases related to money laundering, the requests are forwarded to the Directorate of Enforcement.

A Special Investigation Team (SIT) on “Black Money” has been constituted in May 2014 under the Chairmanship and Vice-Chairmanship of two former Judges of the Hon’ble Supreme Court. Investigation into cases involving substantial black money/undisclosed income, particularly black money stashed abroad, is being extensively and intensively monitored by the SIT. It also reviews the legal and administrative framework to curb the menace of black money.

The Government of India has taken pro-active and effective steps whenever any credible information has been received with regard to black money stashed abroad, whether in HSBC cases, ICIJ cases, Paradise Papers or Panama Papers. These steps include constitution of Multi Agency Group on 4th April 2016, inter alia, for facilitating co-ordinated and speedy investigation in the cases of Indian persons allegedly having undisclosed foreign assets and whose names are reportedly included in Panama Papers leaks. The Group consists of the officers of the Central Board of Direct Taxes (CBDT), Enforcement Directorate (ED), Financial Intelligence Unit (FIU) and Reserve Bank of India.

The Central Bureau of Investigation, the Directorate of Enforcement and the Central Board of Direct Taxes in the recent years have initiated investigation in many high-profile cases, have identified assets stashed in foreign jurisdictions and have made requests to foreign countries for recovery of proceeds of corruption, money laundering and tax crimes.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

i) Often the asset recovery requests received from International jurisdictions do not have sufficient details, do not meet legal pre requisites sufficiently and requires back and forth clarifications. Greater agency to agency cooperation amongst anti corruption agencies and their specialised asset recovery practitioners will enable faster exchange of information and greater operational coordination will enable faster asset recovery process by specialized units.

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption),**



including training or mentorship programmes? If yes, please share examples.<sup>134</sup>

INDIA has been very active in providing international technical assistance in various domains including in the field of asset recovery. CBI Academy has a long standing experience in imparting qualitative training of the highest standards of excellence to international practitioners. The following international trainings were conducted by CBI Academy focused on asset recovery, financial/ economic crime angles and international instruments facilitating asset recovery.

**Training of Foreign Police Personnel in India during the year 2018**

S.No.	Name of the Course	Duration of the Course/ Training	Institute Imparted Training	No. of Foreign police personnel who attended the training	Name of the Country
1	Training Program on Investigation of Conventional/Organized Crime including Crimes related Women and Children in Special reference to Human Trafficking, use of Provision of UNCAC/UNTOC and Trafficking in drugs and Wildlife	08.01.18 to 19.01.18	CBI Academy	25	Bangladesh
2	Course on Investigation of Financial Crime including Bank Frauds, Attachment of Proceeds of Crime, Forensic Auditing/ Accounting, Foreign Exchange and Money Laundering	<u>12.03.18</u> to <u>23.03.18</u>	CBI Academy	20	Bangladesh
3	Course on Investigation of Financial Crime including Security / Commodities Frauds, Corporate Frauds in Insurance Sector	22.10.18 to 26.10.18	CBI Academy	4	Suriname
4	Training Program on Investigation of Anti-Corruption Cases including Procurement & Contract Frauds	22.10.18 to 02.11.18	CBI Academy	20	Bangladesh

<sup>134</sup>You may refer to principle 8 in the “Nine Key Principles on Asset recovery” in providing your response

**Training of Foreign Police Personnel in India during the year 2019**

S.No.	Name of the Course	Duration of the Course/ Training	Institute Imparted Training	No. of Foreign police personnel who attended the training	Name of the Country
1	Training Program on Investigation of Conventional/Organized Crime including Crimes related Women and Children in Special reference to Human Trafficking, use of Provision of UNCAC/UNTOC and Trafficking in drugs and Wildlife	04.02.19 to 15.02.19	CBI Academy	19	Bangladesh
2	Training Program on Investigation of Anti-Corruption Cases including Procurement and Contract Frauds	16.9.2019 to 27.9.2019	CBI Academy	20	Bangladesh
3	Course on Investigation of Financial Crime including Bank Frauds, Attachment of Proceeds of Crime, Forensic Auditing/ Accounting, Foreign Exchange and Money Laundering	14.10.2019 to 25.10.2019	CBI Academy	20	Bangladesh
	Investigation of Financial Crimes including bank Frauds attachment of Proceeds of Crime, forensic Auditing / Accounting, foreign Exchange and Money Laundering	18.10.2019 to 29.11.2019.	CBI Academy	24	Sri Lanka Police
7	Training Program on Cyber Crime/ Cyber Forensics including Plastic Card/E-banking Frauds and Mobile Forensics	02.12.19 to 13.12.19	CBI Academy	20	Bangladesh

The CBI and the Directorate of Enforcement has their internal training academies which impart periodic training to its officers. In collaboration with World Bank-StAR Initiative, a Workshop on Asset Recovery is being conducted through distance mode for the officers of the Directorate of Enforcement from 8.9.2020 to 30.9.2020 in which the main topics of interest/training are the basics of international asset recovery, asset

tracing, international cooperation and mutual legal assistance, relevant international instruments and channels to exchange information.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>135</sup>.**

There is no legal impediment to spontaneous disclosure of relevant information on corruption or proceeds of corruption to law enforcement agencies in foreign territories.

Information on proceeds corruption are regularly shared spontaneously with foreign jurisdictions when it is considered that such disclosure may assist a foreign jurisdiction to investigate a corruption case or take action on proceeds of corruption.

Both formal and informal channels are used for such spontaneous sharing with foreign jurisdictions in consonance with Articles 46(4) and 56 of UNCAC. Informal sharing is done through INTERPOL channels to National Central Bureaus of respective countries and through CARIN Network and formal channels are Letter Rogatory and MLA request.

Details of international Asset Recovery through formal channels of Letters Rogatory/MLA request are maintained but not published on public platforms.

A comprehensive guideline issued by the Ministry of Home Affairs on Mutual Legal Assistance in Criminal Matters on 4.12.2019 is available in public domain.

[http://164.100.117.97/WriteReadData/userfiles/ISII\\_ComprehensiveGuidelinesMutualLegalAssistance\\_17122019.pdf](http://164.100.117.97/WriteReadData/userfiles/ISII_ComprehensiveGuidelinesMutualLegalAssistance_17122019.pdf)

May refer to India's response to STAR DATA COLLECTION: INTERNATIONAL ASSET RECOVERY EFFORTS IN CORRUPTION CASES, 2010–2019 for statistical details.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

Often Requesting Countries share sensitive information on their investigation while making asset recovery request. It may not be feasible to keep such details in the public domain in the interest of the case.

<sup>135</sup>Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response

Also in the interest of successful prosecution of cases and for withholding of identities of victims, accused, abettors or co-conspirators involved in laundering of proceeds of crime in cases of active investigation or prosecution, details are not publicly made available.

## Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>136</sup>

### A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>137</sup>

The Ministry of Home Affairs issues detailed guidelines on procedures to be followed on mutual legal assistance in criminal matters including on how to handle the incoming requests. This guideline/notification has been issued as per Chapter-VIIA of the Cr. PC and section 61 of the PMLA and the latest guideline issued on 4<sup>th</sup> December, 2019, is available in the public domain

[http://164.100.117.97/WriteReadData/userfiles/ISII\\_ComprehensiveGuidelinesMutualLegalAssistance\\_17122019.pdf](http://164.100.117.97/WriteReadData/userfiles/ISII_ComprehensiveGuidelinesMutualLegalAssistance_17122019.pdf)

CBI provides assistance through StAR-INTERPOL Global Focal Points Network for any queries on legal framework on asset recovery in India and to facilitate sending of formal requests through proper channels.

CBI website hosts details on LR, MLA and copies of treaties where relevant that will give guidance for asset recovery.

<http://www.cbi.gov.in/interpol/mlats.php>

<http://www.cbi.gov.in/interpol/invletterrogatory.php>

<sup>136</sup>Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>137</sup>You may refer to principle 3 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>138</sup>**

There is no legal impediment to spontaneous disclosure of relevant information on corruption or proceeds of corruption to law enforcement agencies in foreign territories.

Information on proceeds corruption are regularly shared spontaneously with foreign jurisdictions when it is considered that such disclosure may assist a foreign jurisdiction to investigate a corruption case or take action on proceeds of corruption.

Both formal and informal channels are used for such spontaneous sharing with foreign jurisdictions in consonance with Articles 46(4) and 56 of UNCAC. Informal sharing is done through INTERPOL channels to National Central Bureaus of respective countries and through CARIN Network and formal channels are Letter Rogatory and MLA request.

India has provided international legal assistance through formal channels like Letters Rogatory and Mutual Legal Assistance Requests and also through police to police international cooperation channels through INTERPOL. Based on information sent/ received and coordination with international Law Enforcement Agencies through INTERPOL channels and Police Liaison Officers based in INDIA, several criminal proceedings have been initiated by CBI in India. Especially in the domain of cyber crime there are several instances of coordinated or supportive investigations by CBI across international

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

The collection of evidence through such coordinated mechanisms or arrangements needs to adhere procedurally to the legal requisites of evidence collection in a country. The differences in procedures between international jurisdictions makes it difficult to obtain admissible evidence through informal channels and formal mutual legal assistance channels needs to be resorted to.

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<sup>138</sup>You may refer to principle 4 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>139</sup>**

India has been proactively updating domestic legal framework for asset recovery. India also provides international assistance in asset recovery on the basis of various Treaties signed by India. The overview of asset recovery framework has been given in response to Question A1 and the recent measures have been outlined in response to Question A3. The examples of assistance provided by India in asset recovery have been provided in response to Question A2

### Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

- No response by some countries for several years despite repeated requests and reminders
- Absence of time frame before which the request for assistance should be responded to
- Outright denial of assistance by some countries sometimes citing the principles of dual criminality
- In many countries, overlap of criminal conduct and civil action in cases pose a problem of dual criminality analysis resulting in denial of requests in few cases
- Repeated clarifications sought by requested countries which are time consuming and leads to significant delays in investigations
- Insistence by some countries that the request should be sent in a particular format
- Dissipation of assets due to delay in providing assistance
- Misusing the standards of "foreseeably relevant" to deny or delay the assistance sought for
- Execution of requests partially ignoring the main request and providing only secondary/peripheral requests
- Absence of mechanism for temporary restraint in some countries
- Problems in sustaining of the restraint once imposed sometimes by the accused repeatedly approaching the Courts in the requested country

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<sup>139</sup>You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

- Request for sharing of information with other Law Enforcement Agencies take long time resulting in further delay of investigation
- Lack of effective detection mechanisms leading to opening of investigations
- Difficulty in identifying and verifying the beneficial ownership of suspected crime proceeds or when the assets are held by third parties/nominees on behalf of the criminals
- Difficulties in proving the link between the asset and criminal offence committed
- The freezing orders issued by Civil Courts are not accepted by some countries on unsubstantiated grounds
- The principles of value-based confiscation and the freezing/confiscation by the requesting country of the “equivalent amount” of proceeds of crime is not adhered to by some countries
- The non-conviction based confiscation orders passed by Courts in requesting are not given effect to by the requested countries
- There is no mechanism for resolution of bilateral disputes amongst countries in a multilateral forum
- Absence of a central authority who can guide the investigating officers on the ways in which the requests need to be framed/procedure involved etc.

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

The G20 ACWG could address the issues listed in response to Question A22, which in particular, may include the following

- International cooperation on recovery of assets including on non-conviction-based forfeiture and recovery and countries should modify their domestic laws to facilitate the same
- Prescribing a time limit for providing the assistance on the lines of standards for tax information exchange which states that the countries/jurisdictions should respond to the requests within 90 days of receipt or provide an update on the status of the request
- Resolution of bilateral issues through cooperation amongst law enforcement agencies both at an institutional level and on a case-to-case basis
- Promotion of informal cooperation prior to making formal requests under the bilateral/multilateral treaties and for this purpose, establishing and strengthening the informal channels of communication amongst enforcement agencies
- Use of technology platforms to support international/cross-agency information sharing
- Development of a dispute resolution mechanism through a multilateral review for international assistance provided by

countries as resolution of disputes is presently not the mandate of the current reviews by FATF and UNODC

- Sharing of information received from foreign jurisdictions amongst law enforcement agencies including information received under tax treaties on request or under Automatic Exchange of Information (AEOI). The information received by a country should be made available to enforcement agencies dealing with serious economic crimes such as corruption, money laundering, terror financing and drug related offences in a seamless manner without any requirement of confidentiality just on the intimation of such sharing to the supplying country.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

India has been proactively updating domestic legal framework for asset recovery. Overview of asset recovery framework has been given in response to Question A1 and the recent measures have been outlined in response to Question A3. The examples of assistance provided by India in asset recovery have been provided in response to Question A2

**B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

Terms of the provisions in the Passport (Entry into India) Act, 1920, and the Rules made thereunder govern entry of every foreigner entering India.



The extant Acts dealing with entry, stay and exit of foreigner nationals in the country are:

- i. Passport (Entry into India) Act, 1920
- ii. Foreigners Act, 1946
- iii. Registration of Foreigners Act, 1939

S No	Acts	Description
1	The Passport (Entry in India) Act, 1920	It prescribes specific authorization of foreigner nationals on their valid travel documents/ passports for allowing entry into the country. Under this Act and the Rules made there under, the foreigners coming to India are required to get visa from Indian Missions/ Posts.
2	The Foreigners Act, 1946	It regulates the entry of foreigners into India, their presence therein and their departure therefrom.
3	The Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1992	It mandates that certain categories of foreigners whose intended stay in India is more than the specified period, or as provided in their visa authorization, are required to get themselves registered with the Registration officer.

International Police Cooperation Unit (IPCU) of CBI has a robust mechanism for monitoring movements of international fugitives including those with criminal antecedents relating to corruption. IPCU issues Look Out Circulars against individuals against whom INTERPOL notices are issued. Their criminal antecedents are detailed in the Look out circular and are identified for suitable action at the time of entry into India. The International Police Cooperation Unit of CBI issues Look Out Circulars for International fugitives wanted on the basis of INTERPOL notices and detects their entry or exit from India and reaches out proactively to the concerned notice initiating countries to update them of presence of fugitives wanted by them and requests for them to initiate proceedings against fugitives wanted by them as required by them through formal channels of mutual legal assistance and diplomatic channels.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

There are wide powers within the existing legal framework which can be relied upon for denial of entry for corrupt practices or offences triggering denial of entry.

**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>140</sup>**

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>141</sup>**

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

Non availability of latest updated details from the Requesting Country on present status of legal proceedings against person wanted for corruption. The International Police Cooperation Unit of CBI issues Look Out Circulars for International fugitives wanted on the basis of INTERPOL notices and detects their entry or exit from India and reaches out proactively to the concerned notice initiating countries to update them of presence of fugitives wanted by them and requests for them to initiate proceedings against fugitives wanted by them as required by them through formal channels of mutual legal assistance and diplomatic channels.

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>142</sup>**

**There are no provisions curtailing denial of entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target.**

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<sup>140</sup>For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>141</sup>You may refer to principles 4 and 5 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

<sup>142</sup>You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>143</sup>

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>144</sup>**

India reviews immigration policies and framework and issues guidelines from time to time. The existing legislative framework and related rules for denial of entry also provides wide ranging powers to prevent abuse of immigration programmes.

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

### Holistic questions

**B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

Non availability of latest updated details from the Requesting Country on present status of legal proceedings against person wanted for corruption. The International Police Cooperation Unit of CBI issues Look Out Circulars for International fugitives wanted on the basis of INTERPOL notices and detects their entry or exit from India and reaches out proactively to the concerned notice initiating countries to update them of presence of

<sup>143</sup>Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>144</sup>You may refer to principle 3 in the "G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery" in providing your response.

fugitives wanted by them and requests for them to initiate proceedings against fugitives wanted by them as required by them through formal channels of mutual legal assistance and diplomatic channels.

**B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

System of Look Out Circulars against International Fugitives based on INTERPOL Notices

The International Police Cooperation Unit of CBI issues Look Out Circulars for International fugitives wanted on the basis of INTERPOL notices and detects their entry or exit from India and reaches out proactively to the concerned notice initiating countries to update them of presence of fugitives wanted by them and requests for them to initiate proceedings against fugitives wanted by them as required by them through formal channels of mutual legal assistance and diplomatic channels.

**B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

Apart from the statutory powers under which denial of entry regime is enforced in India, there is an effective system of Look Out Circulars for monitoring of international entry/exit into India of international fugitives and persons with criminal antecedents. IPCU-CBI has a robust mechanism for monitoring movements of international fugitives including those with criminal antecedents relating to corruption. IPCU issues Look Out Circulars against individuals against whom INTERPOL notices are issued. Their criminal antecedents are detailed in the Lookout circular and are identified for suitable action at the time of entry into India.

**C. GENERAL QUESTIONS**

**C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

India has completed the first cycle of review and the executive summary under the UNCAC Implementation Review Mechanism for the first cycle

published on 2<sup>nd</sup> July, 2020, is at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V2003403e.pdf>

The review under the second review is presently in progress.

India is committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits and is committed to publish the full reports of reviews and self-assessment checklists

**C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

India is not a party to OECD Anti-Bribery Convention. India is committed to take concrete efforts towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with Article 16 of the UNCAC and with a view to the possible adherence to the OECD Anti-Bribery Convention.

**C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

# INDONESIA

## A. ASSET RECOVERY

- A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

The framework for International cooperation on asset recovery in Indonesia is conducted through the mechanism of Mutual Legal Assistance in Criminal Matters (MLA), in accordance with Law No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters (MLA Law). The Ministry of Law and Human Rights (MoLHR) is the Central Authority of Indonesia, and pursuant to Article 9 of the MLA Law, the Indonesian National Police (INP), the Attorney General's Office (AGO) and the Corruption Eradication Commission (KPK) are the law enforcement authorities that are authorized to submit MLA requests related to corruption cases.

Indonesia has several additional instruments to facilitate international cooperation in asset recovery. Confiscation and asset recovery requests are executed on the basis of bilateral and multilateral treaties, including the UNCAC. Indonesia is party to 3 international conventions containing relevant asset recovery provisions and has ratified 9 bilateral MLA treaties (PRC, Republic of Korea, Hong Kong SAR, Australia, India, Viet Nam, United Arab Emirates, Iran, Switzerland) and one regional treaty, the ASEAN MLAT. Indonesia has ratified 12 bilateral extradition treaties (Malaysia, Philippines, Thailand, Australia, Hong Kong SAR, Republic of Korea, PRC, India, Papua New Guinea, Viet Nam, United Arab Emirates and Iran). In the absence of such treaties, requests may be submitted and processed, based on principles of reciprocity and other requirements stated on the MLA Law.

Requests by foreign states for asset seizure or confiscation must be submitted to the Indonesian Central Authority with the relevant court order (for seizure) or final and binding court decision (for confiscation) and information of the form of assets, imposition of penalty or payment of compensation. The requirements are stipulated under Articles 28 and 51 of MLA Law.

The procedure for enforcing a foreign confiscation or seizure order is through the issuance of a domestic order by Indonesian courts. There is no mechanism for direct enforcement of foreign orders.

Pursuant to Article 41 of MLA Law, there is a mechanism in Indonesia to provide assistance to other countries for freezing or seizing of assets/properties located in Indonesia based on a warrant and/or court

verdict for investigation or examination purpose before the court. According to Article 42, a request for assistance in search and seizure of assets can be made for properties, objects or assets that:

- a. Are allegedly obtained or resulted from a crime which, according to the law of the Requesting State, has been or has allegedly been committed;
- b. Have been used to commit or prepare a crime;
- c. Are specifically made or aimed for committing crime;
- d. Are related to crime;
- e. Are believed to be evidence of a crime; or
- f. Are used to hinder the investigation, prosecution, and examination of a crime before the court.

When a request for assistance has fulfilled the specified requirements, such request will be forwarded by the MoLHR to the INP or AGO, who shall apply for search and seizure warrants to the Court respective to the location of such assets (article 41(4) of MLA Law). A permit from the Court shall grant authority to the INP or AGO to conduct search and seizure in accordance with the Indonesian Criminal Procedure Code against assets under request from the requesting State.

In practice, to be able to apply for search warrants and seizure orders, the INP or AGO require 2 items of evidence, to indicate that a crime has been committed as well as its connection with the assets.

According to article 41(4) of the MLA Law, the request for search and seizure should be submitted to the Head of the District Court, which may issue a search and seizure warrant with respect to the asset if it is believed that the goods, articles or assets are allegedly obtained from or proceeds or crime under the law of the requesting State.

Publication links:

- APG (2018), Anti-money laundering and counter-terrorist financing measures - Indonesia, Third Round Mutual Evaluation Report, APG, Sydney  
<http://www.apgml.org/includes/handlers/get-document.ashx?d=91e933b2-a5ba-4304-a9f4-a78c1d825d14>
- Indonesia Executive Summary of UNCAC Implementation Cycle II  
<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1802700e.pdf>

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

From 2013 to 2020, there have been 175 incoming MLA requests in total, 57 of which related to requests for identification/tracing measures concerning information and bank accounts. During this period, Indonesia received 7 MLA requests related to corruption offences and 11 MLA requests on Money Laundering Crimes. None of these requests have been refused by the Indonesian authorities to date. As of currently, Indonesia has not received any requests to confiscate assets from any countries. Classification of MLA Requests from Partner Countries based on the type of criminal act can be seen on the table below:

Offence	2013	2014	2015	2016	2017	2018	2019	2020	Total
Money Laundering	3	-	-	1	-	4	3	-	<b>11</b>
Terrorism	-	1	-	1	-	-	2	2	<b>6</b>
Corruption	-	-	2	-	1	1	3	-	<b>7</b>
Bribery	1	1	-	-	-	-	-	1	<b>3</b>
Narcotics	1	1	-	-	-	-	1	-	<b>3</b>
Tax	-	-	-	-	-	1	3	-	<b>4</b>
Environmental Crime	-	-	1	-	-	-	-	-	<b>1</b>
Fraud	5	7	8	4	10	15	23	8	<b>80</b>

Table on Classification of MLA Requests from Partner Countries based on the type of criminal act during 2013-2020 (as of August 2020)

Source: Central Authority of Indonesia

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

Currently Indonesia is taking measures to improve its legislative framework on asset recovery by drafting the law on asset recovery. This



was one of the recommendations of the second cycle UNCAC review, particularly on the implementation of Chapter V of UNCAC, on Asset Recovery.

The finalization of this legislation has become a priority for Indonesia, since there are number of issues that needs to be regulated with regards to asset recovery, such as recovery mechanisms for States to establish title or ownership of property, or be awarded compensation or damages for injuries, through domestic proceedings, and non-conviction based confiscation.

In 2019, Indonesia has signed MLA treaties with Switzerland and Russia. With this, Indonesia has signed a total of 11 MLA treaties.

MLA treaties regulate legal assistance in tracing, freezing, confiscation and seizure of assets resulting from crime. The wide range of MLA is an important part in the framework of supporting the criminal justice process in the requesting country. MLA treaties can also be used to combat tax fraud in order to ensure that Indonesian citizens or legal entities comply with Indonesian tax regulations and do not commit tax evasion or other tax crimes.

The Attorney General's Office issued the Attorney General's Instruction Policy No.6 of 2019 concerning the optimization of the use of MLA cooperation for handling money laundering crimes originating from narcotics, corruption and taxation crimes. This policy is part of the implementation of the action plan of national strategic on the prevention and eradication of the money laundering crimes. The Attorney General's Office instructed that MLA cooperation should be optimized, especially in handling of money laundering cases. This policy also includes the technical guideline for MLA submissions and the capacity building of prosecutors. The AGO also established a guideline on asset recovery through the AGO's Regulation PER 027/A/JA/10/2014 as amended.

Publication Link:

- AGO's regulation on asset recovery guideline  
[https://www.kejaksaan.go.id/produk\\_hukum.php?page=2&id\\_uu=&id=&id\\_prod=7&jud=Peraturan%20Jaksa%20Agung&tahun=&note ng=&prodhkm=&bidang=&thncb=#](https://www.kejaksaan.go.id/produk_hukum.php?page=2&id_uu=&id=&id_prod=7&jud=Peraturan%20Jaksa%20Agung&tahun=&note ng=&prodhkm=&bidang=&thncb=#)  
<https://jdih.kejaksaan.go.id/produkHukum/2804>

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>145</sup>

### **A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to**

<sup>145</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

**receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>146</sup>.**

Indonesia does not have experience to be reported under this question.

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

Constraints in pursuing efforts on mutual legal assistance and informal cooperation are among others:

- a) Legal system differences that could potentially not meet the requirements of MLA.
- b) Lack of personnel capacity and experience.
- c) Lack of knowledge and experience regarding the mechanism for asset recovery and handling of cross-border corruption cases. The MLA request drafting process also requires knowledge on the legal system in the country of destination
- d) Sophisticated modus operandi of corruption crimes.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>147</sup>**

Yes. Indonesian MoLHR is the Central Authority for MLAs and Extradition. The mechanism for exchange of information is not limited only through the MLA mechanism, but also through agency-to-agency cooperation, cooperation between FIUs, cooperation with INTERPOL, cooperation between law enforcement agencies, multilateral networks, such as the Egmont Group, ARIN-AP (Asset Recovery Interagency Network-Asia Pacific), and CARIN (Camden Assets Recovery Interagency Network).

- **Indonesia's Focal Point for MLA**

The Central Authority of the Republic of Indonesia  
Directorate of Central Authority and International Law  
Directorate General of Legal Administrative Affairs  
Ministry of Law and Human Rights  
Jl. H.R. Rasuna Said Kav. 6-7 Kuningan, Jakarta Selatan  
Phone (6221) 5221619  
Fax (6221) 5221619  
Email otoritaspusat@kemenkumham.go.id  
Website <http://ahu.go.id/mla>

- **Indonesia's Focal Point for agency-to-agency cooperation on corruption offences**

International Cooperation Unit

<sup>146</sup> You may refer to principles 1 and 7e in the "Nine Key Principles on Asset recovery" in providing your response.

<sup>147</sup> You may refer to principle 7b in the "Nine Key Principles on Asset recovery" in providing your response

Directorate of Fostering Networks between Commission and Institution  
The Corruption Eradication Commission  
Jl. Kuningan Persada Kav. 4 Setia Budi, Jakarta Selatan, Indonesia 12950  
Phone: (6221) 25578300  
Fax: (6221) 2525926  
Email: [international@kpk.go.id](mailto:international@kpk.go.id)  
Website: [www.kpk.go.id](http://www.kpk.go.id)

- **Centre for Asset Recovery (PPA)**

Attorney General Office  
Jl. Sultan Hasanuddin No.1 Kebayoran Baru  
Jakarta Selatan - Indonesia  
Phone : (6221) 72798353  
Email: [transnationalppa@kejaksaan.go.id](mailto:transnationalppa@kejaksaan.go.id)  
Website: [www.pemulihanaset.id](http://www.pemulihanaset.id)

- **Division of International Relations**

Indonesian National Police  
Jl. Trunojoyo 3 Jakarta 12110 Indonesia, Kebayoran Baru, Jakarta Selatan  
Phone: (6221) 7218467  
Fax : (6221) 7201402, 7269203  
Email: [ncb-jakarta@interpol.go.id](mailto:ncb-jakarta@interpol.go.id)  
Website: <https://divhubinter.polri.go.id>

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

Indonesia does not have any constraints or barriers to be reported under this question.

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which**

**are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>148</sup>**

Indonesia makes use of the ARIN AP and CARIN networks to assist in the investigation of corruption offences that involves multi-jurisdictional cooperation. For example, in the investigation of a case by the Attorney General's Office involving a state owned insurance company. The highlight of the case itself are the alleged mismanaging of premium revenue, by investing it in multiple assets, and investment manipulation for personal gain. The alleged investment mismanagement resulted in the company's failure to pay out Rp 16 trillion (over a billion US Dollar) in matured policies that were due to its policyholders.

The Attorney General's Office investigators and prosecutors communicated intensively with their counterparts in several countries where the assets are allegedly being placed, through ARIN-AP, CARIN and also direct contact.

In 2004, The Governments of Republic of Indonesia, the Brunei Darussalam, the Kingdom of Cambodia, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore, and the Socialist Republic of Vietnam signed a Treaty on Mutual Legal Assistance in Criminal Matters. In 2006, the Kingdom of Thailand and the Union of Myanmar also signed and ratify the Treaty. To enhance cooperation among the Central Authorities of ASEAN Member States and ensure the effective implementation of the MLAT, the Meeting of the Senior Officials on the Treaty on MLA (Among Like-Minded ASEAN Member Countries) and Meeting of Attorneys General/Ministers of Justice and Minister of Law on the Treaty on MLA (Among Like-Minded ASEAN Member Countries) were held regularly.

In 2017, Indonesia had sent MLA request to Singapore to obtain evidences for the investigation and prosecution of corruption case in airplane procurement of Indonesian National Airlines, Garuda Indonesia. Indonesia was well assisted and the evidences were used in the trial of the case. In May 2020, the suspects were convicted for corruption and money laundry allegations.

Publication link:

<https://www.kpk.go.id/en/news/press-releases/1687-international-cooperation-in-the-investigation-of-garuda-case>

Also, Indonesia makes use of the Memorandum of Understanding (MoU) signed under ASEAN-Parties Against Corruption (ASEAN-PAC) as the legal basis for international cooperation in handling corruption cases that involving jurisdictions in the region of ASEAN.

In enhancing the effectiveness of international cooperation, Indonesia also participates in international forums on asset recovery, including:

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<sup>148</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

- 1) Indonesia has been a member of INTERPOL since 1952. Indonesia was the host of the 85th Interpol General Assembly in 2016 in Bali, with participants from 167 countries and 1,200 delegations. The Indonesian National Central Bureau (NCB) is part of the Indonesian national police force. It sits in the Division of International. The NCB plays a central role in preventing the country and surrounding region from serving international organized crime. By providing globally-sourced intelligence about crime trends, the NCB shares information on emerging crime threats affecting the region and ways to tackle them. The NCB takes part regularly in global INTERPOL-led regional police operations. KPK also often request red notice to NCB-Interpol Indonesia;
- 2) ASEAN-PAC is a multilateral cooperation among anti-corruption agencies from 10 Southeast Asian countries based on the MoU on Cooperation for Preventing and Combating Corruption (2004) with the aim of strengthening collaboration in tackling corruption and increasing the institutional capacity of the parties in preventing and eradicating corruption.
- 3) Indonesia initiated the establishment of the Anti-Corruption Authorities and Law Enforcement Agencies Network (ACT-NET) in 2013, a forum for law enforcement authorities of members of the Asia-Pacific Economic Cooperation (APEC) to facilitate sharing of expertise and cooperation on corruption and money laundering crimes;
- 4) Indonesia has been a member of the Asia Pacific Group on Money Laundering (APG-ML) since August 1999, and co-chaired the APG-ML for the 2006-2008 period. Indonesia is currently a member of APG-ML steering group of the Southeast Asia Group. APG-ML is a FATF-Style Regional Body (FSRB) for the Asia-Pacific region which was initially established to improve the focus on the supervision of the compliance of various countries with the implementation of the Financial Action Task Force (FATF) Recommendations as well as other standards concerning anti-money laundering and counter-terrorism financing;
- 5) Indonesia is a member of the Asset Recovery Inter-Agency Network-Asia Pacific (ARIN-AP), an informal network for asset recovery practitioners and experts on crimes in the Asia Pacific region. Indonesia held the ARIN-AP Presidency in 2014 and held its Annual General Meeting from 25-26 August 2014 in Yogyakarta. The ARIN-AP Indonesian focal point is the Attorney General's Office and/or Head of Asset Recovery Center of the Attorney General's Office;
- 6) Indonesia is an observer of the Camden Assets Recovery Interagency Network (CARIN), an informal network for asset recovery practitioners and experts on crimes in Europe. Indonesia took part in the CARIN Annual General Meeting in Rotterdam, the Netherlands in May 2016; and
- 7) Economic Crime Agencies Network (ECAN)

ECAN was established in 2013 in Auckland, New Zealand. This forum is a network between law enforcement agencies from different countries that focuses on the investigation and prosecution of economic crimes, including corruption.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

Indonesia does not have any constraints or barriers to be reported under this question.

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>149</sup>.**

Indonesia does not have legislation on non-conviction based (NCB) forfeiture. However, there is a mechanism under the Anti-Money Laundering Law allowing asset seizure related to crimes committed in a foreign state, in the absence of a court decision through FIU cooperation.

1. Other state's FIU requests INTRAC (the Indonesian FIU) to temporarily freeze a transaction known or alleged to have resulted from a crime.

2. In the absence of third-party objection within 20 days of freezing, INTRAC may forward the frozen assets to Indonesian investigators to open a money-laundering investigation and seize the asset in question. For investigators to open such investigation, the requesting state must inform the Indonesian Central Authority about the presence of proceeds of crime entering the Indonesian financial services system.

3. If the suspect of the crime cannot be found within 30 days and no other parties submits an objection to the freezing or seizure of such assets within 20 days, the investigator may request that the District Court declare the asset as proceeds of crime to be confiscated for the State or returned to the deserving party. The procedure for this confiscation of proceeds of crime in the event that the offender cannot be found is set out in the Supreme Court Rule Number 1 of 2013.

This mechanism is limited to assets under the authority of a financial service provider. In all other cases, requests from foreign states for asset seizure or confiscation must be made through MLA channel and accompanied by a final and binding court decision.

<sup>149</sup> You may refer to principle 4 in the "Nine Key Principles on Asset recovery" in providing your response

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

Not applicable

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

Indonesia has established a mechanism through Supreme Court Regulation No 1 of 2013 which enables prosecutors to confiscate assets of criminal offenses without a criminal verdict, in cases where the suspects or convicts are at large or their whereabouts are unknown.

The Indonesian Attorney General's Office (AGO) has developed an Integrated Asset Recovery Database that contains data and information on asset recovery. Currently the database is for internal use only, however it is expected in the following year that AGO will be able to share the data and information with other relevant institutions and law enforcement agencies.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>150</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>151</sup>**

Indonesia has been dedicating the necessary resources to train and staff central authorities, financial investigators, prosecutors, judges, and other competent authorities involved in asset recovery issues. Management of asset recovery are handled by specialized units of relevant law enforcement authorities, in accordance with their duties and functions. They are:

- The Asset Tracing and Evidence Handling Unit in the KPK. The Task of the Unit is supporting investigation and prosecution in terms of asset tracing, handling management of all evidences & seized and confiscated assets, and performing execution of court decisions and assets recovery;
- The Asset Recovery Centre (PPA) in the Attorney General Office (AGO), supported by technical work units in the regional level. These specialized agencies are intended to enhance efforts by those relevant authorities to recover assets of proceeds of crime more effectively, including assets tracing in both national and international level; and

<sup>150</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>151</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

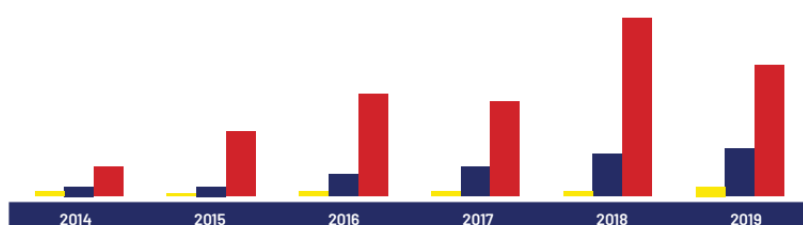
- A special asset tracing unit in the Indonesian National Police (INP), which is in the process for its establishment to complement the existing Evidence Management Unit.

### Asset Recovery Statistic

#### KPK

KPK's Annual Report in 2019 has shown that asset recovery is one of Key Performance Indicators pursued by the agency. Asset recovery referred here is an execution effort in the form of recovering state financial losses in corruption cases handled by KPK.

In 2019, KPK has successfully recovered asset originating from corruption offences amounted to Rp. 2,048,813,493,262 (USD 146 million). The recovered assets were the result of the realization of PNBP (Non-Tax State Revenue) originating from restitution /confiscated asset /fines and the transfer of utilization/grant. Details of the non-tax state revenues as the result of asset recovery handled by KPK are as follows:



Notes:

Yellow: Fines

Blue: Restitution

Red: Sale of confiscated property/assets

Year	2014	2015	2016	2017	2018	2019
<b>Fines</b>	8.95	4.165	9.573	10.056	10.84	17.99
<b>Restitution</b>	16.043	14.129	56.818	71.01	106.659	129.987
<b>Sale of confiscated property/assets</b>	82.07	175.587	269.58	261.759	479.753	320.845

Information: the value above is in Billion Rupiah

Source: KPKs Annual Report year 2019 (page 36)

<https://www.kpk.go.id/id/publikasi/laporan/laporan-akuntabilitas-kinerja/1514-laporan-akuntabilitas-lakip-kpk-2019>

#### **Asset Recovery Centre (PPA), Attorney General Office (AGO)**

Details of the non-tax state revenues as the result of asset recovery handled by AGO are as follows:



Account		2014	2015	2016	2017	2018	2019	2020 (Jan-Sep)
1	Deposited funds from sale of confiscated property from ML and all predicate crime case convictions	9,3 million	8,5 million	7,8 million	9,9 million	6,1 million	7,8 million	3,2 million
2	Deposited funds from auction of confiscated property from corruption cases	Data collection commenced in 2015	3,2 million	429.000	338.000	823,000	570,000	20,000
3	Deposited funds from confiscated cash from ML cases	Data collection commenced in 2015	81.000	366.000	105.000	15,7 million	3,4 million	2,8 million
4	Deposited funds from auction of confiscated property from ML cases	Data collection commenced in 2015	65.000	7.000	268.000	200,000	780,000	274,000
5	Deposited funds from confiscated cash from corruption cases	33 million	2,9 million	2 million	3,1 million	2,6 million	2,2 million	8,3 million
6	Deposited funds from confiscation of corresponding value in corruption cases	7,5 million	12,9 million	20,3 million	16,2 million	17,6 million	42,6 million	6,1 million
7	Deposited funds from civil confiscations in corruption cases (figures as a result of state losses on the basis where criminality cannot be proven – Article 32 et seq. of the anti-corruption law)	18.000	17,8 million	82,5 million	1,6 million	713,000	309,000	3,8 million
<b>Total</b>		<b>49,80 million</b>	<b>45,45 million</b>	<b>113,4 million</b>	<b>31,51 million</b>	<b>43,7 million</b>	<b>57,6 million</b>	<b>24,5 million</b>

Information: the values above are in USD

Source:

Asset Recovery Centre (PPA), Attorney General Office (AGO)

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

The barrier we face frequently in setting up specialized team on asset recovery is the limited number of qualified personnel to conduct investigations in asset recovery cases, as well as lack of financial resources which would bring difficulty in recruiting qualified and experienced investigators. The other challenges are insufficient prosecutorial resources for asset recovery and inadequate training of prosecutors and judges.

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption),**

**including training or mentorship programmes? If yes, please share examples.<sup>152</sup>**

Yes, Indonesia continues to share and exchange best practices and provide regular education and training on asset recovery, among others:

1. In 2018, as the Chair of ARIN-AP, Indonesia held the ARIN-AP Criminal Asset Management Seminar, held in Yogyakarta on 7-9 May 2018. The event was co-hosted by Indonesia's Asset Recovery Centre and Australian Department of Home Affairs (DHA).
2. Indonesia also held the 5th ARIN-AP SGM/AGM 2018 and ARIN-AP Asset Forfeiture Workshop on 7-9 November 2018, co-hosted by Indonesia's Asset Recovery Centre and Australian DHA. Many topics on asset recovery were addressed during the workshop, through presentations, panel discussions, and case studies, including unexplained wealth, the needs for specialists in confiscation, challenges in Mutual Legal Assistance (MLA), etc. The Workshop's main topic was "Pursuing Criminal Assets across International Borders". It facilitated exchange of experience by experts and practitioners on how to make asset recovery more effective. As outcome, participants have agreed on the importance of expanding the network and promote practical international cooperation with other informal asset recovery regional networks.
3. In March 2019, also in cooperation with the Australian Department of Home Affairs (DHA) and US Department of Justice, Office of Overseas Prosecutorial Development, Assistant and Training - OPDAT), The Asset Recovery Centre of the AGO held a Criminal Asset Recovery workshop. The discussion includes several topics related to Indonesia Asset Recovery Legal Frameworks, Asset Recovery Cases, Non-Conviction Based Asset Forfeiture, Cryptocurrency, and ARIN-AP success stories as an informal network. This workshop aims to broaden knowledge and understanding among the participants, to learn best practices, and to get updated information related to asset recovery that can be applied in their day to day works from asset recovery practitioner from US Attorney's, Australian Federal Police and an expert from Indonesia FIU.

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<sup>152</sup> You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>153</sup>.**

Yes. Indonesia continues to share information on asset recovery cases in several forums. Indonesia is sharing asset recovery cases through StAR Data Collection. In addition, KPK shared experiences in handling corruption cases that involved multiple jurisdictions on the Regional Workshop on “Denying Safe Haven to Corrupt Officials and Stolen Assets” hosted by UNODC and Thailand NACC held in Bangkok, Thailand in October 2019. The workshop is a side event of 15th ASEAN-PAC Principals Meeting. The regional workshop is a platform for discussion on challenges, best practices, and possible solutions to cross-border evasion of corrupt officials and stolen assets.

We emphasized on how agency-to-agency cooperation has played an important role. Agency-to-agency cooperation requires trust and close collaboration between anti-corruption agencies. We shared our experience in receiving cooperation from Singapore’s CPIB, UK’s SFO, Mauritius’s ICAC, India’s NACIB, US’s FBI, the of British Virgin Island authorities.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

Indonesia does not have any constraints or barriers to be reported under this question.

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>154</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being**

<sup>153</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), “StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019”. You may refer to principle 9 in the “Nine Key Principles on Asset recovery” in providing your response

<sup>154</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

**achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>155</sup>**

Indonesia published a Guidelines for Handling of Mutual Legal Assistance (MLA) in Criminal Matters in Indonesia. It can be downloaded through <https://ahu.go.id/mla>. These Guidelines have been published by the Directorate of International Law and Central Authority, Directorate General of Legal Administrative Affairs, Ministry of Law and Human Rights of the Republic of Indonesia.

An MLA request to the Republic of Indonesia must be submitted by the Central Authority of the Requesting State that has authority under its law to make a request for assistance in investigation, prosecution, and judicial proceeding in criminal matters.

Types of Assistance that may be requested are:

- a. identifying and locating persons;
- b. obtaining statements or other forms thereof;
- c. providing documents or other forms thereof;
- d. making arrangements for persons to provide statement or to assist in the investigation;
- e. delivering letters;
- f. executing the inquiry of search warrant and seizure;
- g. the forfeiture of proceeds of crime;
- h. the recovery of pecuniary penalties in respect to the crime;
- i. the restraining of dealings in property, the freezing of property that may be recovered or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect to the crime;
- j. locating property that may be recovered, or may be needed to satisfy pecuniary penalties imposed, in respect to the crime, and/or
- k. other assistance in accordance with MLA Law.

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>156</sup>**

Yes, we have conducted several investigation of corruption cases with other jurisdictions.

Example of successful cases:

<sup>155</sup> You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>156</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

### **Innospec Case**

The Innospec case is a multi-jurisdictional investigation (Indonesia-Singapore-UK-British Virgin Island). The case involved Innospec Ltd. which bribed Indonesian state owned enterprise (SOE) officials to sell additive Tetra Ethyl Lead (TEL). KPK found the involvement of foreign legal entities in the bribe scheme to the officials. Four officials of Innospec Ltd pleaded guilty and the company was fined US\$ 12.7 million. Several SOE officials were convicted while the confiscation of asset in Singapore belong to one of the convicted officials is still ongoing through MLA channel.

In handling this case, the KPK conducted a parallel investigation with the Serious Fraud Office (SFO) UK, which provided assistance to the KPK during the pre-investigation and investigation, including the facilitation on the provision of statements from British citizens as witnesses. The collaboration between the KPK and CPIB Singapore and the British Virgin Island (BVI) authorities was initiated informally to support the investigation of this case. This is based on the results of the investigation into the Innospec case, where the KPK found the involvement of foreign legal entities in the bribery scheme for Indonesian officials. One of the suspect opened a bank account in Singapore to receive payment as fees from businesses that were part of this corruption case.

At the Supreme Court, in 2016, Judges sentenced one of the defendants to a higher sentence from 6 to 7 years in prison and a fine of IDR 200 million (or an additional 6 months in prison). The judge also ordered the return of US \$ 190,000 to the state.

Publication link:

<https://acch.kpk.go.id/id/jejak-kasus/368-suroso-atmomartoyo>

### **E-KTP case**

The e-KTP (electronic ID card) case is a corruption case during 2011-2012, involving public procurement of electronic ID Card. According to Indonesia's National Government Internal Auditor (BPKP), the state had to bear a loss of approximately Rp 2.314 trillion from this corruption.

Since 2012, KPK had conducted investigation and finally named a number of people as suspects, some of them were officials from the Ministry of Home Affairs and top officials of the House of Representatives. In its journey, this case was also interspersed with cooperation among overseas authorities. The KPK cooperated with Corrupt Practices Investigation Bureau (CPIB) during the examination of witnesses in Singapore. And for the first time, a witness statement was also taken live through a video conference from Singapore for the e-KTP case trial held at the Central Jakarta District Court.

KPK also carried out a parallel investigation with the Federal Bureau of Investigation of the United States in the e-KTP case. From the witness which residing in the US, the FBI obtained statements and a number of electronic evidences related to the e-KTP case.

Publication link:

<https://www.kpk.go.id/id/berita/siaran-pers/1130-kpk-tetapkan-empat-tersangka-baru-dalam-perkara-ektp>

### **SKK Migas case**

Indonesia successfully repatriated assets worth SGD 200,000 from Singapore in June, 2019. The money was a proceed of crime in the bribery case of former head of Special Task Force for Upstream Oil and Gas Business Activities of Indonesia (SKK Migas). The money was in Singapore bank account under the name of one convicted person, who was also found guilty of jointly committing corruption and money laundering. Based on judge's decision, the SGD 200,000 in the account was confiscated for the state.

During the investigation, KPK collaborated with the CPIB Singapore. After being convicted, the convicted person voluntarily handed over power over the account to KPK. Therefore, CPIB assisted KPK in the process of releasing the freezing in the account and then returning the money to Indonesia.

Publication link:

<https://acch.kpk.go.id/id/jejak-kasus/290-deviardi>

## **A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

Indonesia is facing these following constraints in conducting investigations with other jurisdictions, among others:

- a. Less-cooperative jurisdictions, which is the most challenging problem.  
Many jurisdictions lack the commitment to initiate and push cases forward or to respond appropriately to initial requests for assistance and requests for additional information. We also recognized that a country's economic interests may also dilute political will to combat corruption. Authorities in a requested jurisdiction may hesitate to vigorously pursue a corruption investigation and asset recovery effort involving a large and influential company located there because of the economic benefits the jurisdiction receives from the company.
- b. Legal System Differences, this includes civil law versus common law, dual criminality requirement, refusal of trial in absentia, difference in terminology used, tools available for freezing or confiscation, evidentiary requirements, admissibility requirements, and procedures to obtain assistance.
- c. Lengthy administrative and procedural process of MLA  
In many cases, delays in processing requests may be related to due process rights. We recognize the right of the accused to appeal by making application to court. Due process rights are important protections for those accused of crimes, and should be

respected and maintained. Other common delays are caused solely by the internal processes and procedures of requested jurisdictions.

- d. Lack of resources including cost, manpower, expertise, etc.
- e. Rapid movement and sophisticated modus operandi facilitated by globalization and technology. Assets can be moved within minutes and at the click of a button, investigators need to act in a time-sensitive manner. Any delay in executing a freezing request after the suspect has been arrested or tipped off can be fatal to the recovery of assets. Unfortunately, current MLA processes are not sufficiently agile to address this reality, particularly for tracing, freezing, or seizing of assets. By the time a response is received to a request to restrain assets, the assets will have been moved.
- f. Language barrier among law enforcement officers.
- g. Constraint in encouraging other countries to provide evidence through agency to agency cooperation.
- h. Constraint in encouraging law enforcement agencies in other countries to share information and data as well as intelligence sharing through informal mechanism.

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>157</sup>**

Indonesia provides a high standard formal cooperation concerning asset tracing and asset recovery through our central authority. In addition, we also provide several focal points for informal communication to facilitate sharing information and data related asset recovery requests from other jurisdictions. We are also being active part of the various informal asset recovery networks set up abroad.

### Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

G20 countries shall lead by example and afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the corruption offences, in line with international standards and obligation.

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<sup>157</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

One of Indonesia's challenge in asset recovery is the capacity of the judiciary that have not taken into account the international asset recovery regime or differences in court decision formats.

We suggest the G20 ACWG can promote capacity building involving experts from G20 countries, aimed for judges, central authority staff, financial investigators, prosecutors, and other relevant competent authority officials who are involved in asset recovery issues, and train them with the relevant knowledge regarding international conventions and standards in asset recovery.

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Considering that the G20 ACWG is currently working on "Proposals for G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets", we suggest to add more key areas focus as follows:

- G20 countries to consider explicitly and narrowly define grounds for refusal of a request for mutual legal assistance.
- G20 countries should ensure that competent authorities (judges and prosecutors) are sufficiently staffed, adequately trained, and experienced in asset recovery matters involving both domestic laws and international conventions and standards.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

In 2018, the KPK has established a Guideline for Handling Criminal Cases of Money Laundering and Asset Recovery in the Capital Market with Corruption as predicate crime. This guideline was established based on the fact that there are still few money laundering cases involving products /capital market services or through the medium of the capital market. The small number of such cases could be attributed to the lack of capacity, particularly in handling money laundering in the capital market. To overcome this challenge and with a view to build capacity, the guideline was established.

Based on the results of the 2015 National Risk Assessment, the capital market is one of the high-risk areas to be used as a medium for money laundering. Furthermore, according to the 2017 Sectoral Risk Assessment issued by the Indonesian Financial Services Authority (OJK) and the Indonesian FIU, equity like stocks are high risk products for use in money laundering. Vulnerability in capital market occurs due to several reasons, including the number of actors involved in capital market transactions, nature of transactions which can be done remotely (remote trading) and scripless, various capital market products with complex business



processes, as well as transaction value and high capital market capitalization.

This guideline can serve as a guide for law enforcers in handling money laundering cases and recovery of assets in the capital market with corruption as predicate crime.

In 2019, the KPK, in collaboration with the Australian Department of Home Affairs, have continued the initiative by developing a Guideline to Understanding the Typology of Money Laundering from Corruption (as predicate crime) and Strategies for Handling it.

This guideline has been established because there are not many technical guidelines that can be used by law enforcers as a reference in handling money laundering case with corruption as a predicate crime. In addition, there is no study that specifically discusses these topics in detail. Previously, Indonesian law enforcers referred to the money laundering typology references from the FATF (Financial Action Task Force) which originated from cases handled by FIUs (Financial Intelligence Units) worldwide, where the typology are not necessarily similar to the money laundering cases that occurred in Indonesia.

By establishing a guideline based on the typology and modus operandi of money laundering offenses that occurred in Indonesia, it provides an overview that helps law enforcers in understanding money laundering cases, and it also provides a technical guideline on how to handle them.

Publication link:

- Guideline for Handling Criminal Cases of Money Laundering and Asset Recovery in the Capital Market  
<https://acch.kpk.go.id/id/berkas/buku-antikorupsi/umum/pedoman-penanganan-tindak-pidana-pencucian-uang-dan-pemulihan-aset-di-pasar-modal>
- Guideline to Understanding the Typology of Money Laundering from Corruption (as predicate crime) and Strategies for Handling it.  
<https://aclc.kpk.go.id/panduan-tipologi-tppu-kpk>

## **B. DENIAL OF SAFE HAVEN**

### **B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

Law No 6 of 2011 on Immigration (immigration Law) as amended, stipulates the legal framework of denial of entry in Indonesia. Article 13 of the Immigration Law stipulates that Immigration Officials deny

Foreigners to enter the Territory of Indonesia, in the case that said foreigner:

- a. his / her name is listed in the list of Deterrence;
  - b. does not have a valid Travel Document;
  - c. has forged Immigration documents;
  - d. does not have a Visa, except those exempted from obligation to have a Visa;
  - e. has given false information to obtain a visa;
  - f. suffers from a dangerous infectious disease that is detrimental to public health;
  - g. involved in international crimes and transnational organized crimes;
  - h. included in a foreign country's list of persons sought for arrest;
  - i. involved in treason against the Government of the Republic of Indonesia;
- or
- j. included in a network of practices or activities of prostitution, human trafficking, and people smuggling.

Foreigners who are denied entry into Indonesia are placed under surveillance while awaiting the process of returning the person concerned. Article 68 of the Immigration Law also stipulates that immigration supervision on Foreigners is carried out at the time of visa application, entry or exit, and the granting of Stay Permits is carried out by compiling a list of names of foreigners who are subject to deterrence or prevention.

Indonesian immigration has a system called Information System on Immigration Management, known as SIMKIM, which is a system that integrates all Indonesian immigration functions both at domestic and abroad. The system provides the list of people who are subject to deterrence (denial of entry) or prevention to leave the territory of Indonesia (article 100 of Immigration Law). Denial of entry of foreigner will be issued in a formal letter by the authorities and applies for 6 months with possibility of extension for another 6 months.

Article 236 (3) of Government Regulation No 31 of 2013 on the first amendment on Immigration Law stipulates that denial of entry can also be determined based on:

- a. request from the Representative of the Republic of Indonesia submitted through the Minister of Foreign Affairs;
- b. requests from other countries so that the foreigner does not try to avoid the threat of punishment in that country; and / or
- c. request of the International Court of Justice because the foreigner committed crimes against humanity or transnational organized crime.

Indonesia has developed a procedure for citizens of particular countries (listed on Indonesia's Ministerial Regulation, known as calling visa countries), where they shall obtain inter-agency recommendations for their visa to be approved. These recommendations from law enforcement agencies. Hence, this allows the possibility to open their crime database.

Indonesia also receives information/requests from Interpol (knowns as Interpol notices). The authorized agency (Immigration) will lodge the information/requests into the immigration online alert database. Indonesia also established an information sharing channels between authorized agencies to trace persons suspected of criminal offence(s) or any particular corruption-related offence(s). The aim of the information sharing is to list such individuals for entry or exit prohibition. The entry prohibition, however, applies only for foreigners.

Immigration Law also regulates that Ministry of law and human rights as the authorities, can prevent people from leaving the territory of Indonesia on the request from relevant law enforcement agencies (Indonesian National Police (INP), Attorney General Office (AGO) and KPK) as well as relevant authorities, such as Ministry of Finance and National Narcotics Agency (article 91 of Immigration Law).

Link of publication:

<https://jdih.kemenkeu.go.id/fulltext/2011/6TAHUN2011UU.htm>

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

Extradition in Indonesia is stipulated in Law No 1 of 1979 on Extradition (Extradition Law). As of 2020, Indonesia has ratified 12 bilateral Extradition Treaties (Malaysia, Philippines, Thailand, Australia, Hong Kong SAR, Republic of Korea, PRC, India, Papua New Guinea, Viet Nam, United Arab Emirates, and Iran). The Extradition Law also stipulates that in the absence of an extradition treaty, extradition may be conducted based on good relationship and if the interest of the nation requires it, under the coordination of the Minister of Law and Human Rights as the Central Authority of Indonesia for Extradition.

The AGO has established AGO's regulation No 6 of 2018 concerning Guidelines on Extradition. This regulation contains the guidelines on the stages of an official application for extradition, the execution as well as financing of the extradition.

The mechanism for outgoing requests for extradition is the competent authorities issues a request for extradition to Ministry of Law and Human Rights, the request will then be submitted to Ministry of Foreign Affairs (diplomatic channel) and conveyed to the authorities of the requested country.

Meanwhile, the incoming request for extradition from the authorities of requesting countries should be conveyed to Indonesian Ministry of Foreign Affairs. The request will be submitted to Indonesian Ministry of Law and Human Right and then be forwarded to the competent law enforcement agencies (INP and AGO), district court and ultimately to the President of Indonesia.

Link of Publication:

- Law No 1 of 1979 on extradition : <https://peraturan.bpk.go.id/Home/Details/47145>
- List of treaties concluded by Indonesia : <https://treaty.kemlu.go.id/>
- AGO's regulation No 6 of 2018 concerning Guidelines on Extradition <https://jdih.kejaksaan.go.id/produkHukum/2703>

## Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>158</sup>

### **B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>159</sup>**

The most relevant cases are among others:

1. Indonesian immigration deported two foreigners who allegedly violated their residence permit visit visas while in Indonesia by working at a resort in Lombok, Mataram, West Nusa Tenggara. The two foreigners were a part of modus operandi of the Rp1.2 billion (\$ 82.077) bribery case in the handling of the residence permit abuse case. The two foreigners were deported to their home country prior to the KPK's arrest operation against immigration officials in 2019.  
Publication link:  
<https://www.imigrasi.go.id/berita/detail/imigrasi-deportasi-dua-warga-australia-pelanggar-visa-kunjungan>
2. The Indonesian National Police are reopening a 17-year pending corruption case against one suspect, who is a Dutch national. This individual who had evaded justice for 17 years is a suspect in a major embezzlement case that costed a state-owned bank more than \$200 million in bad loans. This individual was arrested by the Interpol in Serbia in July 2019, based on a red notice issued by Indonesian authorities, and was subsequently extradited to Indonesia in 2020, following a formal request.

### **B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

1. Border Control Management of Indonesia will check the immigration data documents and verify documents, starting from checking the prevention and deterrence lists, visas, the last pass checking point,

<sup>158</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>159</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

other passport data matching and the Interpol system. However, we are facing constraints in the implementation of policies, legal frameworks and enforcement measures in place for denial of entry, among others:

2. There are a total of 182 entry points for Indonesian territory, with 182 Immigration Checkpoints (TPI) and 215 Special Checkpoints (TPK), spread in all borders of Indonesia. However, not all territorial borders between Indonesia and neighbouring countries have immigration checkpoints, hence there are several border gaps that can be used by individuals to enter and exit Indonesia illegally.
3. Indonesia has implemented an online Immigration Management Information System (SIMKIM) in 67 Indonesian representatives abroad (based on 2018 data). This system aims to improve Indonesian immigration services abroad. SIMKIM has been installed in 67 RI representatives, 58 of which are already actively operating. Through this system, immigration data is more secured and can be accessed in real time by immigration officers. However, there are still challenges in the system such as delays when accessing the system due to computer errors or hangs, and network disconnection.
4. There are obstacles to qualified immigration officers and a mismatch between responsibilities and expertise in assigning immigration officers in the borders. Indonesian immigration overcomes this by rotating the officers with an aim that each immigration employee will be able to understand all types of immigration services that exist both in service and law enforcement.

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>160</sup>**

Indonesia does not have experience on deny entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target.

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

Indonesia does not have experience on this matter, hence we are unable to provide an overview of constraints.

<sup>160</sup> You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

## Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>161</sup>

### **B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>162</sup>**

Yes, we review relevant immigration programs on a regular basis. Referring to several cases of transnational crime, these crimes involve several aspects in the immigration function, namely making passports, border control, controlling foreigners, and issuing visas and residence permits. The current immigration control model is based on the three main elements of immigration, namely intelligence, surveillance and inspection at the border. In principle, these three elements are interrelated with one another.

Indonesia holds the interest to encourage revenue generated from the ease of international mobility, but on the other hand, this mobility can be an instrument for international crimes, such as corruption offences. This condition directly demands Indonesia to regularly formulate a proportional immigration control policy based on national interests.

Generally, the coordination between relevant authorities is carried out through the system which providing law enforcement agencies to request prevention and deterrence (CEKAL) to the Immigration Office. Apart from CEKAL, systemic coordination is also carried out by submitting the names of individuals who are included in the police's wanted list (DPO). The two mechanisms, both CEKAL and DPO, can be accessed by the Immigration office at the airport, to then be conveyed to the Immigration counter as field implementers who face people / passengers directly. There is also an exchange of information and data through informal channels that can effectively contribute to the handling of corruption crimes more quickly, particularly in identifying the entry / exit of parties suspected of being corrupt in Indonesian territory.

### **B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

We do not have constraints to be reported under this question.

<sup>161</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>162</sup> You may refer to principle 3 in the "G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery" in providing your response.

## Holistic questions

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

We have not identified any specific gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future.

- B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

First and foremost, all G20 countries should comply with their existing international anti-corruption obligations. This includes promoting possible adherence to G20 Common Principles for Action: Denial of Safe Haven. In this regard, G20 should continue to encourage each other to comply with/meet these obligations, and where possible, to provide assistance in doing so.

G20 countries should also continue to share lessons learned and good practices based on their experiences in the area of preventing corrupt officials and those who corrupt them from being able to travel abroad with impunity. This could include organizing special sessions during the ACWG meetings for practitioners working on these issues. Such can be held virtually, thereby facilitating great participation from practitioners.

- B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

We do not have new initiatives related to denial of safe haven to be reported under this question.

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting**



## them to country visits; publishing the full reports of reviews and self-assessment checklists.

Yes, Indonesia has completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review. Both reviews have been completed.

Indonesia has resolved eight out of the 32 recommendations from the first review cycle which has been completed in 2012. Amendments of Anti-Corruption Law, Extradition Law, Mutual Legal Assistance Law, Asset Confiscation Law and the Penal Code are a few outstanding recommendations that require strong commitment and continued efforts from the Government of Indonesia. The role of the parliament and other stakeholders remain important to comply with the requirements of the UNCAC notably chapter III and IV.

Indonesia has also completed the second cycle of UNCAC Review, which focused on Chapter II (Prevention) and Chapter V (Asset Recovery) in 2018. The Executive Summary of the review has been published on UNODC's official website. This summary contains an overview of the legal and institutional framework of Indonesia in the context of implementation of the UNCAC, successes and good practices, challenges in implementation and technical assistance needs. The review resulted in 21 recommendations, 14 recommendations on prevention and seven recommendations on asset recovery.

For both cycles of UNCAC review, we hosted country visits, involving the private sector, academia and civil society. Indonesia has published the executive summary of both cycles. In 2008, Indonesian civil society published an Independent Report on Corruption Assessment and Compliance United Nation Convention Against Corruption (UNCAC)-2003 in Indonesian Law.

Publication links:

·Indonesia Executive Summary of UNCAC Implementation Cycle I

<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1187232e.pdf>

·Indonesia Executive Summary of UNCAC Implementation Cycle II

<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1802700e.pdf>

- Independent Report on Corruption Assessment and Compliance United Nation Convention Against Corruption (UNCAC)-2003 in Indonesian Law

<https://antikorupsi.org/id/article/laporan-independen-tinjauan-kasus-korupsi-dan-ratifikasi-uncac-dalam-hukum-indonesia>



**C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

No, Indonesia is not a party to the OECD Anti-Bribery Convention. However, criminalization of foreign bribery is one of Indonesia's priorities, with consideration that it is also one of our commitments under the G20 Leaders' Commitment and the UNCAC. In accordance, Indonesia has focused on developing the legal framework that stipulates the criminalization of foreign bribery.

The Corruption Eradication Commission of Indonesia (KPK), for the last couple of years has been actively drafting a revised version of anti-corruption law which includes several gaps identified from the UNCAC review from the 1st cycle, among others: criminalization of foreign bribery, illicit enrichment, corruption in the private sector and trading in influence. The process includes the advocacy and sharing of best practices from experts from academia, law enforcement agencies, CSOs and international organizations. The draft of the law along with its academic paper was submitted to the Minister of Law and Human Rights of Indonesia. In 2019, Indonesia attended the joint meeting G20 ACWG and the OECD Working Group on Bribery that was held in Paris, France.

**C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

Yes, we would like to highlight G20 countries' commitment on strengthening the effectiveness and independency of anti-corruption agencies considering the pertinent role of these bodies in combating corruption, in connection with to the G20 Anti-Corruption Action Plan Seoul 2010 point 8, as well as article 6 and 36 of the UNCAC. In this regard, Indonesia would like to propose that this issue be one of the priorities set by the Group in the next Action Plan of 2022-2024.

The independency issue of anti-corruption agencies was stated in the Jakarta Statement on Principles for Anti-Corruption Agencies, initiated by Indonesia in 2012 as an international standard that can be used as a reference for anti-corruption agencies to work effectively and independently in accordance with UNCAC articles 6 and 36. Jakarta Principles has been referred to in 4 UNCAC resolutions namely:

1. UNCAC Resolution 5/4 entitled Follow-up to the Marrakech declaration on the prevention of corruption which has been adopted during the Conference of State Parties (CoSP) UNCAC held in 2013 at Panama City, Panama.

2. UNCAC Resolution 7/5 entitled Promoting preventive measures against corruption which has been adopted during the Conference of State Parties (CoSP) UNCAC held in 2017 in Vienna, Austria.
3. UNCAC Resolution 8/7 entitled Enhancing the effectiveness of anti-corruption bodies in fighting corruption; and UN Resolution 8/8 entitled Follow-up to the Marrakech declaration on the prevention of corruption. Both UNCAC resolutions were adopted during the 2019 UNCAC Conference of State Parties (CoSP) in Abu Dhabi, United Arab Emirates.

In 2020, the UNODC has published Colombo Commentary on the Jakarta Statement on Principles for Anti-Corruption Agencies. The Colombo Commentary was developed through a participatory process in which ACAs themselves were encouraged to identify good practices and key lessons. In the Commentary, the origin and justification of each principle are discussed, as are its interconnectivity with other principles and its component parts. The Commentary also includes practical examples of implementation aimed at highlighting good practices, encouraging peer-to-peer knowledge exchanges and providing guidance on the principles to help to implement articles 6 and 36 of the Convention.

At the national level, Indonesia has conducted webinars, focus group discussions and other public discussions involving academia and civil societies for raising public awareness on strengthening the effectiveness and independency of anti-corruption agencies, including the international standards on this topic.

## ITALY

The draft Accountability Report for 2020 will subsequently be shared with G20 countries for comments. Once consensus on the Accountability Report has been reached, the report will be published on the G20 website, as mandated by G20 leaders in the 2019-2021 Action Plan<sup>163</sup>.

### A. ASSET RECOVERY

- A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

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<sup>163</sup> G20 Anti-Corruption Action Plan 2019-2021

To have a general overview, it should be considered that in Italy's vision, confiscation of proceeds of crime plays a crucial role in the fight against any form of profit-making crime whatsoever, including corruption.

Italy develops many efforts to ensure that stolen assets are recovered and returned to those citizens victimized by corruption in line with international commitments.

This has been repeatedly observed within the international community, and it is definitely agreed that confiscation prevents criminals from making use of their illicit wealth to finance other criminal activities, including corruption.

In order to combat corruption, Italy, either in accordance to its ancient tradition and as follow up of international inputs, has shaped a comprehensive system that is the result of a strategy conceived for mafia-based organizations, according to which as mafias are in the end profit-oriented illicit associations, it is crucial not only to prosecute its main actors (leaders and supporters), but also to tackle those assets which were obtained through criminal acts.

After almost thirty years of experience, which has led to the confiscation of a significant amount of highly valuable assets (see below the statistics), Italian legislation is now based on a multiple approach, based on various kinds of confiscation with the correspondent freezing measures.

This system may be sketched out by mentioning the following main instruments:

a) Ordinary confiscation, aimed at confiscating assets linked to a specific crime, following a criminal conviction for that crime;

b) Value confiscation, so that assets of equivalent value can be confiscated as well, where specific criminal assets are outside the reach of investigators;

c) The so called "extended" confiscation, which can be ordered within a criminal proceeding, or as a consequence of a conviction for serious economic crimes, especially when organized crime is involved; that is the case when a criminal conviction is followed by the confiscation not only of the assets associated with the specific crime, but of additional assets which the court determines are the proceeds of other, unspecified crime. Confiscation may be based on circumstantial evidence, e.g. balance between a person's assets and the lawful source of income;

d) Third party confiscation, so that assets can be confiscated from third parties to whom they have been transferred.

e) Non-conviction-based confiscation, ordered through a separate proceeding aimed at recovering illicit assets, removing the need for a criminal conviction.

In the Italian experience, extended confiscation and especially "preventive confiscation" (otherwise called non-conviction-based confiscation) do play a pivotal role.

The establishment of such a wide range of instruments has been described by prominent scholars as a significant expression of the development of a human rights-based approach aimed at effectively countering the economic dimension of the most serious criminal phenomena. Corruption and organised crime are increasingly countered through a common strategy, focused on the use of financial investigations. The Italian asset recovery system combines the two aspects of efficiency and guarantees, mutually reinforcing, in adherence to the lessons learnt of the fight against Mafia. Those measures, supported by the Parliamentary Assembly of the Council of Europe (Resolution 2218/2018) have successfully withstood scrutiny by the European Court of Human Rights, which confirmed their compliance with the right to a fair trial and the right to peaceful enjoyment of one's possessions.

This favorable assessment may encourage the highest Courts of foreign Countries to provide the requested international cooperation towards the enforcement of patrimonial prevention measures on assets located outside Italy (already consistent in this respect, the judgments adopted by the Federal Penal Tribunal of Switzerland on 2 June 2016, 21 January 2011 and 1 December 2010, even in the absence of a similar domestic form of non-criminal confiscation).

The Italian legal framework enables competent Authorities not only to rapidly freeze the proceeds of corruption through a seizure order issued by a judge, but also to make a wide use of information technology and to develop a close cooperation with financial institutions. Thanks to the innovative methods of asset recovery introduced in Italy, still unmatched in any other European country, it has been possible to seize assets worth several billion. This successful experience is closely related to an organizational model of justice based on specialization of both investigative bodies and the Courts competent for patrimonial prevention measures

The National Agency for the management and disposal of seized and confiscated assets (ANBSC) has the important potential to link the management of the seized property to its planned disposal and use for social purposes.

The Italian model of "confiscation" determines a severe loss of prestige and influence for mafias in their own environment, since it stops their capacity to condition the surrounding territorial socioeconomic realities.

To have a more comprehensive and detailed reference of the Italian legal framework on asset recovery, please, see the StAR Questionnaire by Italy.

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

To get an overview of the general amount of seizures and confiscations in Italy and abroad, see the Tables below, referring to all crimes and not only corruption (at the end of 2018) which is, at any rate, directly or indirectly involved in a remarkable part of the overall data.

Seized Assets 2018 (in €)										
COUNTRY	IMMOVABLES		REGISTERED MOVABLES		MOVABLES				TOTAL ASSETS	TOTAL VALUE
	apartments, vilas, plots of land		cars, motorcycles, vessels		firms, stocks and shares, sums of money bank deposits		firms			
	NUM	VALUE	NUM	VALUE	NUM	VALUE	NUM	VALUE	NUM	VALUE
ITALIA	4107	1.503.322.198,77	1293	25.767.157,62	3941	2.031.011.250,61	691	1.837.359.826,73	9341	3.560.100.607,00
ANTILLE OLANDESI	0	0	0	0	3	50.000.000,00	3	50.000.000,00	3	50.000.000,00
AUSTRIA	8	3.795.000,00	0	0	9	16.610.575,00	9	16.610.575,00	17	20.405.575,00
CROAZIA	0	0	0	0	2	3.824.383,00	2	3.824.383,00	2	3.824.383,00
GERMANIA	0	0	0	0	1	1.338,56	0	0	1	1.338,56
GRAN BRETAGNA	0	0	0	0	62	119.837.283,00	44	29.160.000,00	62	119.837.283,00
IRLANDA	0	0	0	0	1	29.499,00	0	0	1	29.499,00
MALTA	0	0	0	0	69	843.376.360,00	26	715.887.429,00	69	843.376.360,00
PAESI BASSI	0	0	0	0	2	36.000.000,00	2	36.000.000,00	2	36.000.000,00
PRINCIPATO DI MONACO	0	0	0	0	2	1.500,00	0	0	2	1.500,00
ROMANIA	0	0	0	0	5	1.873.368,00	5	1.873.368,00	5	1.873.368,00
SEYCHELLES	0	0	0	0	1	540.953,00	0	0	1	540.953,00
SLOVENIA	0	0	0	0	2	5.632.414,00	2	5.632.414,00	2	5.632.414,00
STATI UNITI	0	0	0	0	2	9.394.862,00	2	9.394.862,00	2	9.394.862,00
SVIZZERA	7	200.000,00	0	0	4	610.620,00	0	0	5	810.620,00
<b>TOTAL GENERAL</b>	<b>4116</b>	<b>1.507.317.198,77</b>	<b>1293</b>	<b>25.767.157,62</b>	<b>4106</b>	<b>3.118.744.406,17</b>	<b>786</b>	<b>2.705.742.857,73</b>	<b>9515</b>	<b>4.651.828.762,56</b>

CONFISCATED ASSETS 2018 (in €)										
COUNTRY	IMMOVABLES		REGISTERED MOVABLES		MOVABLES				TOTAL ASSETS	TOTAL VALUE
	apartments, vilas, plots of land		cars, motorcycles, vessels		firms, stocks and shares, sums of money bank deposits		firms			
	NUM	VALUE	NUM	VALUE	NUM	VALUE	NUM	VALUE	NUM	VALUE
ITALIA	2618	1.590.959.992,03	547	25.073.542,21	1978	2.159.849.637,42	377	1.799.309.550,80	5143	3.775.883.171,66
BRASILE	21	2.095.000,00	0	0	0	0	0	0	21	2.095.000,00
BULGARIA	7	450.000,00	0	0	0	0	0	0	7	450.000,00
CROAZIA	0	0	0	0	9	421.817,00	0	0	9	421.817,00
FRANCIA	1	4.700.000,00	0	0	0	0	0	0	1	4.700.000,00
GRAN BRETAGNA	1	1.500.000,00	0	0	2	2.017.800,00	2	2.017.800,00	3	3.517.800,00
LIBERIA	0	0	0	0	1	77	0	0	1	77
PORTOGALLO	0	0	0	0	1	1.701.074,28	1	1.701.074,28	1	1.701.074,28
PRINCIPATO DI MONACO	0	0	0	0	1	1.500,00	1	1.500,00	1	1.500,00

ROMANIA	257	250.000.000,00	0	0	0	0	0	0	257	250.000.000,00
SAN MARINO	0	0	0	0	5	5.567.093,33	0	0	5	5.567.093,33
SEYCHELLES	0	0	0	0	1	540.952,00	0	0	1	540.952,00
STATI UNITI	4	2.419.050,00	3	360.000,00	4	200	4	200	11	2.779.250,00
SVIZZERA	2	1.238.250,00	0	0	2	24.790.925,72	0	0	4	26.029.175,72
TOTAL GENERAL	2911	1.853.362.292,03	550	25.433.542,21	2.004	2.194.891.076,75	385	1.803.030.125,08	5.465	4.073.686.910,99

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

No significant update could be shared in consideration of the data of last UNCAC review (second cycle), completed and published in November 2019 and the last FATF Italy's progress follow up in strengthening measures to tackle money laundering and terrorist financing, published in 2019.

[https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2019\\_11\\_22\\_Italy\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2019_11_22_Italy_Final_Country_Report.pdf)

<http://www.fatf-gafi.org/publications/mutualevaluations/documents/fur-italy-2019.html>

**Questions relevant to the Nine Key Principles on Asset Recovery<sup>164</sup>**

**A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>165</sup>.**

To implement the Council Decision 2007/845/JHA of 6 December 2007, which provides a legal basis for the exchange of information between Asset Recovery Offices (A.R.O.s) of all the European Member States in the field of tracing and identification of proceeds from, or other property related to, crime, Italy has set up its own Asset Recovery Office,

<sup>164</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>165</sup> You may refer to principles 1 and 7e in the "Nine Key Principles on Asset recovery" in providing your response.

designating a specific team operating in the International Police Cooperation Service (I.P.C.S.) of the Central Directorate for Criminal Police of the Ministry of Interior.

The I.P.C.S. is an inter-force service, where personnel of the four Italian Police Forces (Polizia di Stato – Carabinieri – Guardia di Finanza – Polizia Penitenziaria, according to article 16, Law 1st April 1981, Nr. 121) working together to provide international police cooperation through the most relevant devoted channels (Interpol, Europol, Sirene, A.R.O. itself, other formal and informal police networks).

The decision taken by Italy to set up a police forces-driven Asset Recovery Office wanted to stress two fundamental needs: giving relevance to the investigative approach to the asset recovery and a top-role of the asset recovery issue in the fight against international organized crime.

Bearing this in mind, the Italian A.R.O. is specifically managed by officers/agents belonging to Guardia di Finanza, both because of the specific training on economic and financial issues and because the Italian law grants to the Guardia di Finanza agents the access to the most relevant economic and financial databases.

The Italian A.R.O. has therefore access to:

- the National Police Database;
- the tax and incomes Database;
- the vehicle registrar;
- the National Land Registry/Cadastre;
- the National Company Registrar.

By the end of 2021, implementing the Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, the Italian A.R.O. will also have access to the national centralized bank account registries.

The figures of the information exchange during the last five years (2014-2019) is shown in the table below, showing the number of requests received from other States ("received") and the number of requests sent by Italy:

2015		2016		2017		2018		2019	
RECEIVED	SENT	RECEIVED	SENT	RECEIVED	SENT	RECEIVED	SENT	RECEIVED	SENT
185	140	803	474	992	717	970	646	1.115	923

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>166</sup>**

The Italian LEAs have established a single point of contact (SPoC) for asset tracing and identification when cross-border investigations are requested by law enforcement services through police links, like INTERPOL, CARIN, RRAG (GAFILAT), StAR or Asset Recovery Offices (EU network).

Within the SPoC/Italian Asset Recovery Office (ARO), a working group has been set up for receiving all the requests coming from abroad, regardless the police channel used. The Italian ARO continues to actively cooperate with other States through both formal and informal cooperation, at request and proactively. Italy implements agreements/arrangements with several Countries assuring exchange of police cooperation.

Italian LEAs are committed to cooperate with other Countries on corruption cases as they actually do on any other serious crime. The requests for investigation and information sharing coming from foreign Authorities are dealt by the Italian LEAs in the same way and with the same powers of those dealt at national level.

The Italian ARO has direct access to several databases/registers: lands and buildings, tax return of natural and legal persons, pensions, register of companies and of vehicles as well as police databases.

These informations are currently provided to the requesting foreign LEAs without the need of MLA request, except in case of bank information. Such exception shall be removed as far as the EU framework is concerned - and the Italian ARO will get direct access also to bank account data and provide information to EU member States requesting Authorities without the need of a specific MLA - as soon as the Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences will be implemented at national level.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

<sup>166</sup> You may refer to principle 7b in the “Nine Key Principles on Asset recovery” in providing your response



**A.8. Please provide a brief overview of your country’s experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>167</sup>**

Italy is one of the most active Countries in the existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN.

In particular, Italy recognizes the relevance of the practitioners’ network coordinated by Interpol, the Stolen Asset Recovery Initiative (StAR), APEC, World Bank, UNODC, and Europol, for peer learning and the exchange of experiences and good practices among law enforcement officials focusing on real-life cases and participation limited to LEOs to ensure candid and practice-centered discussion.

To be highlighted that Italy reached all the meeting of law enforcement authorities at the OECD, in particular providing information sharing and practice cooperation on foreign bribery cases and related offences.

To facilitate multi-jurisdictional cooperation, Italy explained \at both global level and regional level, through its experts, models and the standards of the technical items and protocols to trace and freeze assets.

For instance, during the third Global Meeting of the Network of Law Enforcement Practitioners against Transnational Bribery (GLEN) realized in Paris (2019, December 11) Italy presented its experience in the use of new technologies in investigations, based on databanks and interoperability enabling the police forces and prosecutors to identify the illicit financial flows “follow the money”, developed in thirty years of fight against any form of corruption and organized crime.

Taking into account the increasingly widespread cross-border nature of much ML/TF activities, the international cooperation between FIUs, through the dedicated channels “Egmont Secure Web” and “FIU.NET”, is also to be highlighted. The information exchanges between FIU Italy and its foreign counterparts has made it possible, in years, to trace illicit financial flows across different jurisdictions, to suspend transactions, to prevent the diverting of funds of illicit origin, pending the application of seizure or confiscation procedures.

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<sup>167</sup> You may refer to principle 7c in the “Nine Key Principles on Asset recovery” or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>168</sup>.**

Yes, Italy applies such asset recovery methods since 1992 and, starting from that time, has widen up the range of criminal activities that are under the possibility to be hit by a non-conviction based confiscation or equivalent, as well as unexplained wealth forfeiture orders, putting in force, in some serious cases, the principle of the reverse burden of proof (e.g.: serious organized crimes investigations, especially the mafia-like ones).

Therefore, a two-tiered regime splits confiscation procedures on two levels:

- Criminal proceedings. Seizure and confiscation proceedings are operated under the general criminal court proceedings. Confiscation can be finalised only after the decision of the third degree judge in Corte di Cassazione (Italian Supreme Court). Also in cases regarding individuals who belong to criminal organisations, final confiscation follows a conviction decision issued by a criminal court.
- Precautionary (prevention) proceedings: it is possible to proceed confiscation of assets for some categories of persons, notwithstanding a pending criminal proceeding or a conviction by the court. The precautionary proceeding has a more flexible structure and it is carried out in criminal courts but under different rules.

Criminal and precautionary confiscations both have the same final goal to contrast illicit activities through the use of an additional tool which helps to restore the legal situation and to contrast criminal activities.

However the different nature of the measures implies some differences in the application proceeding, in particular for what concerns the evaluation of evidences and the reasons which drive and are accountable for the proceedings.

Common grounds for proceeding are:

- having a right or the availability, also through another legal or physical person, of money, goods or utilities;

<sup>168</sup> You may refer to principle 4 in the “Nine Key Principles on Asset recovery” in providing your response

- disproportion between the goods value and the declared incomes or the activities performed by the criminally convicted person (based under article 12sexies) or by the person who is socially dangerous (precautionary confiscation);

- the lack of explanations about the origin of the goods by the convicted person or by the socially dangerous person.

Starting from these common grounds additional elements distinguish the two procedures:

- in the criminal proceeding a conviction is the necessary element to activate the confiscation. In the precautionary proceeding the social dangerousness needs to be verified;

- in the precautionary proceeding, it is possible to also confiscate goods of a legitimate origin. In the criminal proceeding the asset which is targeted for confiscation needs to be related to the crime the person is accused of.

A specific focus concerns in particular the evaluation of the evidences and the ground to introduce them. For example, the prosecutor needs to provide proof in relation to the confiscation of all kinds of assets that a subject owns, is a right holder of or has the availability of: most of times the assets are fictitiously or practically transferred to a third party but the actual availability stays on the subject and it is up to the prosecutor to determine these circumstances. On the other side, it is upon the convicted subject to justify the reasons behind the disproportion of assets and the income and/or the economic activities of the convicted person.

Given the different nature and functions of the precautionary proceeding which tries to anticipate the commission of crimes, an overall evaluation of the subject is made to determine the social dangerousness: in particular, elements which did not result suitable to determine a criminal responsibility can be instead used to determine it in this proceeding. The precautionary proceeding is separate and independent from the criminal one, but a wide exam of the subject life can determine its status

NCB methods apply in a very broad number of cases; the main challenges in use of such techniques are related to the asset tracking and recovery in foreign Countries, due to the lack of harmonization of the different national and international legal frameworks.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

The Law n. 3/2019 established a new form of non-conviction based confiscation: when the first instance judge orders the confiscation - including value confiscation - of the proceeds of a serious offence against the Public Administration, as well as in case of extended confiscation, which is also admissible for the same offences, even if the offence is time barred or amnesty shall apply, the Court of Appeal or the Supreme Court may confirm the confiscation, provided that the liability of the offender is equally confirmed (art. 578-bis Penal Code as amended by Law 3/2019). In the Italian experience, extended confiscation and notably preventive confiscation (otherwise called non-conviction-based confiscation) do play a pivotal role.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>169</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>170</sup>**

Being the recovery of asset a relevant issue, Italy has chosen to invest on close coordination between law enforcement agencies rather than creating a single asset recovery team. As previously said (see question B2), Italy has set up a police forces-driven Asset Recovery Office, to stress the investigative approach to the issue, and made it as a single point of contact for the information sharing. Having said that, the asset recovery function during the investigation is a possibility given to all the law enforcement authorities, both to the Police Forces and to the Public Prosecutor's Offices, the ordinary ones and the specialized ones (Anti-Mafia District Prosecutor). It has to be said that, because of its role of economic and financial police, Guardia di Finanza is the police force that has set up its specialized units spread all over the national territory to carry on and support the Judiciary in promoting the asset tracking and recovery function.

As regards the asset recovery process, the role of Italian FIU also must be highlighted. In the articulated chain of prevention and countering of money laundering, terrorist financing and associated predicate offences, FIU Italy plays a significant role, having the capability to identify at an early stage funds of illicit origin as well as subjects to whom such funds are attributable. This is through the information contained in the STRs it receives, and also through the wide range of information sources it can access, including numerous national databases and the extensive

<sup>169</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>170</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

information flows available from the international cooperation with foreign FIUs.

The possibility to detect and seize proceeds of illegal activities comes into consideration almost daily, as part of the ordinary financial analysis and international cooperation activities. In particular, it's worth noting that according to the AML/CFT international standards and the European and national legislation, FIU Italy has also the power to postpone suspicious transactions for up to five working days at the request of the investigative bodies (the Special Foreign Exchange Unit of the Finance Police and the Anti-Mafia Investigation Department), the judicial authorities, a foreign FIU or on its own initiative, provided that this does not interfere with any investigations under way. Postponement orders are issued in close cooperation with the investigative authorities and are in general placed in a phase that must be considered as prodromal to the adoption of asset recovery measures.

It's worth noting that in 2018 FIU Italy was awarded the 'Best Egmont Case Award of Excellence' as part of the World Bank's "STAR—Stolen Asset Recovery" initiative. The winning case, which operated through analysis and information exchanges with other FIUs, concerned the misappropriation of public funds submitted to insolvency proceedings (a selection of relevant cases involving the FIU's financial analysis – including the awarded case – is available, in Italian, in the FIU Italy's website, [www.uif.bancaditalia.it/publicazioni/quaderni](http://www.uif.bancaditalia.it/publicazioni/quaderni)).

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>171</sup>**

Yes, for what concerns the national Asset Recovery Office, their officers/agents regularly hosts delegations of foreign countries (mostly Eastern European countries still not member of EU) for specific training and for the exchange of mutual experiences in the field of asset tracking and recovery.

Italy developed a lot of capacity and institution building activities in its Academies and abroad, through technical assistance programs.

The first one, still open albeit concluding its life cycle, is the Plan de Apoyo a la ESCA, specifically focused on asset recovery in Central America, in coordination with the SICA. The program gives remarkable attention to

<sup>171</sup> You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

the reuse and disposal of confiscated assets in Costa Rica, Guatemala, El Salvador, Honduras, Panama and Dominican Republic.

On the other hand, fully operational is EL PAcCTO, multisectoral EU program covering all Latin American and Caribbean Countries. Italy is implementing - among others - the cross-cutting anticorruption area as a horizontal issue. Among project activities, a crucial role is given to asset recovery to fight crimes including corruption.

The Economic and Financial Police High School of the Guardia di Finanza (also recognized as OECD Tax Crime Academy) organized numerous initiatives of training and capacity building on asset recovery and international cooperation.

Recently, the CEPOL Course 38/2019 on Asset Recovery and Confiscation was held at the School in Lido di Ostia (Rome) from 9 to 12 July 2019. 26 participants from 23 EU Member States attended the course.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>172</sup>.**

A.R.O. Italy cooperates (and is active member of) CARIN, also supporting and cooperating with all the informal asset recovery networks set up all over the world and the StAR initiative, being the single contact point for all the issues concerning the specific topic.

A.R.O. Italy is – and will be more and more – an affordable source of information concerning the tracing and identification of proceeds of crime (or goods related to it) to actively support the investigations to prevent and fight against every kind of illicit where a cash/money flow is involved, especially focusing on the existing links between corruption, bribery and other serious offences.

Bearing this in mind, it is important to address to every single country which is not part of a formal/informal network of asset recovery offices to:

- insert their national A.R.O., if existing, in one (or more) of those networks, becoming an active participant;
- if not existing, to set up their own A.R.O., asking for support to the G20 member they deem as appropriate.

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<sup>172</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), “StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019”. You may refer to principle 9 in the “Nine Key Principles on Asset recovery” in providing your response

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>173</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>174</sup>**

Italy is fully compliant with the G20 High-Level Principles on Mutual Legal Assistance, both at national as well as at international level, see the StAR Questionnaire by Italy.

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>175</sup>**

Italy can report a number of successful experiences on international judicial cooperation in the field of asset recovery. Some of the following cases are related to the execution of non-conviction-based confiscation and have been managed through case-by-case agreements with the requesting/requested State.

A. Switzerland

Three agreements have been signed with Switzerland in order to share in equal parts assets confiscated by Swiss authorities in response to requests made by Italian judicial authorities.

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<sup>173</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>174</sup> You may refer to principle 3 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

<sup>175</sup> You may refer to principle 4 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

a. The first case concerns the confiscation order issued by the Court of Appeal of Turin against an Italian citizen convicted of drug trafficking. Italy and Switzerland have shared equally assets amounting to EUR 550.462,00.

b. The second case concerns a non-conviction-based confiscation order issued by the Court for Preventive Measures in Santa Maria Capua Vetere (Caserta) in the course of the preventive proceedings against an individual suspected of money laundering and of financing the illegal activities of the criminal organization called "Camorra". Italy and Switzerland have shared in equal parts assets amounting to 13.8 million EUR.

c. The third case concerns the execution of a confiscation order of sums issued by the Court of Milan on 12.10. 2009, against an individual convicted of money laundering. Italy and Switzerland signed in August 2015 an agreement for the division of values confiscated in Switzerland, for an amount of 5.195.660,85 Swiss francs. These sums have not been transferred to Italy yet.

#### B. United States of America

The United States of America transferred to Italy assets seized in execution of an order issued by the Court of Appeal of Bologna, at the request of the Attorney General's Office at Court of Appeal of Bologna, in the criminal proceedings against an Italian citizen. The total amount of the sums is EUR 1.898.928,42.

In a different case, the United States of America also transferred to Italy an amount of USD 1.500.000,00 recognizing that the confiscation in the United States was made possible as a result of the wide cooperation given by the Italian authorities in connection with a criminal proceeding of the Anti-Mafia Prosecutor's Office of Rome.

#### C. France

In execution of a non-conviction-based confiscation order issued by the Court for Preventive Measures in Milan, France seized an apartment in Cap d'Antibes. Italy and France have agreed on the sale of the property and the allotment between the two States of amounts obtained through such sale.

It is worth noting that, in granting the enforcement of the confiscation order, the French Court of Cassation clearly valued the parallel criminal conviction, finding: that the Italian non-conviction-based confiscation could «in this context be seen as a criminal verdict»; that it was widely proved the illicit origin of the confiscated apartment; and that it would be confiscated under the French law (criminal confiscation).

#### D. Spain

In execution of a non-conviction-based confiscation order issued by the Court of Rome, Preventive Measures Section, within the prevention proceeding against an Italian citizen, the "Audiencia Nacional" ordered the registration in the "Register of corresponding Properties" of the prohibition of sale of a property in Spain. It was proposed by the Italian Ministry of Justice to the Spanish authorities to proceed with the sale of the property seized and the allotment of sums obtained through the sale.



In a different case, the Spanish authorities have also transferred to Italy amounts seized in execution of a seizure order issued by the Court of Rome in a criminal proceeding.

E. Austria

Italy has recently forwarded to the Austrian authorities a request for international cooperation, requesting the execution of a non-conviction-based confiscation order issued by the Court of Reggio Calabria, related to a prestigious property in Baden.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>176</sup>**

As said before Italy provides through its Asset Recovery Office a high standard formal and informal cooperation, in a very flexible way, concerning asset tracking/recovery and providing training and experience sharing between similar offices all around the world, also being active part of the various informal asset recovery networks set up abroad.

## Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

The G20 group is the premier world economic forum, dedicated not only to the management of the contingent economic crisis or strictly financial matters but also to the promotion of global standards that involve both advanced economies and emerging countries.

The pivotal role of G20 ACWG in designing the policy guidelines on the Anticorruption asset recovery, leading by example, can play a pressure to enable and enhance effective mechanisms of cooperation at international level, updating the existing networks and exploring new instruments, in

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<sup>176</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

particular to improve the cooperation and facilitate the repatriation and reuse and disposal of confiscated assets and to reduce the lack of harmonization of the different national and international legal frameworks about non conviction based confiscation.

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

The G20 ACWG can address any gap in this area through the Accountability Report Mechanism reconstructing the key progress and potential avenues for future work.

The accountability ensures a high-level overview of key achievements in any selected area of antic corruption enforcement in G20 countries over recent years.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

Italy has developed a model on asset recovery based on the following factual premises:

- (1) corruption, as the organized crime is profit oriented;
- (2) profit is at the core of corruptive phenomena;
- (3) illegal capital systematically flows into the licit market in order to increase profit margins, better cover up illicit activities, and facilitate the gradual social infiltration of criminal groups;
- (4) cracking down on illicit capital is the best way to quantitatively reduce the constant regeneration of criminal associations and the foundations of their negative social influence and territorial control.

Therefore, all forms of contemporary crime must be tackled with the high impact instruments of criminal asset seizure. The conceptual apex of the Italian model on asset recovery has been stated by the Constitutional Court of the Italian Republic, whose vision can be summarized as “the wealth originated by illicit assets should not be lost to the surrounding communities”. Consequently, all efforts should be deployed to include the confiscated property into the virtuous economic circuit.

A significant part of the appeal of the Italian model lies also in its symbolic allure and usefulness as a mechanism to express disapproval. Its proponents sought to maintain higher moral boundaries between acceptable and unacceptable behavior in international society.

Confiscation determines a severe loss of prestige and influence for corrupted, corruptors and criminals in their own environment, far more onerous than detention itself, since it stops their capacity to condition the surrounding territorial socioeconomic realities.

It is also highly rewarding that a new generation of transnational institutions are playing an important role in underlining the crucial role of asset recovery in fighting and cracking down on organized crime and corruption.

## **B. DENIAL OF SAFE HAVEN**

### **B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

As part of the Schengen System, reference has to be done to the EU legislation. It does not provide specific provisions for corruption, but it does allow to deny entry:

- when the foreigner is a person for whom an alert has been issued in the Schengen

Information System (SIS), for the purpose of refusing entry;

- when the foreigner is considered a threat to public policy, internal security, public health or to the international relations of any of the Schengen Member States (in particular, where an alert has been issued in Member States' national database for the purpose of refusing entry on the same ground).

In both cases, the alert could be issued for a criminal conviction of the foreigner.

In the G20 DoEEN Member States” (2017) publication it is mentioned that both the Visa Code (art. 21) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0810&from=EN>

and the Schengen Borders Code (art. 5) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R0562&from=EN>

include a legal basis to deny the entry to undesirable individuals.

In both legal acts there are two possibilities for the denial of entry:

- The applicant is a person for whom an alert has been issued in the Schengen

Information System (SIS) for the purpose of refusing entry.

- The individual is considered to be a threat to public policy, internal security,

public health or the international relations of any of the Member States.

[https://www.bmjv.de/SharedDocs/Downloads/EN/G20/Denial\\_of\\_Entry\\_arrangements.pdf?\\_\\_blob=publicationFile&v=1](https://www.bmjv.de/SharedDocs/Downloads/EN/G20/Denial_of_Entry_arrangements.pdf?__blob=publicationFile&v=1)

The EU response to the same document is above attached.

#### 1. Legal basis to deny entry to corrupt foreign nationals.

Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1)

Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4)

As stipulated in Article 6.1 (d) of the Schengen Borders Code, the entry to Schengen area of third-country nationals can be refused on the basis of an alert that has been issued in the Schengen Information System (SIS) for the purposes of refusing entry.

Conditions for issuing alerts on refusal of entry or stay of third-country nationals are enshrined in Article 24 of the SIS II Regulation. Refusal of entry alert to Schengen area can be issued based on a threat to public policy, public security or national security or on the basis that the third-country national has not complied with national regulations on the entry or residence of third-country nationals, which would normally include individuals who overstayed the allowed 90 days period in the Schengen area.

As regard refusal of entry alerts based on a threat to public security, policy or national security, these alerts can be issued for:

□ Article 24.2 (a) a third-country national who has been convicted in a Member

State of an offence carrying a penalty involving deprivation of liberty of at least one year;

□ Article 24.2 (b) a third-country national in respect of whom there are serious grounds for believing that he has committed a serious criminal offence or in respect of whom there are clear indications of an intention to commit such an offence in the territory of a Member State.

It has to be noted that as provided for in paragraph 1 or Article 24 of the SIS II Regulation, such alert can be issued only the basis of the national alert which results from a decision taken by the competent administrative authorities and courts in accordance to the national law of a Member State.

Consequently, the refusal of entry alert to Schengen area on corrupt third-country national could in principal be issued if a person has been convicted in the EU Member State for criminal offences related to corruption (deprived of liberty at least one year) or the EU Member State has serious grounds to believe that a person will commit corruption related offences in the territory of a Member State. It will always however be based on a national decision by competent authority.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

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**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>177</sup>**

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>178</sup>**

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**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

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**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>179</sup>**

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<sup>177</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>178</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

<sup>179</sup> You may refer to principles 6 & 7 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

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**Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>180</sup>**

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>181</sup>**

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**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

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**Holistic questions**

**B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

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**B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

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<sup>180</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>181</sup> You may refer to principle 3 in the "G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery" in providing your response.

- B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

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## **C. GENERAL QUESTIONS**

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

The implementation by Italy of chapters III and IV of the UNCAC Convention was reviewed in the third year of the first cycle. The executive summary of that review was published on 19 November 2013.

The implementation of chapters II and V of the Convention was reviewed in 2018-2019. The executive summary of such review was published in May 2019. The full country report has been published in November 2019.

Both the Executive Summary and Country Report of the first and second review cycle are available at this link: (<https://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=ITA>).

Italy fulfils the G20 Anticorruption Action Plan commitment to voluntarily publish its questionnaire response.

Both civil society components (such as NGOs, representatives of media, academia, legal professions, accounting and notaries) as well as business were actively engaged in a direct dialogue with the reviewing States during the country visits, which took place on September 9-13 2013 (first review cycle) and February 13-15 2018 (second review cycle).

- C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD**

## Anti-Bribery Convention peer review process as a country under review.

ITALY is party of the OECD Anti Bribery Convention and currently is under the fourth evaluation phase just began.

The previous peer review reports are published as above illustrated:

Phase 1: <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/2019055.pdf>

Phase 2: <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/33995536.pdf>

Follow-up report <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/38313133.pdf>

Phase 3: <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Italyphase3reportEN.pdf>

Follow-up report published <http://www.oecd.org/daf/anti-bribery/ItalyP3WrittenFollowUpReportEN.pdfReport>

### C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.

The Italian anticorruption legal framework, following the international workstream and anticipating in some sectors, as a model, the development of the prevention and repression standards against corruption, has been significantly strengthened by [Law n. 3/2019](#) *Measures to fight crimes against the public administration, as well as on the matter of statute of limitations and transparency of political parties and movements.*

The new legislation consolidates a process based upon the Laws n. 190/2012 and n. 69/2015 (empowerment of anticorruption system). It represents an important step toward a more comprehensive anticorruption regime, particularly with regard to combating corruption in the public sector.

Its main features are the following:

- a) Law n. 3/2019 adopts a two-pronged approach, as it enhances (criminal) prosecution and sanctioning of corruption and (administrative) prevention of corruption in the public and private sectors
- b) it fosters the coordination among public institutions involved in these areas
- c) promotes the multi-stakeholder approach, calling the private sector to play an active role in preventing corruption
- d) proves how relevant is the impact of multilateral Conventions, recommendations and standards developed in the relevant Fora (G20, UNCAC, OECD ABC and the CoE criminal and civil Conventions and



respective peer review processes) since it is also the result of further alignment of the national anticorruption system to those frameworks. Law n. 3 epitomizes the development of the rule of law in a multilevel order and shows the capacity of adapting to legal models recommended by the International Conventions and the best practices. After having introduced the Freedom of Information Act (FOIA) and the protection of whistleblowers both in the public and the private sector, it is now the turn of undercover agents in corruption-related investigations.

Law n. 3 imports some measures from the experience of the fight against organized crime and adapts them to countering corruption. It also empowers public prosecutors' arsenal and the enhancing of sanctions, while minimizing - on the other side - the risks of over-deterrence.

The most relevant measures are:

1. Banning order (debarment) for both public officials and private/individuals convicted for corruption. Permanent inability to contract with public administrations and permanent disqualification from public office even in case of rehabilitation. Fictional mediation ("false claims") becomes a new form of crime.
2. Informers who self-report and cooperate will not be held responsible.
3. Strengthening of individual and economic sanctions: convicted public officials and individuals will be subject to more robust economic sanctions/penalties, proportionate to the relevance of the crime.
4. The Law provides for increased transparency requirements with regards to political parties' funding; it thus addresses previous Recommendations under peer review mechanisms on this topic.
5. The statute of limitation will be frozen at the end of the judgement at first instance, so that the appeals process can continue. In this way, the time limits on the prosecution will be loosened to allow the cases to reach the final ruling.

These provisions are enforced through the detection, investigation and prosecution by a strong and independent judiciary, moreover subject to the principle of mandatory criminal action. They can proceed *ex officio* for bribery among private persons and embezzlement/incitement to corruption among private persons, a circumstance under which the penalty may be increased by more than one third. The accessory penalty becomes applicable even in case of the conditional suspension of the principal penalty. The Law allows the use of malware for pc and smartphone intrusion (*Trojan horse*) and undercover operations also for crimes against the public administration.

Before the formal adoption of Law n. 3/2019, the basic lines of the bill were positively assessed in the GRECO, Fourth Evaluation Round, Compliance Report Italy (published in Strasbourg, December 7, 2018 (<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809022a7>)).

A similar assessment came from the European Commission Country

Report published on February 27, 2019 cfr. p. 17 ([https://ec.europa.eu/info/sites/info/files/file\\_import/2019-european-semester-country-report-italy\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import/2019-european-semester-country-report-italy_en.pdf)) and more recently by the Executive Summary and Country Report adopted in the framework of the second review cycle of the United Nations Convention against Corruption (UNCAC).  
<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1808771e.pdf>.

## JAPAN

### A. ASSET RECOVERY

- A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

The Code of Criminal Procedure provides public prosecutors and judicial police officials including the police with the authority to conduct interviews, make inquiries on necessary matters relating to the investigation, and conduct a search, seizure, and inspection, etc. in order to identify, track down, and evaluate property to be confiscated. In principle, prefectural police departments investigate cases and public prosecutors decide whether to prosecute those cases. When necessary, they can request MLA to other jurisdictions. Such requests are made through diplomatic channels if no MLA treaties are established while they can be made directly between law enforcement authorities if those treaties are established.

- A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

The number of persons or cases imposed of confiscation, collection, and preservation order under the Act on Punishment of Organized Crime and Control of Crime Proceeds, and the Anti-Drug Special Provision Law

is provided in the White Paper on Police 2019. See Table 4-22 on its page 176 ([https://www.npa.go.jp/hakusyo/r01/pdf/08\\_dai4sho.pdf](https://www.npa.go.jp/hakusyo/r01/pdf/08_dai4sho.pdf)).

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

Japan became a state party to the UNCAC and UNTOC in July 2017, following legislating an amendment to the Act on Punishment of Organized Crimes and Control of Crime Proceeds. This has made foreign bribery a predicate offence for the purpose of money laundering. The amended Act constitute a legal basis for confiscating the proceeds of bribing foreign public officials.

**Questions relevant to the Nine Key Principles on Asset Recovery<sup>182</sup>**

**A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>183</sup>.**

No.

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

N.A.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>184</sup>**

YES. International Affairs Division, Criminal Affairs Division, Ministry of Justice serves as the focal point.

<sup>182</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
- Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
- Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.

Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>183</sup> You may refer to principles 1 and 7e in the “Nine Key Principles on Asset recovery” in providing your response.

<sup>184</sup> You may refer to principle 7b in the “Nine Key Principles on Asset recovery” in providing your response

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

N.A.

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>185</sup>**

Japan took presidency of ARIN-AP (Asset Recovery Interagency Network – Asia Pacific) in 2017 and held its annual general meeting in Tokyo in September 2017. Japan was also going to host the 14<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice (Kyoto Congress) in April 2020, which has been postponed to March 2021 due to the COVID-19 pandemic.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

N.A.

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>186</sup>.**

No.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

N.A.

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<sup>185</sup> You may refer to principle 7c in the “Nine Key Principles on Asset recovery” or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

<sup>186</sup> You may refer to principle 4 in the “Nine Key Principles on Asset recovery” in providing your response

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

Some laws including the Act on Punishment of Organized Crimes and Control of Crime Proceeds allows for preservation order for confiscation before the institution of prosecution with the aim of preventing criminal proceeds from being concealed or consumed before confiscation.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>187</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>188</sup>**

Each District Public Prosecutors Office has prosecutors specialized in economic/financial crimes. On top of this, those Offices in Tokyo, Osaka and Nagoya, have prosecutors appointed by the Chief Prosecutors to be in charge of foreign bribery cases in the Special Investigation Departments of these three Offices.

At each prefectural police department, there are executive police officers nominated as persons responsible for Anti-bribery of Foreign Public Officials in the 2nd Investigation Division taking charge of intellectual crime investigation.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

N.A.

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>189</sup>**

Since 2000, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) has conducted an annual international training course for criminal justice practitioners around the world entitled “UNAFEI-UNCAC Training Programme”, which addresses the issue of trace, restraint and confiscation of the proceeds of corruption. In 2019, 32 participants from

<sup>187</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>188</sup> You may refer to principle 6 in the “Nine Key Principles on Asset recovery” in providing your response

<sup>189</sup> You may refer to principle 8 in the “Nine Key Principles on Asset recovery” in providing your response

25 countries joined this programme. In addition, since 2007, UNAFEI has organized an annual regional seminar entitled “Regional Seminar on Good Governance for Southeast Asian Countries” to explore ways to strengthen anti-corruption measures in Southeast Asian countries. The thirteenth Seminar in 2019 focused on "Effective Financial Investigation and Anti-Money-Laundering Measures for Confiscation and Asset Recovery to Counter New and Emerging Corruption Threats".

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>190</sup>.**

Yes. See the answer to A2.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

N.A.

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>191</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>192</sup>**

Yes. See the website of the Ministry of Justice Japan:  
<http://www.moj.go.jp/ENGLISH/information/liai0002.html>.

<sup>190</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), “StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019”. You may refer to principle 9 in the “Nine Key Principles on Asset recovery” in providing your response

<sup>191</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>192</sup> You may refer to principle 3 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>193</sup>**

No.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

N.A.

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>194</sup>**

Japan became a state party to the UNCAC and UNTOC in July 2017, following legislating an amendment to the Act on Punishment of Organized Crimes and Control of Crime Proceeds. This enables MLAs to be executed more swiftly with states parties to those conventions, through direct requests between law enforcement authorities rather than through diplomatic channels.

## Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

No.

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<sup>193</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>194</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

N.A.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

No.

**B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

Article 5 of the Immigration Control and Refugee Recognition Act stipulates the grounds for denial of landing for the purpose of preventing the landing of foreign nationals who are found to be unfavorable to Japan,.

In paragraph (1), item (iv) of the same Article, “a person who has been convicted of a violation of any law or regulation of Japan, or of any other country, and has been sentenced to imprisonment or imprisonment without work for 1 year or more, or to an equivalent penalty” is stipulated as a person who is subject to denial of landing. (However, this does not apply to those convicted of a political offense.)

Also, in item (v) of the same paragraph, “a person who has been convicted of a violation of any law or regulation of Japan or of any other country relating to the control of narcotics, marijuana, opium, stimulants or psychotropic substances, and has been sentenced to a penalty” is stipulated as a person who is subject to denial of landing.

Furthermore, in item (ix)-2 of the same paragraph, “a person who has been sentenced to imprisonment or imprisonment without work on the charge of certain crimes provided for in the Penal Code of Japan, etc. during their stay in Japan, who subsequently left Japan and whose sentence became final and binding when the relevant person was outside of Japan, and for whom 5 years have not yet elapsed from the date when the sentence became final and binding” is stipulated as a person who is subject to denial of landing.



Corrupt officials or those who corrupt them do not fall under Article 5 but those have been sentenced to imprisonment with or without work for 1 year or more, or to equivalent penalty in relation to corrupt offenses will be denied entry to Japan.

- B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

N.A.

**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>195</sup>**

- B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>196</sup>**

Because corrupt officials or those who corrupt them do not fall under the grounds for denial of landing simply because of corruption there are no statistics and it is also difficult to give examples.

- B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

Difficult to answer (same as B3)

- B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt**

<sup>195</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>196</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

**persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>197</sup>**

There are no statistics and examples is available because of the reasons shown in B3

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

Difficult to answer (same as B5)

**Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>198</sup>**

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>199</sup>**

N.A.

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

N.A.

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<sup>197</sup> You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

<sup>198</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>199</sup> You may refer to principle 3 in the “G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery” in providing your response.

## Holistic questions

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

N.A.

- B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

N.A.

- B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

N.A.

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (began or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

First cycle: began but not yet completed. Our next step is a county visit.  
Second cycle: not yet began.

- C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

YES. Japan took the Phase 4 evaluation in 2019, and the follow-up review in 2020.

- C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

No.

## **KOREA**

### **A. ASSET RECOVERY**

- A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

Criminal Asset Recovery Division(s) at the Prosecutors' Office(s) is in charge of asset recovery and money laundering. In June, 2018, the Korean government launched the Foreign Illicit Asset Recovery Task Force for the forfeiture of criminal proceeds arising from tax crimes overseas; the Task Force consists of prosecutors, as well as investigators from the National Tax Service, the Korea Customs Service, and the Financial Supervisory Service.

For more details, please refer to the <Link 'Anti-money laundering and counter-terrorist financing measures, Republic of Korea, Mutual Evaluation Report, April. 2020' (fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Korea-2020.pdf)>.

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

Please refer to the <'Anti-money laundering and counter-terrorist financing measures, Republic of Korea, Mutual Evaluation Report, April. 2020' ([fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Korea-2020.pdf](https://fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Korea-2020.pdf))>.

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

The latest version of Korea's FATF Mutual Evaluation report was published in April, 2020. We continue to work closely within the mutual legal assistance framework with the relevant agencies and international partners in order to recover illicit assets arising from corruption and economic crimes.

#### Questions relevant to the Nine Key Principles on Asset Recovery<sup>200</sup>

**A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>201</sup>.**

In June, 2018, Busan District Prosecutors' Office took the initiative and proactively sought mutual legal assistance in coordination with the Australian Federal Police (AFP) and the FIUs of 5 different countries including Hong Kong, which led to an investigation of the suspect who evaded approximately KRW 1,000,000,000 of property to Australia, while providing KRW 700,000,000 of bribes to an executive of a Malaysian state-owned enterprise.

<sup>200</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>201</sup> You may refer to principles 1 and 7e in the "Nine Key Principles on Asset recovery" in providing your response.

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

Although majority of the FIUs provided sufficient cooperation in pursuing the action, Korea had encountered challenges with some of them.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>202</sup>**

Prosecutor at the International Criminal Affairs Division, Ministry of Justice serves as the focal point of contact for asset recovery cases.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

N/A

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>203</sup>**

Some of Korea's multi-jurisdictional cooperation include Korean Supreme Prosecutors' Office reaching out to the Indonesian counterpart through the ARIN-AP (Asset Recovery Inter-Agency Network – Asia Pacific) for the verification of documents required by an investigation and communication with the Turkish Police for the confirmation of the existence of a corporation, etc.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

N/A

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<sup>202</sup> You may refer to principle 7b in the "Nine Key Principles on Asset recovery" in providing your response

<sup>203</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>204</sup>.**

Non-conviction based confiscation is not allowed under the Korean laws.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

N/A

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

In April, 2020, the *Act on Regulation and Punishment of Criminal Proceeds Concealment* was amended to assume the proceeds acquired during the commission of digital sex crimes to be the criminal proceeds from those offenses, subsequently relaxing the Prosecution's burden of proof for criminal asset recovery than before.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>205</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>206</sup>**

In June, 2018, the Korean government launched the Foreign Illicit Asset Recovery Task Force for the forfeiture of criminal proceeds arising from tax crimes overseas; the Task Force consists of prosecutors, as well as investigators from the National Tax Service, the Korea Customs Service, and the Financial Supervisory Service.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

N/A

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<sup>204</sup> You may refer to principle 4 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>205</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>206</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>207</sup>**

Following the FATF Plenary of September, 2016, Korea established the FATF TREIN (FATF Training and Research Institute) in Busan, Korea; the FATF TREIN serves as the FATF's research institute for the new AML/CTF training programmes.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>208</sup>.**

Korea continues to participate in the international forums, i.e. the OECD Working Group on Bribery, the FATF, etc., in order to strengthen international cooperation framework, while also establishing networks of law enforcement agencies in order to collect and share information on asset recovery cases.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

N/A

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>209</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being**

<sup>207</sup> You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>208</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>209</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.



achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>210</sup>

Korea thoroughly responded to and provided specific cases and information for the StAR Asset Recovery Guides questionnaire in March, 2020.

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>211</sup>**

Korea conducts joint investigations with other jurisdictions by obtaining relevant information and evidence through the mutual legal assistance framework. Prosecutor at the International Criminal Affairs Division, Ministry of Justices, in charge of mutual legal assistance serves as the focal point and communicates regularly with other jurisdictions via email, telephone, etc. in order to conduct the investigations.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

N/A

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>212</sup>**

N/A

<sup>210</sup> You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>211</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>212</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

## Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

N/A

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

N/A

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

N/A

## **B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

Under the Immigration Act, there is no direct provision on the entry denial of corrupt government officials.

However, according to Items 3, 4, Paragraph 1, Article 11 of the Immigration Act, the Minister of Justice may prohibit a foreign national from entering the Republic of Korea when that person is deemed highly likely to engage in any conduct harming the interests or public security, or disturbing economic or social order or good morals of the Republic of Korea.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

N/A

**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>213</sup>**

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>214</sup>**

N/A

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

The establishment of international general principles is required first, including setting up the criteria (definition) for corruption which can be sufficient reasons for entry denial (ban) as well as building a consensus between countries on whether the list of corrupt persons can be disclosed.

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>215</sup>**

N/A

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<sup>213</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>214</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

<sup>215</sup> You may refer to principles 6 & 7 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

- B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

N/A

**Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>216</sup>**

- B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>217</sup>**

N/A

- B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

N/A

**Holistic questions**

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

- B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

N/A

<sup>216</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>217</sup> You may refer to principle 3 in the "G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery" in providing your response.

- B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

N/A

## **C. GENERAL QUESTIONS**

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

Korea completed the first cycle of the UNCAC Implementation Review in 2012-2013 and now being reviewed for the second cycle, which began June 2019.

- C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

Korea is the member of OECD Anti Bribery Convention. Korea had undertaken the phase 4 peer review on Dec. 4. 2019. The Act on Combating Bribery of Foreign Public Officials in International Business Transactions had been amended to increase the statutory penalty on corporations that have committed bribery of foreign public officials, as recommended by the OECD.

- C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

With a series of fraudulent claims for public funds and an increase in the government's obligatory spending on the welfare budget, the ACRC has pushed forward with the enactment of a general law on the recovery of

and sanctions on fraudulent claims for public funds since 2014.

In the complete enumeration survey conducted by the ACRC in April 2018 on 1,446 laws, 913 were found to have a legal ground for support from public finances (3,379 provisions). Among them, 138 had a provision for recovery in the case of fraudulent double claims, and only 21 had similar provisions such as additional sanctions imposed as a financial penalty, on top of the recovery of the falsely claimed funds.

Since 2014, the ACRC has pushed forward with the enactment of a general law on the recovery of and sanctions on fraudulent claims for public funds. On April 16, 2018, the Act on Prohibition of False Claims for Public Funds and Recovery of Illicit Profits was enacted and was to be implemented on January 1, 2020.

#### Main Contents

The Public Funds Recovery Act stipulates that relevant public institutions recover the entire amount of the unfair gains and interests from the following four types of fraudulent claims: ① unqualified or ② excessive claims for public finance payments such as subsidies, rewards and contributions; ③ use of the funds for any purpose other than the specified purpose or use; and ④ erroneous payment of the funds. In the case of unqualified and excessive claims for, as well as the misuse of public funds, the Act states that additional sanctions of up to five times that of the recovered amount be imposed on top of the recovery of gains.

In addition, the Act stipulates that the competent administrative agency disclose the list of those who make fraudulent claims in large amount or on a habitual basis, and allows the ACRC to check and inspect the implementation status of the recovery of illicit gains and imposition of additional sanctions. The Act provides thorough protective measures for whistleblowers to make sure that they do not face any disadvantages as a result of the act of reporting, and that their personal safety is guaranteed. It also specifies rewards for whistleblowers to facilitate reporting on fraudulent claims for public funds.

# MEXICO

## A. ASSET RECOVERY

### A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.

On March 14, 2019, a Decree was published in the Official Gazette of the Federation that amended article 22 of the Political Constitution of the United Mexican States, related to non-conviction based forfeiture. Said decree introduced to the catalog of crimes in article 22 of the Constitution, among others, acts of corruption, concealment and illicit acts committed by public officials.

Subsequently, on August 9, 2019, the National Law on Non-Conviction Based Forfeiture was published in the Official Gazette of the Federation, thus replacing the Federal Law on Non-Conviction Based Forfeiture, as well as the laws of the federative entities regarding said matter. To date, the only applicable legislation is the referred National Law.

In said National Law, as it regulates article 22 of the Constitution, it is specified the inclusion of illicit acts of corruption as those that can give rise to the beginning of a procedure for the non-conviction based forfeiture, which aim is to allow for the recovery of assets in the international arena.

Also, in the article 1, the Law indicates expresses to be in accordance with the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption and the United Nations Convention against Illicit Trafficking of Narcotic Drugs and Psychotropic Substances.

Therefore, the Law includes in its Eighth Title a Chapter called "International Cooperation", so this, together with the international treaties that Mexico has ratified on the matter, make up the legal framework through which our country can provide international legal assistance in asset recovery matters.

In that order of ideas, Mexico can grant international cooperation (via legal assistance) to a foreign State, in order to recover assets that are an instrument, object or product of corruption crimes, and that are in national territory or subject to the jurisdiction of the Mexican State. As mentioned, said collaboration is granted based on the international treaties signed by the Mexican Government and the procedural rules established in Title Eight "On International Cooperation" (articles 244 to 251) of the National Law of Non-Conviction Based Forfeiture.

Under that same situation, the Prosecutor General's Office of the Republic (FGR) through the General Direction of International Procedures (DGPI) intervenes in the non-conviction based forfeiture procedure, in its capacity as Central Authority in the receipt and handling of requests for legal assistance made to Mexico.

The National Law, in its article 248, section I, states that in the event that a competent authority of a foreign government submits a request for legal assistance, in accordance with the provisions of international legal instruments to which the United Mexican States is a party or by virtue of international reciprocity, whose purpose is the recovery of assets for the purposes of said Law, located in national territory or subject to the jurisdiction of the Mexican State, the request will be processed by the FGR or by the Central Authority indicated in the corresponding treaty or, where appropriate, by the Ministry of Foreign Relations.

Similarly, it should be noted that article 22 of the Constitution also establishes the figures of Forfeiture and Abandonment, legal instruments that are regulated by the National Code of Criminal Procedures and which are also applicable to the illegal acts of corruption and are a form of recovery of assets that the Mexican government has implemented.

Finally, it is important to mention that the Specialized Unit for Non-Conviction Based Forfeiture (created in October 2019), attached to the FGR, and the relevant units in the local Prosecutor's Offices are the ones empowered to carry out a non-conviction based forfeiture, while the DGP) of the FGR is the Central Authority for international legal assistance.

National Law on Non-Conviction Based Forfeiture:  
[http://www.diputados.gob.mx/LeyesBiblio/pdf/LNED\\_220120.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LNED_220120.pdf)

Agreement establishing the organization and operation of the Specialized Unit for Domain Extinction Matters:  
[https://www.dof.gob.mx/nota\\_detalle.php?codigo=5573945&fecha=01/10/2019](https://www.dof.gob.mx/nota_detalle.php?codigo=5573945&fecha=01/10/2019)

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

To date, there are no statistics on international asset recovery, as no requests for legal assistance have been received by Mexico to recover assets that are or have been an instrument, object or product of acts of transnational corruption.

In this regard, it is important to keep in mind that the acts of corruption were recently incorporated into the Political Constitution of the United Mexican States, as a figure by which the non-conviction based forfeiture proceeds, and the Specialized Unit for Non-Conviction Based Forfeiture of



the FGR has not yet received any case requiring the non-conviction based forfeiture in relation to acts of corruption.

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

The corresponding updates are reflected in the answer to question A1.

### Questions relevant to the Nine Key Principles on Asset Recovery<sup>218</sup>

**A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>219</sup>.**

No.

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

N/A

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>220</sup>**

**Formal** – The FGR has appointed the General Directorate of International Procedures (DGPI) as the point of contact of the Global Focal Point network on Asset Recovery (INTERPOL/ StAR).

It should be noted that the DGPI is also the designated central authority on issues of international legal assistance within the framework of the United Nations Convention against Corruption.

<sup>218</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
- Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
- Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.

Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>219</sup> You may refer to principles 1 and 7e in the “Nine Key Principles on Asset recovery” in providing your response.

<sup>220</sup> You may refer to principle 7b in the “Nine Key Principles on Asset recovery” in providing your response

**Informal** - The FGR collaborates with the Asset Recovery Network of the Latin American Financial Action Group (RRAG - GAFILAT), through its Specialized Unit in Financial Analysis.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

No difficulties have been identified in this regard.

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>221</sup>**

**a) Global Focal Point Network on Asset Recovery (StAR/INTERPOL)**

Through this network, this institution has shared with the member states information and good practices regarding the recovery of assets that are proceeds of crime, in order to strengthen collaboration through dialogue and mutual trust. However, there are no records of requests for international cooperation via mutual legal assistance that the Mexican authorities have received or made through the aforementioned network.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

The FGR has not received or sent requests for international cooperation (via legal assistance) for the recovery of assets that are an instrument, object or product of corruption crimes through said Network. For that reason, it is not possible to provide feedback in relation to this item of the questionnaire.

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<sup>221</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>222</sup>.**

Mexico allows for non-conviction based forfeiture procedures. Based on the provisions of article 22 of the Political Constitution of the United Mexican States, said procedure is applicable to assets of a patrimonial nature whose legitimate origin cannot be proven and are related to investigations derived from acts of corruption, concealment, crimes committed by public officials, organized crime, theft of vehicles, resources of illicit origin, illicit trafficking of drugs, kidnapping, extortion, human trafficking and crimes related to hydrocarbons, petroleum products and petrochemicals.

In that sense, the non-conviction based forfeiture proceeds only in the cases related to the illicit acts established in the Political Constitution and in the National Law on Non-Conviction Based Forfeiture.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

The application of the National Law on Non-Conviction Based Forfeiture has been in force for approximately one year.

Derived from the Covid-19 pandemic, its implementation has been truncated by not being able to carry out a prompt investigation into the illegal acts and the associated goods. Furthermore, the dissemination of the application of the non-conviction based forfeiture has not yet been sufficient for the Public Prosecutors that investigate crimes to inform to the Specialized Units in matters of Non-Conviction Based Forfeiture when an investigation needs to be initiated for this purpose.

Similarly, the failure to regulate the figure of retrospectivity in the Constitution is a limitation to exercise this action on assets that are linked to illegal acts that were already regulated by the Mexican criminal law before the entry into force of the National Law on Non-Conviction Based Forfeiture.

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<sup>222</sup> You may refer to principle 4 in the “Nine Key Principles on Asset recovery” in providing your response

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

- The fact that the National Law on Non-Conviction Based Forfeiture establishes that the procedure will be with prevalence to orality.
- The possibility of initiating a non-conviction based forfeiture investigation based on information obtained through the following ways, and not only through the information obtained through criminal procedures and/or trials:
  - a) Investigations on crime prevention.
  - b) Unique Criminal Information System.
  - c) Application of the General Law on Administrative Responsibilities.
  - d) Databases of the autonomous constitutional bodies or a particular.
  - e) International legal assistance and the international treaties of which Mexico is a Party.
  - f) Any other legal information containing information for the preparation of the action.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>223</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>224</sup>**

Article 240 of the National Law on Non-Conviction Based Forfeiture states that the Public Prosecutor's Offices will have Specialized Units in Matters of Non-Conviction Based Forfeiture, and that said Units will have agents of the Public Ministry of the Federation who will investigate and exercise the action of non-conviction based forfeiture, and will intervene in the procedure.

In that regard, through the Agreement A/016/19, published in the Official Gazette of the Federation on October 1, 2019, the Specialized Unit on Non-Conviction Based Forfeiture was established at the federal level. This Unit, among other powers, has the authority to request and carry out investigation acts and techniques related to the National Law of Non-Conviction Based Forfeiture.

They also have the function of carrying out the patrimonial, fiscal and financial investigation in order to collect elements to exercise the action of non-conviction based forfeiture, as well as carrying out the litigation of the cases that are prosecuted in said matter.

<sup>223</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>224</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

The lack of support personnel, such as experts and specialized police officers in carrying out the investigation under the command of the agents of the Public Ministry of the Federation of Non-Conviction Based Forfeiture.

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>225</sup>**

The FGR is not providing international technical assistance on asset recovery.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>226</sup>.**

No.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

N/A

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>227</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being**

<sup>225</sup> You may refer to principle 8 in the “Nine Key Principles on Asset recovery” in providing your response

<sup>226</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), “StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019”. You may refer to principle 9 in the “Nine Key Principles on Asset recovery” in providing your response

<sup>227</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>228</sup>

No.

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>229</sup>**

No.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

N/A

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>230</sup>**

No.

## Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

The procedure for the recovery of assets is relatively new within Mexican law and the national legal system. In terms of international cooperation there have been few interventions; however, to date, we can point out as

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<sup>228</sup> You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>229</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>230</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

the main challenge the difference between the Mexican and foreign legal systems, specifically regarding the legal concepts of extinction of domain, non-conviction forfeiture, forfeiture, etc., which are difficult at the time of translation into the language of the required State (Mexico).

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

In order to overcome the identified challenges, it would be useful to know the experiences and best practices in the recovery of assets of the members of the ACWG.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

No.

**B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>231</sup>

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>232</sup>**

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>233</sup>**

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

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<sup>231</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>232</sup> You may refer to principles 4 and 5 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

<sup>233</sup> You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response



Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>234</sup>

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>235</sup>**

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

**Holistic questions**

**B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

**B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

**B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

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<sup>234</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>235</sup> You may refer to principle 3 in the “G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery” in providing your response.

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

First Review Cycle – Completed

Second Cycle of Examination - The Executive Report has been published and the publication of the Country Report is pending.

Reports available here:  
<https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fmex.html>

Likewise, it is important to mention that Mexico, in both cycles, organized on-site visits, enabling the participation of the private sector and civil society.

- C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

Mexico is a State Party of the Anti-bribery Convention.

- C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

# RUSSIA

## A. ASSET RECOVERY

### A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.

The Prosecutor General's Office of the Russian Federation is the leading body in Russia as regards the implementation of international agreements on mutual legal assistance in criminal proceedings, including the UNCAC. The procedure for the participation of the Prosecutor General's Office in international cooperation in this realm is established by Decree of the Prosecutor General of the Russian Federation of 2000 No. 23/35 "On the procedure for the activities of the prosecution bodies of the Russian Federation regarding MLA matters in criminal proceedings».

Within its mandate, the Prosecutor General's Office of the Russian Federation carries out the activities aimed at repatriating stolen assets in cooperation with other competent national authorities and State-owned legal persons.

The Prosecutor General's Office is responsible for the examination and implementation of MLA requests of foreign and national competent authorities at the pre-trial stage of criminal proceedings, including the requests to detect, freeze, seize, confiscate and return proceeds of crime.

Chapter 55.1 of the Code of Criminal Procedure of the Russian Federation, introduced by Federal Law of 2017 No. 387-FZ, provides for the procedure for recognizing and enforcing the decisions of foreign courts regarding the confiscation of proceeds of crimes on the territory of the Russian Federation. It is the Ministry of Justice of the Russian Federation that submits and implements the MLA requests processed by the judiciary.

The procedure for the management and disposal of seized and confiscated assets is provided for by article 82 of the Code of Criminal Procedure of the Russian Federation, articles 87, 104 and others of Federal Law of 2007 No. 229-FZ "On Enforcement Proceedings", the Agreement of 2015 "On the interaction between the Federal Bailiff Service and the Federal Agency for State Property Management on the issues regarding the sale of property, seized in compliance with court decisions or acts of the bodies entitled to forfeit property", Government decrees of 2012 No. 848 "On the procedure for the sale and disposal of objects constituting physical evidence, whose conservation during criminal proceedings or by their conclusion is hindered" and of 2015 No. 1041 "On the procedure for the sale of property accrued to the State, and on the amendments to the Government Decree of 2019 No. 1238 "On the disposal of property accrued

to the State”, Federal Law of 2001 No. 115-FZ “On the Fight against Money Laundering and Terrorist Financing” (in terms of freezing modalities).

The real estate property confiscated abroad in accordance with a request of the Russian Federation is to be transferred to the Russian treasury after the decision of the court which has the jurisdiction over that property and the transfer of the ownership title to the Russian Federation.

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

The Russian Federation submitted 63 MLA requests to detect, freeze, seize, confiscate and return proceeds of crime from mid-2016 to 2019: 25 requests were implemented, 3 were partly implemented, 1 was not implemented, and no information on the remaining 34 requests was received.

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

**Questions relevant to the Nine Key Principles on Asset Recovery<sup>236</sup>**

**A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>237</sup>.**

In 2011, the Prosecutor General's Office of the Russian Federation undertook a series of international legal actions that led to the return of the ocean drilling vessel V. of a value of 200,000,000 USD to the Russian

<sup>236</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
- Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
- Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.

Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>237</sup> You may refer to principles 1 and 7e in the “Nine Key Principles on Asset recovery” in providing your response.

SOE A. The vessel had been leased under a fraudulent contract to a private Norwegian company in 2005 at a knowingly lower rate of 21,000 USD per day instead of the real rate of 490,000 USD per day.

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

The lengthy implementation (over a year) of MLA requests as well as refusals of foreign authorities to implement Russia's MLA requests submitted in the framework of criminal proceedings are the major barriers to an effective cooperation in this area. Most refusals are motivated by differences in law across jurisdictions, the necessity to prove the illicit origin of assets, the granting of the refugee status to the accused and lack of evidence that the accused possesses certain assets.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>238</sup>**

The National Central Bureau of INTERPOL of the Ministry of the Interior of the Russian Federation is the focal point for the cooperation with INTERPOL and EUROPOL in the area of exchange of information on crimes, the provision of support to the requests of foreign law enforcement bodies to track, detain and extradite individuals accused of having committed crimes as well as to detect and seize proceeds of crimes, stolen items and documents transferred abroad. The modalities of cooperation are determined by a specific instruction of 2006.

The divisions competent in supervision of the enforcement of anti-corruption legislation were established in 2007 within the Prosecutor General's Office of the Russian Federation, in the offices of the prosecution service in the regions of the Russian Federation and in the equivalent specialized prosecution bodies. In particular, they address issues related to the repatriation of proceeds of corruption.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

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<sup>238</sup> You may refer to principle 7b in the "Nine Key Principles on Asset recovery" in providing your response

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>239</sup>**

Russian law enforcement bodies employ ever more actively the INTERPOL channels to investigate and solve crimes, including those related to corruption. In fact, the requests regarding economic crimes, including corruption, amount to 30-40 per cent of the workflow of the National Central Bureau of INTERPOL of the Ministry of the Interior of the Russian Federation.

The analysis of the workflow of the National Central Bureau for the years 2019-2020 demonstrates that Russian law enforcement bodies more actively employed the INTERPOL channels to detect the assets acquired with proceeds of crimes. From January 2019 to June 2020 the National Central Bureau received 380 requests and investigation materials from Russian law enforcement bodies to verify if certain individuals under investigation had movable and immovable property, bank accounts and other assets abroad. The most intense contacts through the INTERPOL channels were registered with law enforcement bodies of Germany, the Czech Republic, Montenegro, France, Cyprus, the United Kingdom, Spain, Latvia and Italy.

The interaction with law enforcement bodies of the Czech Republic, Cyprus, Austria, Germany, France, Spain, Italy, Bulgaria, Montenegro, Latvia and Seychelles produces the most tangible results in terms of the volume of submitted information both on the immovable property and the participation of the individuals under investigation in foreign commercial entities.

The information received through the INTERPOL channels made it possible to detect movable and immovable property, bank accounts and other assets under 106 requests of Russian law enforcement bodies.

The INTERPOL channels are actively employed by the Prosecutor General's Office of the Russian Federation for submitting the copies of MLA requests related to criminal proceedings in order to expedite their implementation by foreign counterparts and to seize the assets of the prosecuted individuals as soon as possible. 46 such requests were submitted 2019, and 54 have been sent in 2020.

Besides that, since 2019 the National Central has been providing assistance to the Investigative Department of the Ministry of the Interior and the Investigative Committee of the Russian Federation in submitting the

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<sup>239</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

copies of MLA requests and related documents. In the period between January 2019 and June 2020 the information regarding 8 MLA requests of the Investigative Department of the Ministry of the Interior of the Russian Federation and 6 MLA requests of the Investigative Committee of the Russian Federation regarding criminal cases were sent to competent foreign authorities.

14 requests of foreign law enforcement bodies to detect assets were received through the CARIN channels in 2019 and 16 such requests have been received in 2020. 39 requests of Russian law enforcement bodies were sent to foreign partners over the indicated period. Most active interaction is registered with law enforcement bodies of Spain, France, the United States, Switzerland, Poland, Hungary, Mongolia, Moldova, Belarus, Kazakhstan, Latvia and Israel.

The Ministry of the Interior of the Russian Federation is also working on establishing a focal point within the Investigative Committee of the Russian Federation to access the INTERPOL/StAR Global Focal Point Platform to exchange information on the cases related to the detection and return of stolen assets.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

The legislation of many countries does not provide for the possibility to supply information about property through the INTERPOL channels. Moreover, it is almost impossible to obtain the information related to bank accounts and relevant transactions in a foreign country, using the INTERPOL channels. Based on the analysis of the responses of foreign law enforcement bodies, such information constitutes bank secrecy and can be provided by foreign law enforcement bodies through the INTERPOL channels only if the respective formal MLA request of the Prosecutor General's Office of the Russian Federation is satisfied by a competent legal authority, a prosecutor or a court of the requested jurisdiction.

In the cases where the legislation of a country (for instance, Turkey, Cyprus and Israel) requires a court decision to supply information about immovable property thereby making it impossible to obtain it through the INTERPOL channels, the National Central Bureau of INTERPOL resorts to the CARIN mechanisms.

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>240</sup>.**

The legislation of the Russian Federation does not provide for non-conviction based confiscation: the term “confiscation” as such is applied only in the criminal legislation of Russia.

At the same time, under Federal Law of 2012 No. 230-FZ “On the Control over Correspondence between the Expenses and Income of Individuals Holding Public Positions and Other Individuals” in the event that such verification procedure with respect to an individual that holds a position indicated in article 2 (1) (1) of the Law and his/her spouse and minor children reveals that their expenses exceed their income, this information should be communicated to the prosecution service of the Russian Federation by the body that conducted the verification. If the legal origin of the property is not reasonably explained by its owner, the prosecutor brings the case to court and requests to accrue the property to the State. If the court grants the request of the prosecutor, the property is accrued to the State under article 235 (2) (8) of the Civil Code of the Russian Federation.

Since Federal Law No. 230-FZ was adopted there has been one case where the court decided to accrue property, situated abroad, to the State. In order to implement this court decision an MLA request was submitted to the Federal Ministry of Justice of Germany based on the UNCAC in September 2018. The request is being implemented by the German competent authorities. The difficulties of its implementation are related to the fact that there are no similar provisions in the German legislation. The information about the property of the public official was received through the INTERPOL channels at the request of the Prosecutor General's Office of the Russian Federation submitted within the framework of the verification procedure.

The Prosecutor General's Office of the Russian Federation has already gained considerable experience in this area. In 2019, it submitted 34 MLA requests to competent foreign authorities in the framework of these non-criminal verification procedures. The requests were to verify whether Russian citizens had bank accounts and property abroad, foreign citizenship or stakes in foreign companies.

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240 You may refer to principle 4 in the “Nine Key Principles on Asset recovery” in providing your response



**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

Russia's practical experience in this field shows that only few countries provide information with the purpose to prevent and detect corruption offenses that do not imply criminal liability.

The Prosecutor General's Office of the Russian Federation has analyzed the possibility to request the information about bank accounts of Russian citizens in foreign banks from of 110 countries with particular focus on their national legislation and practices of interaction with other countries. The legislation of almost every country protects the information about bank accounts and provides for the protection of personal data and bank secrecy. As a result, it cannot be provided at the request directly submitted to a bank. Most countries, however, make an exception from this rule for law enforcement, judicial and financial (tax) authorities.

In addition, the possibility to create and provide access to international databases to this end should be further explored.

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>241</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>242</sup>**

The criminal procedure law in force does not provide for the establishment of teams of preliminary investigation officers and prosecutors, specializing in asset recovery.

However, the divisions for economic security and anti-corruption of the Ministry of the Interior of the Russian Federation collaborate on a regular basis with the Federal Financial Monitoring Service, the Federal Tax Service, the Federal Service for State Registration, Cadaster and Cartography and other competent authorities with the aim to detect the property which is also located abroad and can be potentially related to criminal proceedings.

Moreover, working meetings of prosecutors and investigators are regularly organized in order to coordinate their concerted action

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241 In some jurisdictions, an asset recovery office may fulfil this role.

242 You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

throughout the investigation into crimes and the analysis of the outcome of verifications of alleged corruption-related offences.

In addition, the instruments of the so-called diagonal interaction (the employment of the potential of INTERPOL, the Federal Financial Monitoring Service, the Federal Tax Service, the Federal Customs Service and other competent authorities that can provide necessary information) are being used ever more actively in the field of detection and repatriation of assets due to the fact that it takes a long time to receive answers to MLA requests submitted to competent foreign authorities.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

As indicated in the answer to question A13 above, the establishment of special teams of preliminary investigation officials and prosecutors in order to facilitate asset recovery is not provided for by the Russian criminal procedure law.

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>243</sup>**

Russia regularly conducts capacity-building training courses and expert workshops for practitioners from member States of the Eurasian Group on Combating Money Laundering and Financing of Terrorism. In 2019 the International Training and Methodology Centre for Financial Monitoring (Centre), based in Moscow, hosted a programme on enhancing the potential of financial intelligence units and law enforcement authorities of Albania, Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia and Serbia under the UNODC Regional Programme for South Eastern Europe. The programme was focused, in particular, on how to effectively counter drug trafficking, related financial flows and organised crime in the region. The Centre also holds annual training courses on the implementation of FATF Recommendations for practitioners from developing countries and advanced training on CTF for law enforcement practitioners from the Commonwealth of Independent States. These capacity-building initiatives also regard anti-corruption matters. In addition, since 2012 the Prosecutor General's Office of the Russian Federation regularly hosts trainings for governmental experts from the States parties to the UNCAC engaged in country reviews under the Implementation Review Mechanism.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>244</sup>.**

The Russian Federation shares relevant information within the subsidiary bodies of the UNCAC COSP. Russia for instance, submitted its response to the questionnaire "StAR Data Collection: International Asset Recovery Efforts in Corruption Cases, 2010–2019".

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<sup>243</sup> You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>244</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>245</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>246</sup>**

In order to streamline Russia's participation in international cooperation in this area the Investigative Committee of the Russian Federation issued a special order in 2018. In addition, an interactive guide on how to make international MLA requests, including relevant samples, was released.

The information on the implementation procedure of and the requirements applied to the foreign MLA requests in Russia are published in the set of materials [“Asset Recovery: Practical Step-by-Step Guide by the Russian Federation”](#) on the website of the StAR initiative.

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>247</sup>**

The presence of representatives of requesting States at the performance of procedural actions to implement respective MLA requests considerably enhances the effectiveness of and reduces the time for obtaining evidence.

To this end, officers of the Investigative Committee of the Russian Federation assist at the implementation of MLA requests on the territory

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245 Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

246 You may refer to principle 3 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

247 You may refer to principle 4 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

of foreign States, and representatives of competent foreign authorities are welcomed in Russia.

For instance, Italian public prosecutors attached to the court of Milan assisted at the implementation of the MLA request on a criminal case regarding the creation of a criminal gang with the aim to evade taxes, commit corrupt acts and other offences in Russia in 2019.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>248</sup>**

The Ministry of Justice of the Russian Federation formulates proposals on the conclusion and implementation of international agreements on MLA in criminal matters. The Ministry has also drafted a model agreement that can be potentially signed with foreign States. It includes the provisions regarding mutual assistance in the detection, seizure and forfeiture of proceeds of crime and compensation to victims. Once such agreement is signed and the internal procedures necessary for it to come into force are completed, its provisions have direct effect and their application does not require the adoption of any additional laws or amendments to the existing legal acts.

These provisions are included in Russia's agreements on MLA in criminal matters with the following G20 countries: Argentina, Brazil, Canada, China, India, Indonesia, Turkey and the United States.

**Holistic questions**

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

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<sup>248</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

## **B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

The Code of Criminal Procedure of the Russian Federation, which contains an exhaustive list of investigative and procedural actions, does not provide for the possibility to deny entry in the Russian Federation. Russia fulfills its obligations under the UN Convention Relating to the Status of Refugees of 1951 and the Protocol thereto of 1967 along with a series of other international instruments regarding the protection of human rights and persons seeking protection on the Russian territory.

The grounds and procedure for granting the status of refugee and the provision of temporary asylum are provided for by Federal Law of 2003 No. 4528-I “On Refugees”. According to article 2 of the Law, its provisions cannot be applied if:

- 1) there are serious grounds to believe that the applicant has committed a crime against peace, a war crime or a crime against humanity as defined by the international acts adopted with the purpose of taking measures against such crimes;
- 2) the applicant had committed a felony (serious crime) of non-political nature outside the territory of the Russian Federation before he/she was admitted to the territory of the Russian Federation as an asylum-seeker;
- 3) the applicant is responsible for the acts that contradict the goals and principles of the United Nations.

The grounds for refusing to consider the merits of his/her application for refugee status are the following:

- 1) if there are criminal proceedings against the applicant regarding the commitment of a crime on the territory of the Russian Federation;
- 2) if the applicant has left the State of his/her nationality (regular residence) and does not want to return to that State out of fear of being punished for having illegally left its territory or having committed any other offence there;
- 3) if the applicant was forced to illegally cross the border of the Russian Federation with the aim to apply for the refugee status and has not done so in line with the Russian legislation.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>249</sup>**

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>250</sup>**

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

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<sup>249</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>250</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>251</sup>**

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

**Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>252</sup>**

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>253</sup>**

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

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<sup>251</sup> You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

<sup>252</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>253</sup> You may refer to principle 3 in the “G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery” in providing your response.



## Holistic questions

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

- B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

- B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

The review of the implementation of chapters III “Criminalization and law enforcement” and IV “International cooperation” of the UNCAC by the Russian Federation was completed in 2013. The full report is published on the official website of the Prosecutor General's Office of the Russian Federation.

Currently, Russia is undergoing the review under the second cycle. The Prosecutor General's Office of the Russian Federation in cooperation with other competent national authorities completed the self-assessment questionnaire in 2018 and submitted additional information requested by the reviewing experts for the executive summary last June.

- C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

The Russian Federation adhered to the OECD Anti-Bribery Convention in 2012. The country is undergoing the monitoring of the implementation of the OECD anti-corruption standards under Phase 2. Based on the discussion of the progress report last December, the WGB found it was ready to conduct the Phase 3 evaluation of the Russian Federation, provided that Russia implemented a high-priority recommendation on the foreign bribery offence by a set deadline.

- C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

The Russian Federation is a member of the Group of States against Corruption of the Council of Europe. It has completed the third evaluation round on incriminations and the funding of political parties and electoral campaigns and is undergoing the fourth round focused on the prevention of corruption in respect of members of parliament, judges and prosecutors.

## **SAUDI ARABIA**

### **A. ASSET RECOVERY**

- A.1. Please provide a brief overview of the current asset recovery framework in place, including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

Asset recovery in Saudi Arabia is a crucial matter for the government of Saudi Arabia and the asset recovery framework undergoes constant reforms to adhere to the international best practices in this regard. Such constant reforms can be demonstrated in the most recent issued Royal

Decree of December 2019, which authorizes the Oversight and Anti-Corruption Authority (Nazaha) to pursue by all legal means the return and recovery of stolen assets through investigating, gathering evidence and prosecuting the involved individuals, in cooperation with the Ministry of Justice to ensure the return and recovery of assets in line with relevant domestic laws and international conventions and treaties.

In this regard, in December 2019, Nazaha established the Asset Recovery from Abroad Department as a designated department for the return and recovery of assets. This department cooperates closely with other relevant entities such as the International Cooperation Unit in the Public Prosecution.

Currently, Nazaha is outreaching to its counterparts in other countries to sign MoUs to facilitate **exchanging information of corruption related crimes in terms of enforcement, investigation, asset tracing and recovery.**

Further information on the Saudi Assets Recovery Framework can be found in [the Standing Committee for Legal Assistance Requests official website](#).

**A.2. If available, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

Saudi Arabia mainly rely on mutual legal assistance channels to recover stolen assets. Statistics on MLA requests can be found on the [latest FATF Mutual evaluation report](#).

An excerpt of the type of statistics included is provided below:

Table 33. Incoming MLA requests 2013-2017

Year	2013	2014	2015	2016	2017
Incoming requests	40	58	64	93	96

Table 34. Incoming and outgoing requests by case type 2016-2017

Case Type	2016		2017	
	Incoming	Outgoing	Incoming	Outgoing
Fraud	17	5	22	10
Cursing and insulting	11	2	16	8
Forgery	9	0	11	5
Customs evasion	4	0	2	1
Murder	3	0	2	0
Drugs	9	1	5	12
Notification of Judicial judgement	7	0	3	3
Terrorism financing	2	0	1	0
Terrorism activities	3	1	1	1
Sexual Assault	2	0	1	0
Money laundering	3	2	8	16
Blackmailing	3	2	1	4
Corruption			5	13
Bribery			3	9
Magic and sorcery	1	0	0	0

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

To address the weaknesses of the asset recovery and mutual legal assistance framework highlighted in the UNCAC IRM and FATF Mutual Evaluation, many steps were taken to improve the overall framework in place. This includes the following:

- Updating the legislative framework: Saudi Arabia continues to examine its legal framework in light of its international obligations. Recently, Saudi Arabia criminalized certain UNCAC offenses, including criminalizing foreign bribery to IOs officials. Furthermore, the legal framework review is also addressing the weaknesses highlighted in the UNCAC Cycles Review.

- Building capacity programs: These programs target not only government officials from Saudi Arabia but also officials from different Arab countries. Most programs are conducted on collaborations with international organizations such as the UNODC and the World Bank with the aims of sharing best practices on addressing the deficiencies identified in the UNCAC country reviews and FATF Mutual Evaluation reports.

- Strengthening international cooperation: A significant step that is worth highlighting in this regard is the improvement of the overall process for signing Memorandums of Understanding (MoU) with foreign counterparts. In late June 2020, the Council of Ministers issued Resolution No. (707), which permits the Oversight and Anti-Corruption Authority to commence negotiations with counterparts in other countries through signing-off MoU agreements, without seeking prior approval from the Royal Court per previous procedures. The approved Guiding Model of the MoU provides a standardized framework for cooperation between the Oversight and Anti-Corruption Authority and its counterparts to establish a strategic partnership in the areas of fighting and preventing corruption. Moreover, the Guiding Model offers technical cooperation with regard to conducting training courses, seminars, workshops and/or exchanging of expertise through programs or activities with the aim of fighting all forms and manifestations of corruption that fall under the administrative and financial domains, as per the scope of work agreed upon between the Oversight and Anti-Corruption Authority and its counterparts. Furthermore, such areas of cooperation include the exchange of information on corruption related crimes in terms of enforcement, investigation, asset-tracing and recovery, as mutually agreed upon between the Parties of the MoU.

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>254</sup>

### **A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>255</sup>.**

Although there are precedents where relevant entities have had some type of cooperation with counterpart authorities for suspected financial operations inside or outside Saudi Arabia, there remain a gap in this area on the international level, due to the lack of clear and adequate mechanisms in place for encouraging informal cooperation between relevant authorities and counterparts to engage in such peer-to-peer outreach in the preliminary stages of investigations. Nevertheless, Saudi Arabia has adopted a policy of providing “informal” assistance in reviewing requests for mutual legal assistance before their formal submission, and consults as a matter of practice with requesting States before rejecting or deferring requests per articles 15.4 and 18 of the rules of procedure of [the Standing Committee for Legal Assistance Requests](#).

### **A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

The lack of an existing platform or an inclusive global network that facilitates informal cooperation between anti-corruption law enforcement authorities represents a hurdle in pursuing such action due to the ambiguity and lack of knowledge and capacity of the overall process.

### **A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>256</sup>**

Yes, focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases have been established and the details for these focal points can be viewed under the directory of Competent National Authorities (CNA Directory) of the UNODC.

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<sup>254</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
- Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
- Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.

Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>255</sup> You may refer to principles 1 and 7e in the “Nine Key Principles on Asset recovery” in providing your response.

<sup>256</sup> You may refer to principle 7b in the “Nine Key Principles on Asset recovery” in providing your response

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

N/A

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>257</sup>**

Although there has been some type of experience in utilizing police networks in corruption cases such the INTERPOL in police-to-police cooperation, it has not been the same case when it comes to cooperation between non-police anti-corruption authorities. Despite the existence of many specialized anti-corruption networks, the non-existence of an inclusive global network and platform that covers all offences under the UNCAC as well as facilitates informal cooperation between competent anti-corruption authorities or anti-corruption law enforcement bodies significantly hinders the possibility of initiating such cooperation between officials from anti-corruption counterparts. That is, existing networks may prove to be crucial for some countries while not providing the same benefits for many other countries, including Saudi Arabia. This is due to many facts such as networks covering a particular offense (such as the OECD Network) or having limited membership networks (such as CARIN) to certain number of countries or regions. Hence, this represents one of the many aspects that prevents such use of existing networks in seeking cooperation on cross-border anti-corruption cases, including asset recovery.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

Please refer to answer in A8.

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<sup>257</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>258</sup>.**

Saudi Arabia allows non-conviction based (NCB) to take place for asset recovery purposes post the issuance of the Royal Decree of December 2019, which allows the Oversight and Anti-Corruption Authority to pursue non-conviction based confiscation for the return and recovery of stolen assets through investigating and gathering evidence, in cooperation with the Ministry of Justice, to ensure the return and recovery of assets in line with relevant domestic laws and international conventions and treaties when executing NCB requests with foreign counterparts. In this regard, on the regional level, the Riyadh Arab Agreement for Judicial Cooperation between the League of Arab States facilitates the pursuing of NCBs, in addition to MLAs and execution of cross-border convictions.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

Although international conventions for NCB confiscation is under development, the lack of clarity in the overall international process for the use of NCBs and plea mechanisms present a constraint in pursuing such technique in cross-border cases.

**A.12. Has your country implemented any other new measures which allow for increased flexibility in asset recovery which could be beneficial to share with the group?**

New implemented measures is Saudi Arabia that would facilitate flexibility in asset recovery and combating corruption include the introduction of structural arrangements for NCB confiscations for the first time in Saudi Arabia, as well as an organizational restructuring that was stipulated by a Royal Decree in December 2019, to merge all control, enforcement, and investigation bodies related to fighting financial and administrative corruption into one body, under the name of Oversight and Anti-Corruption Authority (Nazaha), that led to the the establishment of specialized departments and units at Nazaha, such as an asset recovery department and the investigation and criminal prosecution unit, to prosecute corrupt public officials, where the unit enjoys autonomy and independence through its direct reporting to the President of Nazaha.

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<sup>258</sup> You may refer to principle 4 in the “Nine Key Principles on Asset recovery” in providing your response

Having all relevant anti-corruption departments reporting to the President of Nazaha has facilitated exchanges of information in a timely manner and strengthened cooperation and synergies between all these departments, which in turns increased flexibility in asset recovery.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>259</sup> If so, please provide an overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if available<sup>260</sup>.**

With regard to the set-up of the assets recovery team, please refer to answer in A.12

It is premature to assess the impact of the anti-corruption authorities restructuring that was stipulated by a Royal Decree in December 2019.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

N/A

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>261</sup>**

Saudi Arabia conducts serious efforts in providing technical assistance to other jurisdictions who may lack the capacity, inadequate human, financial and technical resources through organizing regional training or mentorship programmes in partnership with international organization such as the UNODC and the World Bank. For example, in 2017 and 2019, the Oversight and Anti-Corruption Authority in Saudi Arabia, in partnership with the UNODC, jointly organized regional workshops in Riyadh to support enhancing the expertise and knowledge sharing of regional States Parties of the UNCAC. Experts from States Parties such as Bahrain, Kuwait, UAE, Jordan, Egypt, Sudan, and Morocco actively participated in these regional workshops. The training developed the expertise of the participants on the review methodology and included a detailed substantive discussion on the prevention of corruption and asset recovery (chapters II and V of UNCAC) as well as applied group exercises. The participating

<sup>259</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>260</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>261</sup> You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response



governmental experts exchanged knowledge and experiences on specific topics related to the prevention of corruption and asset recovery and to foster cooperation and information exchange. Furthermore, The Standing Committee for Legal Assistance Requests has held workshops in Saudi Arabia in the field of legal assistance, as well as regional meetings to exchange experiences. Nevertheless, we believe that improving the overall technical assistance and capacity building requires a global efforts under an inclusive global network or platform for many countries who lack the expertise in such areas to benefit from the more advanced countries in the global fight against corruption.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide an overview of such efforts<sup>262</sup>.**

The non-existence of a global mechanism that enables anti-corruption law enforcement authorities hinders Saudi Arabia of being able to collect or share information on asset recovery.

Although Saudi Arabia constantly provides its good practices through contributing working papers to working groups under the UNCAC umbrella, which are also available on the UNODC website, the mechanisms and organizational structure of other existing bodies such as the OECD Anti-Bribery Working Group, CARIN, or the other similar networks, do not provide many non-member countries with the benefits of collecting anti-corruption cases on such forums, while at the same time, some forums on some level, will allow non-member countries to share but never collect information. Thus, the functionality of the system in such forums is not ideal in this regard, hence, one way to address such malfunction in the system is through enhancing the informal cooperation under a UN umbrella, where States Parties to the UNCAC can all benefit from collecting and sharing not only information on corruption offenses, but also capacity building and know-how means in knowledge and technical assistance to reflect the true spirit in the fight against corruption through enhancing cooperation at all levels and across all corruption offenses under UNCAC.

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<sup>262</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

Please refer to answer in A.16

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>263</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? Please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>264</sup>**

Saudi Arabia provides clear and accessible information regarding the procedural requirements for mutual legal assistance and recovery of assets, and to ensuring prompt transmission of requests by the relevant authority to the executing authorities, through open and direct lines of communication between central authorities, and encouraging whenever possible, mechanisms for informal cooperation before the submission of a formal MLA request.

For more information, please visit [the Standing Committee for Legal Assistance Requests official website](#).

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and statistics if possible.<sup>265</sup>**

Saudi Arabia recognizes the importance of joint investigation, especially in transnational crimes. Although requests for joint investigation are handled through [the Standing Committee for Legal Assistance Requests](#) channel, Saudi Arabia encourages countries to informally consult with relevant authorities before submitting MLA request,

<sup>263</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>264</sup> You may refer to principle 3 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

<sup>265</sup> You may refer to principle 4 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

especially in case of urgency in order to stop criminals from benefiting from the proceeds of their crimes.

**Statistics:**

**A- Joint Investigations:**

Joint investigation From 1/4/2019 to 30/6/2019	
Issued joint investigation	12
Received joint investigation	36

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up of such mechanisms.**

The most common issue in conducting joint investigations or in setting up such mechanisms is the **obscurity** surrounding identifying the specialized anti-corruption authorities or bodies when initiating a request for joint or parallel investigations with other jurisdictions. Such obscurity, we believe is generated by the lack of knowledge on the importance of informal cooperation between cross-border jurisdictions. This has resulted in weakening the means to strengthening relationships between anti-corruption authorities, in addition leading to neglecting the creation of a culture that focuses on building informal cooperation between anti-corruption authorities as a crucial mean in the preliminary stages of investigations at the outset of initiating formal procedures and channels.

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>266</sup>**

Please refer to answer in A.3, A.10, and A12.

<sup>266</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

## Holistic questions

### **A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

- 1) One of the major weakness is the overreliance on the MLA channels before exercising the informal cooperation channels at the outset of initiating investigations, whether joint or parallel.
- 2) The lack of and almost non-existence of clear mechanisms and procedures for countries when it comes to seeking assistance for the return and recovery of asset to its legitimate owners. For example, the existence of a unified platform or network under the UN body would address such challenge through identifying the steps for each country seeking such assistance through initiating informal cooperation between States Parties to the UNCAC prior to pursuing formal procedures through MLA channels.
- 3) While it is increasingly understood that informal cooperation between law enforcement authorities is essential to counter different forms of crimes, including corruption, many authorities, particularly in developing or less developed countries, are not empowered to engage in such informal cooperation to facilitate the MLA procedures, which is an area that could be addressed by the G20 ACWG in the future.

### **A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Future G20 Presidencies may look at addressing gaps or weaknesses through examining the G20 set of high-level principles and initiating an update of the HLPs to accommodate the changing mechanism of the contexts in which the HLPs are developed to address, which would reflect the expected role of the G20 to lead by example by constantly updating its produced work to meet new and altering challenges. By the token, produced compendiums should be based on empirical evidence approach and analysis conducted by international organizations and reputable institutions to ensure that the work of the G20 would address the challenges faced by all, including those challenges faced by less developed countries. In doing so, it would be ensured that the work and efforts of the G20 ACWG is promoted to the international community.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

Please refer to answer under A10.

**B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

The legal framework for the denial of entry revolves around subjecting the entry on the assessment of applications taking into account crimes such as terrorism or money laundering. Nevertheless, since Saudi Arabia is a host of two holy Islamic sites, individuals, may, for a limited time only, be granted entry to perform Islamic practices such as Hajj or Umra, given the assessment of the authorities of the nature and seriousness of the crimes committed by those individuals. Having said that, immigration and visa laws undergo constant reviews by the designated authorities to address deficiencies and to adapt to the changing circumstances.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

Please see B1.

## Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>267</sup>

### **B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>268</sup>**

Although there are precedents for denying the entry of individuals under the current laws, disclosure of such information is not possible due to legal reasons.

### **B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

Constraints can be the non-existence of a definition for corruption, in addition to the non-existence of a global platform or network for countries to share information on corruption and corrupt individuals, aside from INTERPOL. Also, many countries do not have the legal framework for the systematic denial of entry networks, in addition to the lack of capacity building and knowledge sharing for the available tools and instruments, which represents a lack of clear frameworks and mechanisms.

### **B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>269</sup>**

Although there are precedents for denying the entry of individuals under the current laws, disclosure of such information is not possible due to legal reasons.

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<sup>267</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>268</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

<sup>269</sup> You may refer to principles 6 & 7 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

- B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

This is an area that is in need of collaboration and sharing of experiences by countries to generate a clear map of factors and indicators for constraints or barriers.

#### Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>270</sup>

- B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>271</sup>**

Please refer to B1.

- B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

This is an area that is in need of collaboration and sharing of experiences by countries to generate a clear map of factors and indicators for constraints or barriers.

#### Holistic questions

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

This particular subject is underdeveloped and the ACWG is encouraged through presidencies to address this issue.

<sup>270</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>271</sup> You may refer to principle 3 in the "G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery" in providing your response.

**B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Possible ways to address this issue can be through establishing regular meetings between international designated immigration and denial of entry practitioners to develop a set of good practices in this area. Moreover, international organizations can play a critical role in this area through taking the lead on this subject and develop, for example, best practices guide and update it regularly in this field.

**B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

The Riyadh initiative for enhancing international anti-corruption law enforcement cooperation will enhance the informal cooperation in this area between law enforcement authorities upon its launching. Also, the Riyadh Arab Agreement for Judicial Cooperation between States of the Arab League is a juridical initiative that is worth highlighting as it can play a significant role in enforcing cross-border criminal convictions between States of the Arab League.

## **C. GENERAL QUESTIONS**

**C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed).**

Saudi Arabia has completed the first and second cycles:  
The First cycle was completed in 2015.  
The Second cycle was completed 2018.

**C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

After consultation with the OECD and given that non-members of the OECD need, as a first step towards joining the Convention, to become full participants in its Working Group on Bribery (WGB), as stipulated



in Article 13.1 of the OECD Anti-Bribery Convention, Saudi Arabia has proceeded with the necessary procedures to become a participant in the OECD WGB in International Business transactions. Accordingly, we have officially expressed to the OECD Saudi Arabia's interest in joining the WGB and requested from the OECD to send us an invitation letter in this regard.

**C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

Please refer to A1, A3, A10, and A12.

## **SOUTH AFRICA**

### **A. ASSET RECOVERY**

**A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

A dedicated Asset Recovery Unit was established by the National Prosecuting Authority. This Unit is mandated to deal specifically with national asset recovery efforts.

A close working relationship exists with law enforcement agencies and the Financial Intelligence Unit to ensure sharing of information.

It is important to note that this dedicated Asset Recovery Unit plays a part in the continuous development of legislation and ensuring that a set a good jurisprudence is developed in the area of asset recovery.

#### **NATIONAL PROSECUTING AUTHORITY OF SOUTH AFRICA**

##### **Independence**

The National Prosecuting Authority of South Africa (NPA) was established in terms of section 179 of the Constitution of the Republic of South Africa, 1996 (Constitution).

The NPA is guided by the Constitution and seeks to ensures justice for the victims of crime by prosecuting without fear, favour and/or prejudice and by working with its partners and the public to solve and prevent crime.

The position and independence of the NPA in the broader South African legal system structure was set out by the Supreme Court of Appeal in: The Minister for Justice and Constitutional Development v Moleko [2008] 3 All SA 47 (SCA), at paragraph 18 thereof on page 52, as follows:

- The National Prosecuting Authority Act, 32 of 1998 (NPA Act) provides that the Minister for Justice and Constitutional Development exercises final responsibility over the NPA Authority but only in accordance with the provisions of the NPA Act (s 33(1)).
- The National Director of Public Prosecutions (NDPP) must, at the request of the Minister, inter alia furnish him with information in respect of any matter dealt with by the NDPP or any Director of Public Prosecutions (DPP), and with reasons for any decision taken by a DPP, 'in the exercise of their powers, the carrying out of their duties and the performance of their functions' (ss 33(2)(a) and (b)).
- The NDPP must furnish the Minister, at his request, with information regarding the prosecution policy and the policy directives determined and issued by the NDPP (ss 33(2)(c) and (d)).
- The NPA is only accountable 'to Parliament in respect of its powers, functions and duties under this Act, including decisions regarding the institution of prosecutions' (s 35(1)).

#### Appointment of NDPP

The Constitution requires that the NDPP be appointed by the President as head of the National Executive.

The President does however have a discretion to regulate this recruitment and appointment process. This was demonstrated with the appointment of the current NDPP in that the assistance of a panel of individual experts from the legal fraternity and 'State Institutions Supporting Constitutional Democracy' were invited in recommending suitable candidates.

#### The Asset Forfeiture Unit of the NPA

In 1999, the NPA established the Asset Forfeiture Unit (AFU) to ensure the implementation of Prevention of Organised Crime Act, Act 121 of 1998 (POCA).

The mandate of the Unit is to take the profit out of crime by utilising both conviction and non-conviction-based confiscation and forfeiture proceedings.

POCA applies to all crime. The legal architecture of POCA applies to all crimes, not only corruption. The purpose of POCA is certainly to combat the specific evils associated with organised crime but it is not the only purpose thereof and its provisions are designed to reach far beyond organised crime and apply also to cases of individual wrongdoing.

This domestic non-conviction based forfeiture powers can, and have, been used in cases where the criminality was committed in another country.

Further, POCA is part of the domestic implementation of South Africa's international obligations. This position was concisely captured by the South African Constitutional Court in the matter of NDPP v Mohamed NO and Others 2002 (4) SA 843 (CC) at para 14: 'The present Act (and

particularly Chapters 5 and 6 thereof) represents the culmination of a protracted process of law reform which has sought to give effect to South Africa's international obligation to ensure that criminals do not benefit from their crimes.'

POCA therefore provides the necessary legislative mechanism to facilitate the forfeiture of assets in accordance with the Republic's existing and prospective international obligations. POCA also signifies an intention on the part of Government to comply with current international practice and to facilitate international co-operation in the fight against crime.

South Africa does not require any international agreement to support our ability to provide assistance to a requesting State in relation to asset recovery. South African domestic law can apply to any request for assistance in an asset recovery case. South Africa also enters into general and ad hoc agreements, on a case-to-case basis, if it is a requirement of the other State.

In practice, South Africa will provide assistance and with an underlying understanding that, the requested state will be entitled to deduct its costs in securing the property.

In addition, the parties will negotiate whether the requested state will retain a share of the confiscated property.

There is also nothing preventing South Africa to enter into bi-lateral and multi-lateral agreements regulating this issue.

The Unit is comprised of managers, advocates, state attorneys, financial investigators, administrative support staff as well as enforcement officers who are responsible for the enforcement of asset forfeiture court orders.

Both advocates and the AFU state attorneys are responsible for preparing cases for court.

Financial investigators are responsible for conducting financial related investigations such as asset tracking and analysis of cash flows. The Unit is also assisted by financial investigators of the South African Police Services (SAPS) who fall under the Directorate for Priority Crimes Investigations (DPCI) of the SAPS.

International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996) (ICCMA).

The International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996) (ICCMA) governs the provision of mutual legal assistance by South Africa.

Chapter 4 thereof concerns confiscation and transfer of proceeds of crime. In terms of the ICCMA, assistance can be provided to requesting States, when a formal letter of request has been issued.

It is a requirement to apply for the letter of request as part of an asset forfeiture application which would then be issued by the Court in terms of the ICCMA (see sec 2, 19 and 23). Only upon the Court granting such an application, is the letter sent to the Director-General for sending on to the requested State.

The Special Investigating Unit and Special Tribunal Act, 74 of 1996

The President, in terms of the section 2(1) of the SIU founding legislation, The Special Investigating Units and Special Tribunals Act 74 OF 1996, is empowered to establish a Special Tribunal (ST).

The mandate of the ST is to adjudicate upon civil matters emanating from investigations by SIU. The ST may make the following orders: issue suspension orders, interlocutory orders or interdicts on application by such Unit or party, make any order, which it deems appropriate to give effect to any ruling or decision given or made by it, and make any order, which it deems appropriate as to costs.

The principle objective for the re-establishment of the ST is to expedite the finalizations of civil matters instituted by the SIU. The ST will now exclusively deal only with SIU litigation and it will no longer be necessary for the SIU to compete with other litigants for trial dates and availability of court facilities. The ST operate like a High Court.

Based on the envisaged speedy finalization of civil matters, the SIU will increase the outcomes of asset recovery. This implies that judgments can effectively be executed and the risk of dissipation/ alienation of assets to avoid satisfaction of the orders will be drastically reduced. In other words, the SIU will substantially increase the return of the proceeds of crime to the fiscus.

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

Performance of the Asset Forfeiture Unit

The statistics relating to the recovery of assets, provided hereunder, represent the period of 1 April 2015 to end July 2020.

During this period the Asset Forfeiture Unit obtained 1974 Freezing Orders (consisting of a combination of restraints in terms of Chapter 5 and preservations in terms of Chapter 6 of the POCA. The value of the freezing orders amounted to R9.011 Billion Rand.

The AFU completed a combined total of 2409 confiscations in terms of Chapter 5 and forfeitures in terms of Chapter 6 of POCA. The total value of the completed forfeitures amounted to R4.7 Billion Rand.

R3.65 Billion Rand was recovered and returned to victims and R610 million was paid into the Criminal Assets Recovery Account. This brings the total amount recovered in terms of POCA to R4.3 billion Rand.

<b>2015 FY to July 2020</b>	Number of completed forfeitures	2409
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	Value of completed forfeitures	4 707 205 071	
	Number of freezing orders	1974	
	Value of freezing orders	9 011 188 561	
	Value of Recoveries, POCA	4 258 025 022	

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

Both mentioned reviews are still ongoing and hence have not been concluded.

**Questions relevant to the Nine Key Principles on Asset Recovery<sup>272</sup>**

**A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>273</sup>.**

South African domestic law can apply to any request for assistance in an asset recovery cases. South Africa also enters into general and ad hoc agreements, on a case-to-case basis, if it is a requirement of the other State.

In practice, South Africa will provide assistance and with an underlying understanding that, the requested state will be entitled to deduct its costs in securing the property.

In addition, the parties will negotiate whether the requested state will retain a share of the confiscated property. There is also nothing preventing South Africa to enter into bi-lateral and multi-lateral agreements regulating this issue.

Nielsen/Hayat

In October 2018, the Government of the Republic of South Africa

<sup>272</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>273</sup> You may refer to principles 1 and 7e in the “Nine Key Principles on Asset recovery” in providing your response.

received a request for the extradition of Ms B Nielsen and her son J Hayat from the Government of Denmark.

The reason for the extradition was that Nielsen, who was previous employee of the National Board of Social Services of the Government of Denmark, committed 'data fraud' in terms of Danish criminal law, in Denmark in that she:

- Was tasked with the evaluation, approval and payment of all subsidiary project funding applications;

- In her capacity as employee of the National Board of Social Services set up fictitious subsidiary projects with fictitious recipients and changed the account details of actual subsidiary project recipients to reflect her own banking details;

- Transferred the criminal proceeds of the data fraud into accounts, held in her name, at the Danish banks of Nordea and Danske Bank;

- During the period 5 July 2007 to 19 March 2012, transferred a sum of DKK1 628 511.91, the current equivalent of approximately R3 662 173, from her Danske bank account to a bank account held in South African.

- During the period of 1 December 2008 to 28 September 2018, and in 37 separate transactions, transferred a sum of EUR 984 025, the current equivalent of approximately R16 430 017, from her Nordea bank account a bank account held in South African.

In South Africa, Nielsen used the part of the funds to purchase movable of immovable property either in her name or the name of her son Hayat.

The Asset Forfeiture Unit worked closely with the legal and investigating officials of the Office of the Danish State Prosecutor for Serious Economic and International Crime to finalise the initial draft preservation application for freezing and asset recovery.

To date that the Asset Forfeiture Unit of the National Prosecuting Authority preserved the assets listed below to the value of approximately R12 million:

- R 6 million held in different South African bank accounts in the name of Hayat and another person.

- R235 000 held in a South African bank account of the second hand car dealer in respect of a vehicles sold by Hayat.

- Immovable property to the value of R4 million located in the town of Palaborwa in the Limpopo Province of South Africa

- R2 million held by attorneys in trust in respect of the sale of immovable property by Hayat

- R648 730 confiscated from Nielsen during her arrest.

These liquid assets, or the money value thereof after sale, will be

repatriated to Denmark after forfeiture.

Bawden

On 26 January 2017 an Absa cheque account was opened at Mooi River branch by a certain David Charles Bawden (Bawden) holding a Malawian passport.

On 12 July 2017, the Absa cheque account was credited with an international transfer from Germany amounting to R1 252 948.52. The transfer relates to a Swift transfer in excess of €82 084.25 which originated from Deutsche Bank AG, Frankfurt Am Main.

According to the Swift message the originator of the transfer is a life insurance company based in Germany called Alte Leibzifer Lebensversicherung, Oberusel, Germany. Bawden succeeded to withdraw R3 000 a day later at an ATM and a further R250 000 at Absa Fourways. A hold was put onto the account by Absa, pending further investigation as the transaction appeared to be suspicious.

Further investigations by Absa's forensics determined that the Malawian passport used to open the account is fraudulent as the specific passport was issued to a SB White with date of birth 11 January 1978 and not Bawden.

The same individual purporting to be Bawden opened 8 other accounts with Absa using different passports of the Democratic Republic of Congo and Republic of Malawi. The passports bear different names, however they contain the photo of the same individual. The account holder was requested to supply the source of the origins of the funds but failed to do so.

The suspect is in all likelihood part of a known syndicate which targets South African residents with investments or banking accounts abroad by intercepting their bank statements and/or banking information in the mail stream.

Once the syndicate receives the information, fraudulent bank accounts are opened in the name of the individual by the use of false passports from foreign African countries. Shortly after the accounts are opened, substantial amounts of funds are solicited (under fraudulent pretences) from foreign banks by individuals who purport to be the genuine account holders. The funds received from the foreign banks are then paid into the fraudulently opened accounts from where it is withdrawn.

On 6 November 2017, the AFU obtained a preservation order as per case 75129/17. On 29 May 2018 a forfeiture order was granted and on 2 August 2018 and amount of R997 924.55 was repatriated to the victim Alte Leibzifer Lebensversicherung in Germany.



**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

- Information must be provided timeously to prevent dissipation of assets.
- Full and accurate information in respect of the accused/defendant of whom the information/action is sought.
- Full and accurate particulars of legal entities of whom the information/action is sought.
- Adherence to the requested countries legislative framework.
- Summary of the suspected offence and not merely the requesting countries classification of the crime.
- Translation if necessary and required.
- The process of obtaining information/ evidence from foreign jurisdictions are cumbersome and frustrates investigations, prosecutions as well as recovery of losses.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>274</sup>**

South Africa is part of the ARINSA network and an observer to the CARIN network. These networks provide for certain types of information sharing:

- ARINSA is a multi-agency informal network between participating countries in Southern Africa which exchanges information, models legislation and county laws in asset forfeiture, confiscations and money laundering.
- All ARINSA member countries have an investigator and prosecutor that networks and shares with counterparts in depriving criminals of the proceeds of crime.
- The Secretariat of ARINSA is located in Asset Forfeiture Unit: Head Office of the National Prosecuting Authority of South Africa.
- CARIN is an informal network of contacts and a co-operative group concerned with all aspects of confiscating the proceeds of crime.
- CARIN is linked to similar asset recovery networks in Southern Africa, Latin-America & Asia Pacific.

The following benefits of the ARINSA & CARIN needs specific reference:

- These networks have proven guidelines and best practices that ensures effective implementation.
- Proper information is shared through established nodal points to ensure the information reaches the correct governmental agency.

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<sup>274</sup> You may refer to principle 7b in the “Nine Key Principles on Asset recovery” in providing your response



- Promotes the element of flexibility in information sharing.

The Department of Justice and Correctional Development is the central authority for formal MLA requests. The contact details of the AFU in South Africa is published on the NPA website.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

- Different government departments are responsible for formal and informal assistance and coordination remains a challenge.

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>275</sup>**

South Africa's experience in utilising the existing networks has been positive. A number of cases were brought to court based on informal requests. Please refer to the response in A4 reflecting 2 such successful interventions.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

- Language barrier.
- Understating both requesting and requested states domestic legislation.
- Requests are not made timeously and hence the assets are dissipated.
- Delays in supplying the relevant information.

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<sup>275</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>276</sup>.**

Chapter 6 of POCA (Non conviction based)

Preservation orders

Section 38 of the POCA deals with preservation orders.

In terms of section 38(1) the National Director of Public Prosecutions may by way of an *ex parte* application apply to a High Court for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property.

Section 38(2) provides that the High Court shall make an order referred to in section 38(1) if there are reasonable grounds to believe that the property concerned-

- (a) is an instrumentality of an offence referred to in Schedule 1 to POCA;
- (b) is the proceeds of unlawful activities; or
- (c) is property associated with terrorist and related activities.

Forfeiture orders

Section 48 of the POCA deals with applications for forfeiture orders.

Section 48(1) provides that if a preservation of property order is in force the National Director may apply to a High Court for an order forfeiting to the State all or any of the property that is subject to the preservation of property order.

In terms of section 48(2) the National Director must give 14 days' notice of such an application to every person who entered an appearance in terms of section 39(3).

Any person who entered such an appearance may appear at the application to oppose the making of the order or to apply for an order excluding his or her interest in that property from the operation of the order or varying the operation of the order in respect of that property and may adduce evidence at the hearing of the application (section 48(4)).

In terms of section 52(1) of the POCA a High Court considering a forfeiture order, may on application make an order excluding certain interests of persons in property from the operation of a forfeiture order.

In regard to the registration of foreign freezing orders. Competent Authorities are in a position to act on an *ex parte* basis.

The NCB provision applies broadly and forfeiture of instrumentalities applies to the offences list in Schedule 1 of the POCA.

<sup>276</sup> You may refer to principle 4 in the "Nine Key Principles on Asset recovery" in providing your response

NCB forfeiture provisions are utilised widely in domestic cases. Below are examples of NCB forfeiture provisions utilised on foreign requests.

**NDPP in re immovable property held by O I Sunmola (Preservation & Forfeiture)**

Olayinka Ilumisa Sunmola (Sunmola), an adult male Nigerian national was arrested on 9 August 2014 at London Heathrow Airport in response to an Interpol Red Notice issued by the Washington DC Interpol office on 2 July 2014. He was indicted in the US in respect of some of his criminal activities. Sunmola and his accomplices defrauded American citizens and businesses. The fraudulent scheme was conducted from within South Africa. The *modus operandi* involved the use of fictitious identities and other tricks that enabled Sunmola and his accomplices to gain an unfair and dishonest advantage over victims located within the Southern District of Illinois and elsewhere in the U.S.

On 20 November 2014 the NPA's Asset Forfeiture Unit obtained a preservation of property order, in the High Court: Pretoria, for immovable properties registered in Sunmola's name and the contents thereof on the grounds that it represents the proceeds of unlawful activities or instrumentalities of offences listed under Schedule 1 to POCA, or both.

On 1 April 2015 the AFU obtained a forfeiture order in respect of the properties. The curator sold the properties and the funds totalling approximately R2 823 336.82 were returned to the US for victim compensation.

Subsequent to further investigations, on 13 October 2015 the AFU also obtained a preservation of property order in terms whereof it seized funds totalling R19 730.10 in an ABSA bank account held in the name of Sunmola. A forfeiture order was subsequently granted on 4 March 2016 in respect of these funds where after it was returned to the US for victim compensation.

The seizure was the result of a joint multi-agency investigation between the South African Police Services' Directorate for Priority Crimes Investigation Unit, the United States Homeland Security, the United States Postal Inspection Services and the AFU.

According to US authorities, on 3 March 2016, Sunmola pleaded guilty.

**Von Creytz (Preservation & Forfeiture)**

On 26 April 2017, an Absa Bank account at the Woodstock branch by a female: Christiane Von Creytz (Von Creytz) holding a Swaziland passport.

On 22 June 2017, the said account was credited with an international transfer from Germany amounting to R716 835.65. The transaction appeared to be suspicious as it displayed signs of a *modus operandi* used by a syndicate who open accounts with false passports to solicit funds by fraudulent pretences from foreign banks.

The bank subsequently placed a hold on the account pending further investigations. The account holder, Von Creytz was requested to supply evidence of the source of the funds. She provided letters from AXA Lebensversicherung AG in Cologne, Germany which shows a €50 000 (Fifty thousand Euro) pay-out from a life insurance policy 24914136001.

According to the letters, she is residing at 135 Blaauwberg Road, Table View, Cape Town.

Further investigation revealed that the Swaziland passport in the name of Christiane Von Creytz was never issued by the Kingdom of Swaziland and it is thus fake.

The genuine Christiane Von Creytz was traced who confirmed that she is the holder of the life insurance policy 24914136001 at AXA Lebensversicherung AG but that she never requested a pay-out of the policy. She further confirmed that she never opened an Absa Bank at Woodstock and that she does not reside at 135 Blaauwberg Road, Table View. She also confirmed that the signature on the request for the pay-out is not hers and is forged.

It was pleaded, that the funds in the Absa cheque account represented the proceeds of unlawful activities, namely, the common law offences of fraud, theft and money laundering in contravention of the provisions of chapter 3 of POCA.

On 1 September 2017 the AFU obtained a preservation order as per case number 6026/17. On 2 March 2018 the AFU was granted a forfeiture order and on 16 April 2018 an amount of R682 624 was returned to the victim AXA Lebensversicherung AG in Germany.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

There are no barriers in implementing NCB forfeiture provisions in South Africa.

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

- South Africa does not require a formal MLA request to utilise POCA provisions to freeze and forfeit funds domestically.
- South Africa does not require a sharing agreement to return stolen assets but will enter into such an agreement if requested.
- In February 2019, the President appointed and made functional the Special Investigating Unit Tribunal to fast-track the finalisation of matters that the Special Investigating Unit (SIU) refers for civil litigation following conclusion of their investigations. These are matters where the SIU would have referred to civil litigation contracts entered into by state institutions to be declared irregularly invalid or set aside. Fast-tracking these matters through the Special Tribunal will enable the SIU to recover monies and or assets lost by state institutions through irregular and corrupt means; thus ensuring that those who are responsible for the loss of

monies and or assets by state institutions are held accountable. The litigation process includes both public and private sectors persons and entities.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>277</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>278</sup>**

Please refer to the responses in A1 and A2

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

- Open lines of communication between AF prosecutors and criminal prosecutors.
- Clear roles and responsibilities between AF investigation and police investigators.
- Investigative powers for AF investigators.

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>279</sup>**

South Africa plays a vital role in the ARINSA network. South Africa serves as the secretariat of the ARINSA network.

South Africa is co-chair of ARINSA network which is a formal structure under the auspices of the UNODC promoting co-operation between its members (mostly on a quick and efficient informal basis).

Furthermore, AFU of the NPA of South Africa hosts the Prosecutor Placement Program (PPP) in terms of which asset forfeiture lawyers and judges/magistrates are trained in Asset Forfeiture and placed in the regions to actively participate in asset forfeiture. This program is an initiative of ARINSA and the AFU.

In the past 6 months South Arica has provided technical support to Mozambique in assessing their asset forfeiture legislation and advising on proposed amendments to order to meet the international obligations and domestic needs.

<sup>277</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>278</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>279</sup> You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

South Africa is currently in the process of providing technical support to Eswatini in an appeal on an asset forfeiture cases to the Supreme court.

Over and above the specific examples South Africa, on an ad hoc basis, provides advise on legal issue s and as and when requested by the ARINSA member countries.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>280</sup>.**

Information is shared with existing forums such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group and networks such as CARIN, STAR focal points and ARINSA.

Aggregated annual statistics on asset recovery information would be kept by the National Prosecuting Authority and would be reported on in the Annual Report of the organisation.

The details of this information may be requested from the National Prosecuting Authority in terms of the provisions of the Promotion of Access to Information Act, 2 of 2000 (PAIA).

South Africa is also a member of the Asset Recovery Inter-Agency Network for Southern Africa (ARINSA). South Africa also holds the Secretariat for ARINSA. This platform enables participating members to exchange information, model legislation and country laws in asset forfeiture, confiscation and money laundering.

South Africa does not require any international agreement to support our ability to provide assistance to a requesting State in relation to asset recovery.

South African domestic law can apply to any request for assistance in an asset recovery case. South Africa also enters into general and ad hoc agreements, on a case to case basis, if it is a requirement of the other State.

In this regard note that South Africa is part of the ARINSA network and an observer to the CARIN network. These networks provide for certain types of information sharing:

The following benefits of the ARINSA & CARIN needs specific reference:

- These networks have proven guidelines and best practices that ensures effective implementation.
- Proper information is shared through established nodal points to ensure the information reaches the correct governmental agency.

<sup>280</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response

- Promotes the element of flexibility in information sharing.
- Prosecutor Placement Program - Is still one of the most popular and valued programs in the ARINSA network where South Africa hosts foreign prosecutors and train them on live cases. We are currently considering to conduct a similar program for investigators

Furthermore, note that South Africa does however negotiate and conclude agreements, on an individual case basis or more general basis, to facilitate individual cases and promote asset recovery co-operation.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

- High costs of asset management during the recovery process
- Lack of request for return of assets from country of origin
- Difficulties in negotiating mutually acceptable terms for an agreement under UNCAC Art. 57(5) or an asset-sharing agreement
- Non-responsive or overly broad MLA requests

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>281</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>282</sup>**

Regarding guidance issued by South Africa to requesting States on how to formulate requests or on its requirements for asset recovery, reference is made to the G-20 Step-By-Step Guide for Asset Recovery in South Africa issued in 2013. South African authorities confirmed that the AFU of the NPA has published an online 'step-by-step' guide in this regard, which is accessible from the G-20 website.

<sup>281</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>282</sup> You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>283</sup>**

South Africa has various mechanisms for joint, related or parallel investigations for example:

Superior Courts Act, 10 of 2013

Section 21 of the Superior Courts Act, 10 of 2013, allows any State Party and/or foreign individual, as a litigant, to initiate any action and/or application procedure in the South Africa courts.

Furthermore, any affected foreign State Party and/or individual, with a vested and/or direct and substantial interest in the outcome of any dispute, may approach a South African Court to be joined as litigant or interested party to any dispute.

Note that in terms of section 173 of the 1996 Constitution, all South African High Courts have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.

POCA

In terms of Chapters 5 and 6 of POCA, only the NDPP is allowed to initiate or institute asset forfeiture proceedings.

However, POCA specifically allows for parties, either foreign or domestic, with an interest in the property to claim the property in the processes described hereunder.

Chapter 5 of POCA (Conviction based)

1 In terms of section 24 of the POCA a High Court may, for purposes of issuing a confiscation order, enquire into any benefit a convicted person may have derived from an offence.

Where such a convicted person dies or absconds before a confiscation order is made, the court may, among others, make a confiscation order or authorise the realisation of the property.

Further, section 24(4) of the POCA provides that the High Court shall not make such orders, unless it has afforded all persons having any interest in the property, an opportunity to make presentations to it in connection with the making of such orders.

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<sup>283</sup> You may refer to principle 4 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response



In terms of section 26 of the POCA, a High Court may on application by the

National Director of Public Prosecutions make a restraint order in respect of realisable property.

In terms of section 26(10) of the POCA, a person affected by such a restraint order may apply for the rescission of the order.

In terms of section 29 of the POCA, a High Court may make orders in respect of immovable property which is subject to a restraint order.

In terms of section 29(6) of the POCA any person affected by such an order may at any time apply for the rescission of the order.

In terms of section 30 of the POCA, a High Court may, on the application of the National Director of Public Prosecutions, make an order in respect of the realisation of property which is under a confiscation order.

In terms of sections 30(3) and (4) of the POCA the Court shall not make such an order unless it has afforded all persons known to have an interest in the property concerned an opportunity to make representations in connection with the realisation of that property.

Chapter 6 of POCA (Non conviction based)

Section 48 of the POCA deals with applications for forfeiture orders.

Section 48(1) provides that if a preservation of property order is in force the National Director may apply to a High Court for an order forfeiting to the State all or any of the property that is subject to the preservation of property order.

In terms of section 48(2) the National Director must give 14 days' notice of such an application to every person who entered an appearance in terms of section 39(3).

Any person who entered such an appearance may appear at the application to oppose the making of the order or to apply for an order excluding his or her interest in that property from the operation of the order or varying the operation of the order in respect of that property and may adduce evidence at the hearing of the application (section 48(4)).

In terms of section 52(1) of the POCA a High Court considering a forfeiture order, may on application make an order excluding certain interests of persons in property from the operation of a forfeiture order.

South Africa allows its courts, both lower and higher, to award compensation and restitution to parties, both foreign and domestic.

Sections 300 – 301 of Chapter 29, of the Criminal Procedure Act, 51 of 1977 (CPA), provides as follows:

Section 300(1) of the CPA provides that where a person is convicted by a superior court, a regional court or a magistrate's court of an offence which has caused damage to or loss of property (including money) belonging to some other person, the court in question may, upon the application of the injured person or of the prosecutor acting on the instructions of the

injured person, forthwith award the injured person compensation for such damage or loss.

Section 301 of the CPA makes provision for compensation to an innocent purchaser of property unlawfully obtained.

Section 297 of the CPA allows for the imposition, in deserving cases, of compensation as part of the punishment, as a suspensive condition to the sentence.

Examples:

NDPP VS NIELSEN AND HAYAT.

The AFU assisted Denmark in recovering monies and property bought with proceeds of fraud committed by Nielsen whilst in the employ of the Danish Government. She created false beneficiaries of social grants and paid the funds to herself. The AFU obtained a number of preservation orders in the previous financial years. The AFU obtained a forfeiture to the value of R3.89 million on 27 June 2019. Other forfeiture orders are in the process of being obtained. The recovered monies will be returned to Denmark. Danish authorities informed the NPA that Nielsen was sentenced 6 ½ years in prison.

BOBROFF MATTER

Ronald and Darren Bobroff carried on business as directors of Ronald Bobroff & Partners Inc (The Firm) where they practised as specialist personal injury attorneys.

They had entered into multiple fee agreements with their clients. In some instances, up to three agreements were signed with each client: These agreements were, inter alia:

- a. Percentage contingency fee agreements also known as common law contingency fee agreements. In terms of this contingency fee agreement The Firm was entitled to a fee amounting to 25% to 30% plus VAT of the amount recovered on behalf of the client;
- b. An attorney and own client fee agreement. In terms of this agreement the Firm is entitled to an hourly fee exclusive of VAT in respect of any work done on the clients behalf;
- c. A “no win – no fee” mandate. In terms of this agreement the firm is entitled to an hourly fee with respect to any work done by professional staff and non-professional services;
- d. A contingency fees agreement in terms of the Contingency Fees Act 66 of 1997 (the CFA). In terms of this agreement the Firm was entitled to fees in respect of all time spent at an agreed rate per hour plus VAT or part thereof pro rata and a success fee equal to double the normal fee in respect of all time spent at the hourly rate. The fee will charged to the client will either be as calculated at the hourly rate stated earlier and doubled, or will be equal to an amount of 25% of the monetary award recovered on the client’s behalf, whichever is the lesser.

Ronald and Darren's modus operandi was to convince clients to these agreements in order to disguise the aforesaid fraud, theft and tax evasion.

In addition, Ronald and Darren invested a substantial amount of The Firm's monies in a section 78(2A) investment account which was opened under the name "Zunelle". The "Zunelle" account was, however, not reflected as a trust creditor account in The Firm's trust accounting records. The absence of the "Zunelle" account from the Firm's trust accounting records is therefore highly unusual and indicated an intention on the part of Ronald and Darren to conceal the existence of the "Zunelle" account.

The monies were possibly invested in terms of section 78(2A) under the name of "Zunelle" in order to avoid the taxation of the interest earned on the monies invested whilst granting Ronald and Darren with the opportunity to launder funds without been detected.

Israeli Authorities informed the AFU via the CARIN network that they had funds in a bank account held by Bobroff and his son. The AFU requested the Israeli authorities to freeze 27 mil Israeli Shekels in the accounts of Darren and Ronald Bobroff.

The AFU brought a preservation application in terms of Section 38 of the Prevention and Combating of Corrupt Activities Act 121 of 1998 for R101.5m.

The AFU has obtained a forfeiture order on 21 August 2019 for R104 million.

Other cases where assets were seized based on foreign co-operation:

- Sunmola – ZAR2 015 000,00 payment made to victim(s) through account of USPS in United States on 07 October 2016
- Tier One - ZAR102 654 160,00 payment made to Defence Section, High Commission of Nigeria on 22 March 2016
- Swaziland Kia- ZAR126 776 payment made to victim, Kia Swaziland on 28 August 2015
- Umbuluzi Chickens - ZAR113 858 payment made to victim, Umbuluzi chickens, Swaziland on 27 August 2015
- Von Creytz - ZAR682 996,04 payment made to victim, AXA Lebens versicherung in Germany on 16 April 2018
- Bawden - ZAR997 924,50 payment made to victim, Alte Leipziger Lebens versicherung in Germany on 1 June 2018
- Salia - ZAR1 366 995,23 payment made to victim, Mr J D Black in the United States on 20 December 2018
- Langley - ZAR136 583,00 payment made to victim, Mervyn Joseph, Banque Populaire Occitane France on 3 August 2019
- The South African Police Service conducted a joint investigation with the United States Secret Service, the United States Homeland Security and the London Metropolitan Police Service in the investigation of a mass marketing fraud involving an accused of Nigerian origin. The accused owned four residential properties in South Africa valued at R2, 9 Million. The properties were confiscated by the South African Law Enforcement Agency. The properties were

subsequently sold and the proceeds of \$ 200 000 was turned over to the District Court for proportional disbursement to the individual identified victims. The accused Olayinka Sunmola was sentenced to 27 years imprisonment by the United States District Court in East St. Louis, Illinois.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

- High costs of asset management during the recovery process
- Lack of request for return of assets from country of origin
- Difficulties in negotiating mutually acceptable terms for an agreement under UNCAC Art. 57(5) or an asset-sharing agreement
- Non-responsive or overly broad MLA requests

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>284</sup>**

South Africa's legislation adequately caters for rendering assistance and ongoing review of practices takes place to ensure efficiency in rendering assistance.

### Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

- Language barriers
- Lack of knowledge of domestic legislation
- Delays in responses

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

- Guidelines and good practices to be developed
- Contact details of focal points to be easily assessable

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<sup>284</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

None

**B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

The following persons are prohibited in terms of **section 29** of the Immigration Act, 2002 and do not qualify for a port of entry visa, visa, admission into the Republic or a permanent residence permit:

- anyone against whom a warrant is outstanding or a conviction has been secured in the Republic or a foreign country in respect of money laundering or kidnapping;
- anyone previously deported and not rehabilitated by the Director-General in the prescribed manner.

The following persons may be declared undesirable by the Director-General in terms of **section 30** of the Immigration Act, 2002, and after such declaration do not qualify for a port of entry visa, visa, admission into the Republic or a permanent residence permit:

- an unrehabilitated insolvent;
- anyone who has been ordered to depart in terms of the Act;
- anyone who is a fugitive from justice;
- anyone with previous criminal convictions without the option of a fine for conduct which would be an offence in the Republic.

Also relevant is the Declaration of undesirability under section 30 of the immigration act, 2002 in cases where someone is a fugitive from justice or for previous convictions.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

Section 29 of the Immigration Act, 2002 – Prohibited Persons  
Section 30 of the Immigration Act, 2002 – undesirable persons  
Please see B1 above for details of the sections.

**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>285</sup>**

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>286</sup>**

Known individuals are v-listed and included in warning lists to prevent their travel to the Republic of South Africa.

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

The legal framework under the **Promotion of Administration Justice Act 3 of 2000** provides for all administrative decisions to be appealable. Under section 6 of the Act, (1) any person may institute proceedings in a court or tribunal for the judicial review of an administrative action.

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>287</sup>**

No.

<sup>285</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>286</sup> You may refer to principles 4 and 5 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

<sup>287</sup> You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

- B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

N/A

**Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>288</sup>**

- B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>289</sup>**

Not yet.

- B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

**Holistic questions**

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

No.

- B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

<sup>288</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>289</sup> You may refer to principle 3 in the "G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery" in providing your response.

**B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

No.

## **C. GENERAL QUESTIONS**

**C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

### **1<sup>st</sup> cycle of implementation review:**

- Completed in 2012.
- The Country visit was undertaken and the private sector, academia, civil society and the private sector were invited to the Country visit.
- Report published on the UNODC and the Department of Public Service and Administration websites.

### **2<sup>nd</sup> cycle of implementation review:**

- Review is on-going. It was delayed due to COVID-19 travel restrictions.
- Country visit was scheduled to take place at the end of March. Will be undertaken as soon as the restrictions are lifted.
- As in the first cycle of implementation review, the private sector, civil society, and academia will be invited to the Country visit.
- SA remains committed to publishing the report.



**C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

SA acceded to the OECD Anti-Bribery Convention. The Country has completed its review of the **phase three** of the implementation review. SA is scheduled for the fourth phase in June 2023.

**C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

1. South Africa is currently reviewing its anti-corruption strategy. The National Anti-Corruption Strategy is currently being taken through the Cabinet process for approval.
2. In April 2019, the President operationalized the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit to promote ethics in both the public service and the municipalities. The start-up Unit is now operationalized in the organizational structure of the Department of Public Service and Administration.
3. In June 2020, the President signed the Promotion of Access to Information Amendment Act which will require political parties to record their funding. The act makes it an obligation for the head of a political party – including independent candidates – to create and keep records of any donation exceeding the prescribed threshold in any given financial year. Currently the threshold is R100 000.00.
4. Political parties are also required to:
  - Record the identity of the persons or entities who made such donations;
  - Make the records available every quarter; and
  - Keep the records for at least five years after the records concerned have been created.
- 5.

# SPAIN

## A. ASSET RECOVERY

- A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

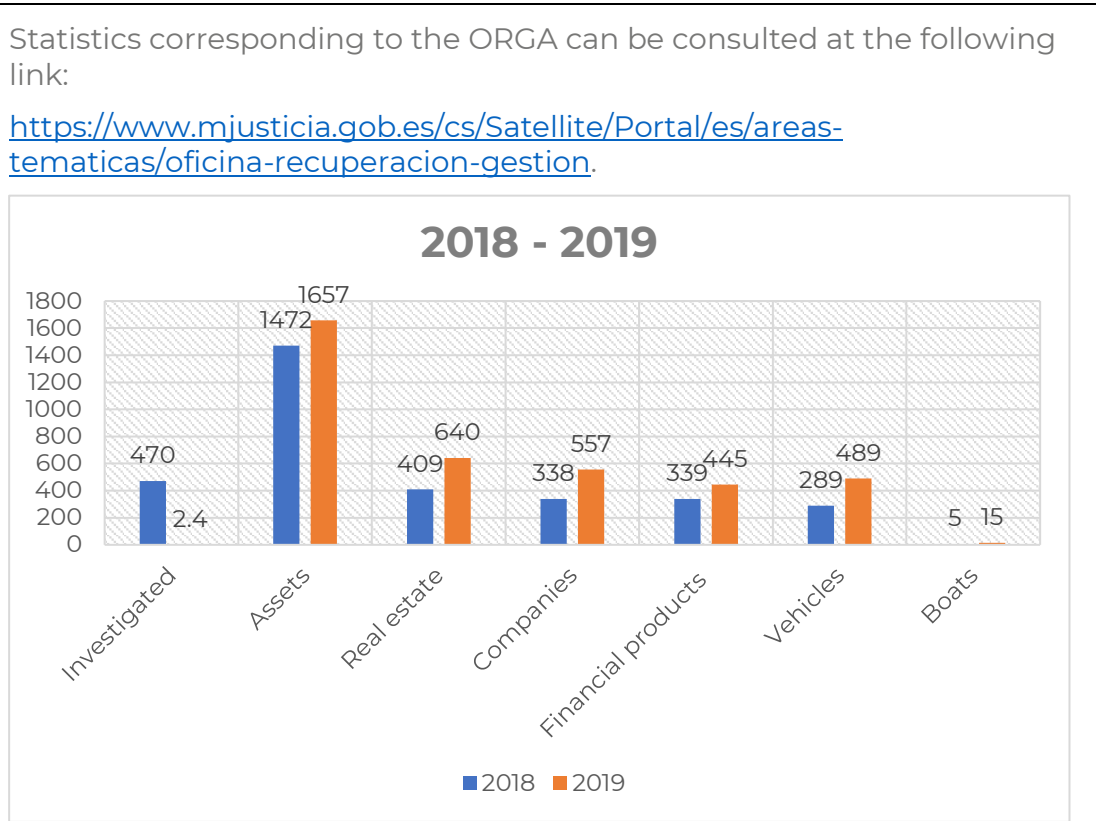
The Spanish framework for asset recovery was set out in the Nine Key Principles of Asset Recovery Benchmarking Survey (2012). This document indicated that, in accordance with Article 8.1 of Council Decision 2007/845/JHA of 6 December 2007, all matters relating to cooperation in asset tracing and recovery were entrusted to two entities: the Intelligence Centre against Organized Crime (CITCO), within the Ministry of Interior, and the Anti-Drug Special Prosecution Office.

Without prejudice to the scope of action of those entities, already in 2012 the Nine Key Principles of Asset Recovery included the legal modifications carried out in Spain with the aim of promoting the future creation of an independent office specialized in the recovery of assets from crime.

These amendments led to the creation of the Asset Recovery and Management Office (ORGA) in October 2015, which is a body of the General State Administration and auxiliary to the Administration of Justice, with responsibility for locating, recovering, preserving, administering and realizing the effects, assets, instruments and profits from criminal activities. This reform transposed Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

All the entities referred to in the documents referred to above and in this questionnaire carry out their activity within the framework of action that corresponds to them (international cooperation, money laundering, etc.) but are closely linked to the ORGA, which is the instrument aimed at the specific activity of recovery of goods and their management.

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**



**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

Please refer to the answer to question A21.

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>290</sup>

### **A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>291</sup>.**

The ORGA is currently promoting some developments beyond the mere exchange of information between Asset Recovery Offices (AROs). As a judicial supporting office, it is devoted to proactively improve the use of the best investigative resources and procedures in order to plan and prepare from scratch the most effective actions to assure freezing and confiscation.

Therefore, the ORGA is in contact with other offices and judicial authorities and attends international meetings. It also cooperates in projects such as PacCto or EMPACT for the creation of further networks and it is part of the most important information exchange platforms (SIENA, CARIN, RRAC, STAR, etc.).

### **A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

- Disparities between AROs
- Gaps in and disparities between legal systems
- Linguistic barriers
- Lack of proactivity and limited willingness to collaborate
- Lack of early contact with the criminal investigation team or other entities
- Lack of technical software and devices to carry out the exchange of information
- Interoperability and data formats
- Difficulties to get colleagues involved and to set up multidisciplinary teams
- Staffing limitations

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<sup>290</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
- Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
- Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.

Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>291</sup> You may refer to principles 1 and 7e in the “Nine Key Principles on Asset recovery” in providing your response.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>292</sup>**

The ORGA is an important point of contact in the sense set out in point 7b of the Nine Key Principles.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

Collaboration and exchange are usually optimal, despite the already mentioned insufficiencies.

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>293</sup>**

The most commonly used platforms by the ORGA are SIENA, RRAG and CARIN because a large part of the investigated people try to hide or launder their assets. INTERPOL is not yet operational on asset recovery matters and the ORGA is trying to join it formally.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

- Personal focal points instead of unit focal points
- Lack of an ARO network similar to FIU.net
- Lack of secure communications
- Linguistic barriers (we need to understand the whole information available, not only the basics)
- Reports in PDF, image or email format
- Difficulties on digitalization
- Difficulties to import or export data
- Interoperability

<sup>292</sup> You may refer to principle 7b in the "Nine Key Principles on Asset recovery" in providing your response

<sup>293</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>294</sup>.**

The Spanish legal framework foresees a legal figure called autonomous seizure, which is included in Article 127 ter of the Criminal Code, and the process to be followed is contemplated in our Law of Criminal Prosecution. One of the following situations must occur:

- a) That the subject is deceased or suffers from a chronic illness impeding his/her trial and that there is a risk that the criminal offences may prescribe;
- b) He/she is in a situation of default, preventing a trial within a reasonable period of time; or
- c) No sentence is handed down as the individual is exempt from criminal responsibility or said responsibility has been finalised.

The seizure referred to in this article may only be directed against the person who has been formally charged or against the accused in relation to whom there are rational indications of criminality when the situations referred to in the previous paragraph would have prevented the continuation of the criminal proceedings.

Since it is a new figure, it is too soon to evaluate its use and effectiveness. In the reform of the Criminal Procedure Law that is being prepared, greater importance should be given to it, and its use by the Public Prosecutor's Office be encouraged.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

- Where a deceased person was being investigated, the court may ask the ORGA the location of assets for their (possible) subsequent confiscation, based on Art. 127 g of the Penal Code, which, in order to ensure the effectiveness of the system, allows the seizure or freezing of property under instruction from the pre-trial phase onwards. The cause is however secret and therefore information sharing is limited at best.
- At the management stage, where the sale of the property or alternative measures should be proposed, the Office might fail to receive the relevant judicial orders.

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<sup>294</sup> You may refer to principle 4 in the "Nine Key Principles on Asset recovery" in providing your response

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

Spain is currently working on a profound reform of the Criminal Procedure Law that attempts to update procedures in accordance with the latest developments in information and communication technology, so that they can be used to their fullest extent while regulating their adaptation to criminal procedure. This reform will affect the ORGA.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>295</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>296</sup>**

The ORGA fulfils this role.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

The ORGA finds no other impediments beyond its relatively recent establishment. It is always difficult at first to make any new office known among the judicial bodies and other entities with which it must collaborate, to delimit exactly its scope of action, and to regulate its procedures in the best possible way. The Criminal Procedure Law that is currently being prepared takes into account these barriers.

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>297</sup>**

Yes, all organizations usually request their members to provide partners with expertise. International meetings are usually a good opportunity to transmit this knowledge and experience.

<sup>295</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>296</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>297</sup> You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>298</sup>.**

Yes, the information is shared within the existing fora the ORGA works with.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

The ORGA tends to get involved mainly in investigations on the spot in order to meet the judiciary needs and less in non-operational or strategic issues.

### Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>299</sup>

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>300</sup>**

The Ministry of Justice provides information on its website about:

- [Mutual legal assistance](#), including links to the main websites of legal cooperation both at national ([Prontuario](#)) and international level ( [European Judicial Network](#) and [Red Iberoamericana de Cooperación Jurídica Internacional - IberRed](#) )
- [Surrender of procedural parties](#) (Extradition or European Arrest Warrant)
- [Compendium of Practical Guides on MLA with the US](#)

<sup>298</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>299</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>300</sup> You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response



**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>301</sup>**

Regarding criminal prosecution, Spanish authorities have developed several joint investigations with other jurisdictions. We could mention, as an example, a joint investigation included in the Report on Eurojust's Casework in Asset Recovery, which addresses asset recovery issues registered at Eurojust between 1st January 2014 and 31st March 2018.

In early 2013, the UK health authorities informed their Spanish counterparts about six illegal shipments containing 25 600 tablets of counterfeit medicines originating from India that were about to be transported to a person in Spain. A controlled delivery was set up, and the recipient was arrested by the Spanish authorities.

The UK investigation indicated that approximately 50 websites hosted on servers located in the Czech Republic and the Netherlands were advertising medicines for sale without medical prescription, mainly products used to combat erectile dysfunction. The drugs, produced in India, were sent to the UK to be distributed to other retail sellers within the EU for further distribution. The orders were placed either via the Internet or by telephone. The payments were made by credit card to bank accounts in several EU Member States, which channelled those funds through a layer of bridge accounts to bank accounts in Cyprus.

Links with another investigation in Austria targeting a criminal group of Ukrainian origin with connections to Israel and the Russian Federation were identified by Europol. Two operational meetings at Europol, in April 2013 and February 2014, allowed the various police services to exchange information, which detected possible links with a French investigation concerning a group of websites, managed from Israel, that also offered medicines without medical prescription.

The Spanish authorities submitted MLA requests to Austria, Belgium, Cyprus, Germany, India and the USA to identify the beneficiaries of the illegal activity and to try to locate and seize the criminal proceeds, the value of which was estimated at approximately EUR 1 800 000. As a result of the meetings at Europol concerning potential connections with investigations in other countries, the Spanish authorities approached Eurojust to coordinate the judicial aspects of the cases. A coordination meeting was held in March 2014, attended by Spain, Austria, Belgium, Cyprus, Germany, France, the UK, the USA and Europol.

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<sup>301</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

The meeting resulted in close links being identified between the cases in several States, and a JIT, in which Eurojust and Europol participated, was set up between Austria, Spain and France. The JIT was funded through Eurojust and was later extended to the UK. The coordination meeting also allowed discussion about the offences under investigation in each State to avoid a conflict of jurisdiction or ne bis in idem. Finally, supported by Eurojust's analysis of the MLA requests, the participants were able to identify overlapping requests, coordinate their execution, agree on the terms and conditions for sharing the evidence obtained and identify a bank account that appeared in proceedings in Austria, Spain and France.

In June 2014, the Spanish authorities carried out a new arrest and seizure of 25 000 tablets, and new evidence was gathered in Austria, France and the UK that demonstrated the need to discuss possible actions in the short term. To this end, a coordination meeting with Austria, Spain, France, Eurojust and Europol was held in Vienna. The ongoing proceedings were discussed and a common strategy was agreed. Austria, Spain and France focused on fraud and public health-related offences, while the UK applied an innovative approach by investigating only money laundering activities, with an emphasis on asset tracing for further freezing. The UK investigation benefited from the investigations in the other States to prove that predicate offences were committed elsewhere in the European Union.

During the meeting, a decision was made to conduct coordinated actions during a common action day to gather additional evidence. As most of the planned actions had a judicial component, for example the execution of MLA requests, a coordination centre was held at Eurojust in September 2014 with the participation of all JIT members.

During the action day, at least 12 suspects were arrested and 16 people were interviewed as either suspects or witnesses. Austria, Hungary and the UK carried out 23 searches, and 91 bank accounts were frozen or seized in the participating States, along with 1 million tablets. Assets with an estimated value of approximately EUR 7.8 million were seized.

A final coordination meeting was held at Eurojust in March 2015 to exchange information on the proceedings in the participating States and evaluate the JIT cooperation.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

Nothing worth highlighting.

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>302</sup>**

Article 10 of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union urges Member States to take the necessary measures to establish centralised national offices «to ensure the adequate management of property frozen with a view to possible subsequent confiscation».

In Spain, this provision of the Directive has been included in the Sixth Additional Provision of the Code of Criminal Procedure, by which the ORGA is established and given the responsibility for the tracking, recovery, conservation, administration and realisation of assets derived from criminal activities in the terms provided by criminal and procedural law.

Royal Decree 948/2015 of 23 October regulates the Asset Recovery and Management Office, and Order JUS/188/2016 of 18 February determines the scope of action and the start of operation of the Asset Recovery and Management Office as well as the opening of its Deposits and Consignments Account.

Among its objectives, the ORGA complies with the obligations arising from international cooperation and collaborating with the courts and the Public Prosecution Service in their functions concerning judicial assistance in criminal matters.

In addition, Spain is working in the implementation of Regulation (EU) 2018/1805 of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, whose objective is to lay down the rules under which a Member State recognises and executes in its territory freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters. Under this basis, Member States should ensure that their Asset Recovery Offices cooperate with each other to facilitate the tracing and identification of proceeds of crime and other crime-related property which may become the object of a freezing order or confiscation order.

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<sup>302</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

## Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

While there is still a need to strengthen the conventional legislative framework in both cases, the weaknesses of the system could be addressed in the short term with greater coordination and better knowledge of the respective national progress.

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

As previously stated, coordination is essential, so increased action by the G20 ACCGW in this area would be desirable.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

## B. DENIAL OF SAFE HAVEN

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

Operating in an area of free movement, such as the Schengen area, Spain is subject to the instruments provided for at EU level. Entry bans are recorded in the Schengen Information System (SIS). It is an individual Member State who enters an entry ban into the SIS, but ideally this should be based on common criteria in order to avoid conflicts with eventual permits granted by other Member States, before or after that point in time.

Entry bans for corrupt practices can be the result of judicial sentences, but, as a preventive measure, entry bans are also entered into the SIS by means of Council Decisions implementing restrictive measures, frequently affecting persons participating in corrupt regimes of third countries.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

The first cycle review under the UNCAC IRM was made public in 2011.

Entry bans will be rendered more effective with the ongoing changes in the large scale IT systems of the EU in the field of Justice and Interior, and the interoperability among them.

SIS will have an increasing base of biometric data in order to avoid circumventing the restrictions with the use of false documents. Additionally, SIS will be automatically consulted by the Visa Information System (VIS) and by the European Travel Information and Authorization System (ETIAS). Since VIS will be expanded to include residence permits and long term visas, all persons wishing to enter the Schengen area will be checked in advance, before even initiating their travel.

The use of PNR, which is gaining momentum, together with the already functioning Advanced Passenger Information (API), contributes to the searched objectives.

The European Criminal Record Information System for Third Country Nationals (ECRIS-TCN) will be another useful tool for Member States in order to exchange information on people sentenced for corruption.

**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>303</sup>**

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>304</sup>**

Refusals of entry are taking place resulting from the measures explained above. However, we cannot break down statistics and differentiate corruption cases from other criminal cases.

<sup>303</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>304</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

While situations deriving from criminal sentences are clear to proceed on, preventive entry bans, based only on intelligence, may result in conflicts with fundamental rights, in particular the right to defence in legal cases.

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>305</sup>**

Yes, based on Council Decisions as explained above. No statistics are available specifically for corruption-related cases.

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

We suffer from insufficient data to verify if the person being dealt with is the same person as in the database, as well as from entries into the database that are not correctly recorded and do not result in a hit when the person is checked.

**Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>306</sup>**

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and**

<sup>305</sup> You may refer to principles 6 & 7 in the “G20 Common Principles for Action: Denial of Safe Haven” in providing your response

<sup>306</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

**subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>307</sup>**

No. However, policies are more effectively implemented with the new tools (see answer to B2).

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

Not applicable (see previous answer).

### Holistic questions

**B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

Yes: having better motivated entry bans in absence, and more precise information in the databases.

**B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Linking legal, technical and procedural aspects in order to reach effective solutions.

**B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

No.

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<sup>307</sup> You may refer to principle 3 in the “G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery” in providing your response.

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

Spain was reviewed in 2011 within the first year of the first cycle of the UNCAC Implementation Review Mechanism. The review included chapters III (international cooperation) and IV (criminalization). The country visit to Spain was conducted from the 5th to the 7th of April 2011. The country review report is publicly available:

<http://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=ESP>

Spain will be reviewed within the fifth year of the second review cycle. This exercise has just started and Spain remains committed to the use of the voluntary options foreseen in the terms of reference. The review will include chapters II (prevention) and V (asset recovery).

As long as the current health crisis allows it, Spain remains committed to hosting country visits, to involving the private sector, academia and civil society and to publishing the full reports of reviews.

- C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

Yes, Spain ratified the OECD Anti-Bribery Convention on 3 January 2000.

Spain has already gone through three phases of the Peer Review Process: phase 1 in 2000, phase 2 in 2006 and phase 3 in 2012. The Working Group on Bribery (WGB) adopted the phase 3 report on implementing the OECD anti-bribery Convention in Spain in December 2012, and the phase 3 review process finalized in October 2015. Spain is scheduled to go under review (phase 4) in 2022, and the report is foreseen to be adopted by the WGB in March 2022.

More information is available at:



<http://www.oecd.org/daf/anti-bribery/spain-oecdanti-briberyconvention.htm>

**C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

The National Security Council, on 21st January 2019, adopted an agreement approving the 2019-2023 National Strategy against Organised Crime and Serious Crime, which revised and updated the 2011-2014 Strategy against Organised Crime.

One of the priority objectives of this plan is the fight against crimes related to corruption through implementing coordinated actions that include effective prevention and control measures.

The main lines of action are:

- Improve the regulation of access to financial databases by public security operators specialized in the fight against corruption, money laundering and other forms of economic crime to increase their use in investigation and intelligence tasks.

- Strengthen the material resources, especially technical resources, of the units dedicated to the investigation of these crimes to make it possible to reinforce the tasks of assisting judges and prosecutors.

- Promoting the development of assets investigations on natural and legal persons involved in corruption processes through promoting national and international collaboration with the bodies specifically responsible for locating and recovering assets (in their respective areas of competence, the Asset Recovery and Management Office of the Ministry of Justice (ORGA) and CITCO).

## **TURKEY**

### **A. ASSET RECOVERY**

**A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

According to the Turkish legislation, confiscation is a security measure.

“Confiscation of goods” and “confiscation of benefits” are established in Articles 54 and 55 of the TCL respectively.

Article 54 provides for confiscation of goods used in or allocated for commission of a deliberate offence or derived from a crime. In addition, goods whose production, disposition, usage, transportation, purchase and sale constitute a crime are to be confiscated, Goods prepared for use in commission of an offence may be confiscated where there is danger to public security, public health or public morality. If these goods have been removed, transferred or consumed, or if confiscation of them is for some other reason impossible, an equivalent value of the goods will be confiscated.

Article 54;

- (1) On the condition that the property does not belong to any third party acting in good faith, property that is used for committing an intentional offence or is allocated for the purpose of committing an offence, or property that has emerged as a result of an offence shall be confiscated. Property that is prepared for the purpose of committing crime shall be confiscated, if it presents a danger to public security, public health or public morality.
- (2) Where the property defined in paragraph one cannot be confiscated because it has been destroyed, given to another, consumed, or, for any other reason, an amount of money equal to the value of this particular property shall be confiscated.
- (3) Where the confiscation of property used in an offence would lead to more serious consequences than the offence itself, and would be unfair, confiscation may not be ordered.
- (4) Any property where, the production, possession, usage, transportation, buying and selling of which has constituted an offence, shall be confiscated.
- (5) When only a certain part of a property needs to be confiscated, then only that part shall be confiscated, if it is possible to do so without harming the whole, or if it is possible to separate that part of it.
- (6) Where property is shared by more than one person, only the share of the person who has taken part in the crime, shall be confiscated.

Article 55 States that the material benefits derived from committing a crime, constituting the subject of the crime or provided for committing the crime, along with the economic proceeds obtained by the holding or conversion of them, will be confiscated.

Article 55

- (1) Material gain obtained through the commission of an offence, or

forming the subject of an offence or obtained for the commission of an offence and the economic earnings obtained as a result of its investment or conversion, shall be confiscated. Confiscation under this paragraph should only be ordered where it is impossible to return the material gain to the victim of the offence.

- (2) Where property and material gain which is subject to confiscation cannot be seized or provided to the authorities then value corresponding to such property and gains shall be confiscated.
- (3) (For the property within the scope of the article to be confiscated, the person who has subsequently obtained it must not benefit from the provisions concerning the protection of the goodwill of the Turkish Civil Code no. 4721 dated 22 November 2001.
- (4) Article 55/1 of TCC regulates that material gain obtained through the commission of an offence, or forming the subject of an offence or obtained for the commission of an offence, and the economic earnings obtained as a result of its investment or conversion, shall be confiscated. In order to make a decision of confiscation, the important thing is that material gain should not be returned to the victim of the offence.
- (5) Procedures such as protection, seizure, sending, disposal, return, confiscation and removal of property and economic gain acquired from offence are conducted according to the Regulation on Property Acquired from Offence. Regarding this regulation, procedures concerning property acquired from offence are conducted by "Judicial Depository Department" under continuous supervision and scrutiny of Chief Public Prosecutor's Office.
- (6) The other point is that if there is a claim by third parties regarding ownership of confiscated assets, Turkish legal system allows these parties to receive the assets by filing a civil lawsuit.

Regarding this subject, Turkey has ratified "European Convention on the International Validity of Criminal Judgments (ETS 70)". According to Article 2 of the said Convention, it is stated that provision of this article is applicable to "sanctions involving deprivation of liberty, fines or confiscation and disqualifications".

Likewise, Article 26 and onwards of the Law No 6706 includes provisions on taking over of enforcement. In order to provide enforcement of conviction decisions made by foreign courts in Turkey, conviction decision must become final, the act constituting the subject of conviction decision must be regulated as offence in Turkey and must not be time barred and

there must not be any investigation or prosecution being conducted in Turkey for the same offence.

**A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

Not applicable

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

The information provided in this section is related to relevant functions of MASAK, Turkish financial intelligence unit (FIU), within the context of anti-money laundering and counter financing of terrorism (AML/CFT) system of Turkey. These functions also provide contribution on asset recovery process.

1. *Identifying, tracing and evaluating proceeds of crime*

MASAK has the duty and power in the scope of prevention of laundering proceeds of crime and terrorism financing of collecting data, receiving STRs, analyzing, evaluating and examining them and disseminating the results of these works to relevant authorities including public prosecutor offices [Presidential Decree No 1 Article 231(1)]. Performing these basic FIU functions contribute to identification, trace and evaluation of the proceeds of crime including corruption and also repatriation of assets where necessary.

2. Postponement of transactions

MASAK has the function on postponement of transaction(s) linked to money laundering and terrorism financing.

According to the Article 19/A of the Law No.5549 on Prevention of Laundering Proceeds of Crime, in cases where the assets which are the subject of a transaction are suspected to be linked to offence of laundering or financing of terrorism, the Minister (of Treasury and Finance) has the authority to suspend the transactions that are attempted to be conducted or currently going on within or through obliged parties for seven work days or not to allow the performance of those transactions for the same period of time so that MASAK can verify the suspicion, analyse the transaction and convey the results of those analyses to

competent authorities when necessary.

This power may also be used, based on reciprocity principle, for transactions which are the subject of the reasoned request made by foreign counterparts for suspending or not allowing the performance of the transaction provided that MASAK suspects that the transaction is linked to offence of laundering or financing of terrorism. In the same way, MASAK has the power to request from foreign counterparts for suspending or not allowing the performance of the transaction linked to money laundering and/or associated predicate offences including corruption.

### *3. Preparing a report on the value of the proceeds of crime*

According to the Article 128 of the Criminal Procedure Law, prior to the seizure MASAK, BRSA, MoTF and/or Public Oversight, Accounting and Auditing Standards Authority are required to prepare a report regarding the value of the proceeds, which include the Identification, tracing and evaluation of the property which is subject to seizure.

In conclusion, although MASAK's duties and powers do not cover all aspects of asset recovery related to corruption, abovementioned functions in the context of AML/CFT provide contribution in this regard.

The Financial Action Task Force (FATF) assessed Turkey's AML/CFT system in the context of 4<sup>th</sup> round mutual evaluation process. The FATF adopted the latest Mutual Evaluation Report (MER) of Turkey at its October 2019 Plenary meeting. The Report is publicly available on its website: [www.fatf-gafi.org/publications/mutualevaluations/documents/mer-turkey-2019.html](http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-turkey-2019.html). There is no update to be reported in relation to asset recovery within the context of AML/CFT since the last version of our MER was published.

After UNCAC First cycle review, Law No. 6706 on International Judicial Cooperation in Criminal Matters entered into force in 2016. On the other hand, bilateral agreements in the field of legal assistance were signed with China, Qatar, and Uzbekistan, with the purpose of strengthening the international judicial cooperation in criminal matters.

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>308</sup>

### **A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>309</sup>.**

Turkish legislation provides mechanism to share information, without any request and within the scope of both judicial and police cooperation, the information that will enable the initiation of an investigation or prosecution in another State or facilitate the carrying out of an existing investigation or prosecution or form the subject of a judicial cooperation request.

**Furthermore** as explained in our response to the question no. A3, MASAK has the power to request from foreign counterparts for suspending or not allowing the performance of the transaction linked to Money laundering and/or associated predicate offences including corruption. As an administrative body, MASAK has no function in relation to mutual legal assistance.

### **A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

The translation procedure during the preparation of international judicial assistance document may cause a loss of time. Moreover, the incomprehensible requests may be a matter of question due to the inadequate and inaccurate translation in the Turkish translations of the legal assistance document received from the foreign states. Besides, reciprocal visits between the countries are hindered by the Covid-19 pandemic, which constitutes a problem in the solution of the issues. The documents required by the countries that adopt the Common law system and formal conditions also complicate the legal assistance procedure.

### **A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>310</sup>**

Not applicable

<sup>308</sup>We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
- Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
- Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.

Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>309</sup>You may refer to principles 1 and 7e in the “Nine Key Principles on Asset recovery” in providing your response.

<sup>310</sup>You may refer to principle 7b in the “Nine Key Principles on Asset recovery” in providing your response

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

Not applicable

**A.8. Please provide a brief overview of your country's experience in the use of existing networks(policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>311</sup>**

As a member of INTERPOL, we use the secure communication channel of INTERPOL in order to exchange information related to, inter alia, the corruption. Moreover, we insert passport data of those, who are wanted by our judicial authorities with a view to extradition, into the SLTD (Stolen/Lost Travel Document Database) in order to locate and arrest them.

Upon the request of judicial authorities, we issue red notices via INTERPOL. As of the beginning of September, 2020, we are seeking after 27 offenders with red notices, in relation to corruption-related crimes including embezzlement, bribery, abuse of functions, misappropriation and money-laundering.

In addition, Anti-Smuggling and Organized Crime of Turkish National Police appointed one officer for the INTERPOL Global Focal Point Platform on Asset Recovery.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

INTERPOL General Secretariat deleted our travel document entries from the SLTD after Following the failed coup attempt on July 15<sup>th</sup>, 2016, and also suspended our data entry rights to the SLTD on 2<sup>TM</sup><sup>312</sup> August. From then to the April, 2018, we couldn't insert any passport data, including those of criminals sought for corruption-related offences.

<sup>311</sup>You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(l)(c) of your second cycle UNCAC review in providing your response

<sup>312</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(l)(c) of your second cycle UNCAC review in providing your response

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>313</sup>.**

The provisions of non-conviction based confiscation in Turkey is valid for these crimes, when the defendant is absent, dead or fugitive.

Further, in accordance with Article 43/A titled "liability of legal persons" added on 26/06/2009 with the Law No 5918 to the Code of Misdemeanours No 5326, in case in the case that an organ or a representative of a private law legal person; or; a person, who is not the organ or representative but undertakes a duty within the scope of that legal person`s operational framework commits the following offences to the benefit of that legal person, the legal person shall also be penalized with an administrative fine.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

Not applicable

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

Not applicable

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>314</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>315</sup>**

In our country, the Chief Public Prosecutor's Offices mentioned with the name of the city or district in each city centre and districts with the court establishment are established. The Financial Crimes Bureau is established within the jurisdiction of Chief Public Prosecutor's Offices focused on financial crimes. Within the mentioned bureaus, Public Prosecutor who

<sup>313</sup>You may refer to principle 4 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>314</sup>In some jurisdictions, an asset recovery office may fulfil this role.

<sup>315</sup>You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response



has speciality in the relevant field and law enforcement personnel hold office. These bureaus cooperate with the relevant institutions, mainly with MASAK, in the investigation of financial crimes.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

Not applicable

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>316</sup>**

Various training activities including Identification, trace and evaluation of proceeds of crime were organized for delegates from:

- Azerbaijan, Kazakhstan, Uzbekistan, Turkmenistan, Tajikistan, Kyrgyzstan, Pakistan (within the context of the project on Improving Cooperation and Exchange of Experience Among Financial Intelligence Units - 2015)
- Uzbekistan (2018)
- Turkish Republic of Northern Cyprus (2018)

On the other hand, the training activities of the foreign judicial members coming from abroad in the Justice Academy of Turkey are conducted. Within this scope; various programs on the fight against transnational crimes were carried out with Qatar, Kyrgyzstan, Kazakhstan, Mongolia and Uzbekistan.

Moreover, the followings are planned by the Justice Academy of Turkey;

- Within the scope of activities of our country regarding the South East Europe Cooperation Process (SEEC) 2020-2021 Chairmanship-in-Office; the program titled "The Post Covid-19 Workshop on the Developments in the Pre-Service and In-service Trainings of the Judges and Prosecutors" covering the themes of challenges faced in the pre-service and in-service trainings of the judges and prosecutors from the judicial training institutions of the countries participating in the SEEC and strengthening of the cooperation in this field is planned to be conducted online between 30 September and 01 October 2020.
- Within the scope of activities of our country regarding the South East Europe Cooperation Process (SEEC) 2020-

<sup>316</sup>You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

2021 Chairmanship-in-Office; the colloquium program on the matters of “The Fight Against Terrorism” and “The Management of Justice” for the judges and prosecutors assigned in the South-East European countries is planned to be conducted online in December 2020.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>317</sup>.**

Not applicable

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

Not applicable

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>318</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>319</sup>**

Requests are fulfilled through central authorities, responsible for carrying out MLA requests. In addition, police cooperation channels such as Interpol can also be employed to accelerate cooperation in emergency cases.

<sup>317</sup>Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), “StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019”. You may refer to principle 9 in the “Nine Key Principles on Asset recovery” in providing your response

<sup>318</sup>Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>319</sup>You may refer to principle 3 in the “G20 High-Level Principles on Mutual Legal Assistance” in providing your response

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>320</sup>**

With regards to MLA requests in transnational crimes, which fall under the jurisdiction of our country, including corruption, an investigation is initiated the country and the criminals are pursued in many countries. In case the fugitives are located in Turkey, while an investigation is being conducted in another country, the case is processed according the principle of "either extradite or prosecute". Likewise, cases where fugitives escape to Turkey while an investigation is being conducted in another country against them, are processed according the principle of "either extradite or prosecute".

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>321</sup>**

Not applicable

## Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

Not applicable

<sup>320</sup>You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>321</sup>You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Not applicable

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

Not applicable

**B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

Article 9 of the Law No. 6458 on Foreigners and International Protection regulates entry bans and these bans are applied to individuals who are deemed inconvenient in terms of public order, public security and public health. At the same time, article 7 of the same law regulates foreigners who will not be allowed to enter into our country.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

DGMM takes the opinions of Public Institutions and Organizations to issue entry bans, and implements entry bans on persons sought by both Interpol General Secretariat and the United Nations in the international arena.

Upon receiving a MLA request about a person, sought on an international level, made under the European Convention on Extradition and under Bilateral Agreements, the person sought is arrested for being extradited and then extradited. In case the extradition is rejected, the person is subjected to a trial based the principle of “either extradite or prosecute”.

Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>322</sup>

- B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>323</sup>**

Not applicable

- B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

Not applicable

- B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>324</sup>**

Not applicable

- B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

Not applicable

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<sup>322</sup>For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>323</sup>You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

<sup>324</sup>You may refer to principles 6 & 7 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>325</sup>

- B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>326</sup>**

Not applicable

- B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

Not applicable

**Holistic questions**

- B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

Not applicable

- B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

Not applicable

- B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

Not applicable

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<sup>325</sup>Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>326</sup>You may refer to principle 3 in the "G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery" in providing your response.

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

Turkey completed in 2013-2018 the first cycle review, conducted under section three, titled "Criminalization and Law Enforcement", and section four titled "International Cooperation", of the European Convention on Extradition.

- C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

Our country is a party to the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions and has completed the third examination phase in this context. It was decided to discuss the fourth stage review draft report of our country at the Working Group Meeting to be held in 2023.

- C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

Law No. 6706 on International Judicial Cooperation in Criminal Matters entered into force in 2016. In addition, the Anti-Corruption Circular has been issued by the General Directorate of Criminal Affairs of the Ministry of Justice. Likewise, bilateral agreements have been signed with China, Qatar, Uzbekistan and Rwanda in the field of legal assistance, with the intent of developing judicial cooperation.

## UK

### A. ASSET RECOVERY

- A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

The UK ratified the UN Convention Against Corruption in 2006 and this is the main legal basis for returning recovered proceeds of corruption and other UNCAC crimes. Where the return is not mandated under Article 57 of UNCAC, the UK will seek to return the proceeds of crime to its “prior legitimate owner” where relevant.

The Proceeds of Crime Act 2002 is the main legislation granting powers used to recover proceeds of crime. There are additional powers in other pieces of legislation including the Anti-Terrorism, Crime and Security Act 2001 and the Misuse of Drugs Act 1971.

The Proceeds of Crime Act 2002 was amended by the Criminal Finances Act 2017 to include a suite of new powers including account forfeiture, forfeiture of certain personal/moveable assets and civil recovery. The latter is particularly important in recovering the proceeds of corruption where the corruption (or any other UNCAC offence) did not take place in the UK. The Criminal Finances Act 2017 also introduced the unexplained wealth order, which is an investigative tool.

The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 and the Proceeds of Crime Act 2002 (External Investigations) Orders 2013 and 2014 are used to execute requests from other countries. This means that the UK can offer the fullest possible assistance for asset recovery through Mutual Legal Assistance (MLA), including for non-conviction based recovery.

Law enforcement and prosecution agencies undertake asset recovery activity. Responsibility for the return of funds sits primarily in the Home Office but is ultimately the responsibility of whichever agency or Government department has responsibility for the recovered funds.

- A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**



1. The UK Central Authority (UKCA) receives incoming MLA requests for England, Wales and Northern Ireland that are not related to tax - some of these requests are asset recovery related. The UKCA also receives outgoing MLA requests to non-EU countries, some of which are associated with asset recovery. Requests to EU countries including those for asset recovery are sent via direct transmission by the relevant prosecutor in the UK.
2. Between 2015 – 2019 the UKCA handled 43,685 requests for MLA. Some of these requests were related to asset recovery. 1,103 of these requests were for either restraint, freezing, confiscation or asset tracing. Of the MLA requests received by the UKCA between 2015 – 2019 the UKCA has accepted 33,793. 723 of these requests were for either restraint, freezing, confiscation or asset tracing.
3. All figures are from local management information and have not been quality assured to the level of published National Statistics. As such they should be treated as provisional and therefore subject to change.

More generally, asset recovery statistics are published in an annual statistical bulletin

Details of asset return cases can be found in our recent return to the Stolen Asset Recovery Initiative (StAR) which we expect to be published soon.

We have a number of live cases in which any recovered proceeds of crime may be ultimately returned to their prior legitimate owner.

**A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

1. UNCAC - The last Executive Summary of the UK report was published recently (May 2019) and the full report is due to be published soon. There are no updates to report - please refer to chapters 2.3 and 3.3 for the latest on MLA and asset recovery.
2. FATF – The latest FATF Mutual Evaluation Report for the UK was published in 2018.

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>327</sup>

### **A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>328</sup>.**

Cases are commenced by law enforcement for a number of reasons, including MLA requests and informal requests. A number of live cases have, however, been commenced without request from another government, reflecting our commitment to tackling the presence of the proceeds of crime in the UK.

The UK has also prosecuted persons in the UK for money laundering where the predicate offence of corruption occurred overseas; these cases have progressed to confiscation. A similar approach has been taken with our non-conviction based confiscation (civil recovery) powers.

### **A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

1. On occasion, a lack of engagement or willingness to consider alternative approaches by all parties can hinder progress. The most effective way to see the return of funds based in the UK is to cooperate with the ongoing case led by UK authorities.
2. As per the government's Asset Recovery Action Plan (July 2019), securing the recognition of the UK's civil non-conviction-based recovery orders overseas has proved challenging, as legislative differences mean that many other countries do not have recognized frameworks for civil non-conviction based asset recovery.
3. The recognition of non-conviction based orders would improve our ability to cooperate with other countries. Many countries need assistance to understand the UK system for asset recovery and to appreciate what information can be shared without the need for formal MLA. Some requests need substantial work with the requesting authority to meet the requirements and this creates delay in the process.

<sup>327</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>328</sup> You may refer to principles 1 and 7e in the "Nine Key Principles on Asset recovery" in providing your response.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>329</sup>**

Yes.

UKCA is the prime contact where an MLA request is the preferred route. Further information is captured on the [Gov.uk website MLA pages](#).

The Home Office ([international-assetrecovery@homeoffice.gov.uk](mailto:international-assetrecovery@homeoffice.gov.uk)) is the main point of contact when the asset recovery case does not relate to an MLA request.

However, where a contact in the relevant law enforcement or prosecution agency has already been identified, this contact should be used for discussions relating to a specific case.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

N/A

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>330</sup>**

The International Anti-Corruption Coordination Centre (IACCC) is effective as an operational network – particularly on a practical level of providing vital intelligence to progress grand corruption investigations. The IACCC is hosted by the National Crime Agency (NCA) and has been operational since July 2017, including a host of anti-corruption law enforcement agencies from around the world. It informs which organisations can offer assistance, assists with practice actions and advice, collects information on grand corruption, coordinates an effective global law enforcement response and collaborates by creating a constructive and cooperative approach.

<sup>329</sup> You may refer to principle 7b in the “Nine Key Principles on Asset recovery” in providing your response

<sup>330</sup> You may refer to principle 7c in the “Nine Key Principles on Asset recovery” or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

The NCA also has a network of International Liaison Officers which is used to facilitate bilateral working in a number of countries globally. Where necessary Europol and Interpol are also utilised.

We also engage, as appropriate, with a number of other networks such as the OECD Law Enforcement Officials Network, CARIN and Interpol.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

Full global buy-in is necessary for such networks to work well.

When using the networks, there can be delays in evidential enquiries being made and a difference in evidential standards sometimes arise.

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>331</sup>.**

The recognition of non-conviction based orders is crucial to the delivery of our international anti-corruption objectives, as it allows for the recovery of proceeds of crime where that crime did not take place in the UK (as well as having a large number of other benefits).

Asset recovery powers available under the Proceeds of Crime Act focus on assets and property rather than individuals. Unexplained Wealth Orders (UWOs) are a highly publicised instance of an asset denial tool (as in the case of Zamira Hajiyeva, the wife of an Azerbaijani central banker imprisoned for embezzlement), but they are not simple in their application. UWOs are designed for application against those involved in serious crime or Politically Exposed Persons (PEPs) outside the EEA with assets that do not match their income. UWOs require a person to provide an explanation for their wealth, with failure to respond potentially resulting in the forfeiture of the property.

In reality, when dealing with high-net worth individuals and those involved in serious crime, they have access to extensive legal and financial resources to challenge asset recovery actions. In light of this, UWOs are likely to be a gateway into longer, more adversarial processes of civil asset recovery playing out in court. Nevertheless, UWOs are a key tool in enabling the commencement of investigations and to progress cases that may not otherwise be feasible.

In addition, taxation can be a particularly powerful tool for recovering criminal assets. Where there is reasonable grounds to suspect someone has income or assets obtained through crime, UK law enforcement will

<sup>331</sup> You may refer to principle 4 in the “Nine Key Principles on Asset recovery” in providing your response

raise tax assessments and relentlessly pursue that liability together with penalties and interest.

In addition to UWOs, UK law enforcement is expanding the use of account freezing / forfeiture orders (AFOs), another POCA civil power established by the Criminal Finances Act 2017. In the 2019/20 tax year, the tax authority HMRC froze 166 bank or building society accounts, a 177% increase on the previous year, preventing access to or withdrawals from £19.5mn suspected have been derived from tax fraud or other crimes. In the same year, the NCA was granted freezing orders on accounts containing in excess of £145mn.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

The international dimension of anti-corruption investigations makes it challenging to take steps such as collecting evidence overseas or extraditing suspects to the UK. Prior to 2017, it was challenging to work with overseas jurisdictions and seek restraints of monies within narrow timeframes. However, the Criminal Finances Act 2017 introduced the ability to apply for a moratorium extension, allowing investigators to work with overseas jurisdictions who in the past may have struggled to send a valid request for mutual legal assistance within the prescribed timescale.

By extending the moratorium period by up to 186 days, it is more feasible to work with jurisdictions and overseas law enforcement where previously it has been difficult to do so. In January 2017, the NCA's International Corruption Unit (ICU) obtained the UK's first ever moratorium extension that helped prevent USD 500 million that had been embezzled from Angola from being dissipated further. These funds were subsequently returned to the Angolan Central Bank.

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

The introduction of new powers under the Criminal Finances Act 2017 has provided invaluable options for the civil recovery of assets (without conviction). The evidential standard is a civil standard, lower than that required for a criminal conviction. This is particularly useful when assets are laundered through or held in the UK but the offences such as bribery and corruption are committed overseas. Key orders are: Account Freezing / Forfeiture Orders and Unexplained Wealth Orders (see A10 for more detail)

There are also provisions under the Proceeds of Crime Act (POCA) to forfeit cash and listed assets which are deemed as recoverable property, a civil measure not requiring a criminal conviction. An example of the

use of Account Freezing Orders is a recent NCA investigation where Orders were obtained in respect of funds held in UK bank accounts which were believed to have been acquired through bribery and corruption. A civil settlement was reached and the funds returned to the country where the original corruption and loss to the state took place. No conviction was required.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>332</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>333</sup>**

Yes. A wide variety of agencies and public bodies are granted access to asset recovery powers, including all police forces, HM Revenue & Customs, Department of Work and Pensions, the Environment Agency and Trading Standards.

The National Crime Agency hosts the International Corruption Unit (ICU) and the Civil Recovery and Tax unit (CRT). The ICU's main aim is to investigate and prosecute Politically Exposed Persons (PEPS) involved in international bribery and corruption, making the UK a more hostile place for criminals to operate. Frequently this may result in money laundering offences and use of the Criminal Finance Act 2017 powers such as Account Forfeiture Orders and Unexplained Wealth Orders. The main unit within the NCA dealing with asset denial, restraint and confiscation is the Civil Recovery and Tax team (CRT). They work closely together to ensure a mixture of both criminal and civil powers are used to ensure the most appropriate response is progressed. This may be a mixture of criminal prosecution and civil recovery and confiscation.

The ICU has investigated serious criminal allegations of foreign bribery and corruption and has restrained or detained £32mn of funds in 2019/20; a further £146mn has been confiscated or forfeited, of which £139mn has been returned to developing countries.

Within policing, regional policing units (comprising a number of local police forces) establish economic crime units to increase their asset recovery capacity and capability.

We have a number of asset recovery initiatives in train which we discuss in the [Asset Recovery Action Plan](#) including expanding the use of asset recovery powers to more public sector agencies, reviewing the Proceeds of Crime Centre which accredits financial investigators and improves our response to tackling outbound cash at the border.

For statistics, see the [annual statistical bulletin](#).

<sup>332</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>333</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

N/A

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>334</sup>**

The UK is involved with a number of networks and initiatives aimed at improving international collaboration and building expertise in asset recovery. For instance, the UK provides funding to the Stolen Asset Recovery Initiative and to the International Centre of Asset Recovery, both of which seek to strengthen networks of information sharing and support individual countries to improve international collaboration.

UK provides funding to the capacity building wing of the Egmont Group of Financial Intelligence Units (which supports financial intelligence gathering that enables asset recovery investigation) and to UNODC, to provide technical assistance for developing countries seeking to improve their adherence to UNCAC standards.

The UK Central Authority (UKCA) has two specialist lawyers who are employed on a project funded by the Department for International Development (now the Foreign, Commonwealth and Development Office – FCDO), to build capacity and capability in central authorities to tackle corruption and asset recovery through seeking MLA to the UK. The UKCA will work alongside FCDO, the National Crime Agency, the International Corruption Unit and the International Anti-Corruption Coordination Centre to identify priority countries, develop and deliver training packages to upskill central authorities and competent authorities to improve MLA requests, support and assist in asset recovery and repatriation of funds and to increase capacity for internal prosecution. This is a five year project, which started in May 2020.

The UK also attended and presented at the Second Africa-Europe Dialogue on Asset Recovery in September 2019, an event hosted by the Deutsche Gesellschaft für Internationale Zusammenarbeit. This was from both an operational and policy perspective.

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<sup>334</sup> You may refer to principle 8 in the “Nine Key Principles on Asset recovery” in providing your response

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>335</sup>.**

The UK last updated its guide to obtaining Asset recovery assistance from the UK in December 2017 for the [Global Forum on Asset Recovery](#). [This guide](#) can be found on the StAR website.

We hope to be able to share statistics in relation to asset returns in the future.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

N/A

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>336</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>337</sup>**

Guidelines for MLA are published on [gov.uk](#). Guidelines for the European Investigation Order are also published on [gov.uk](#). Changes to these guidelines are planned for the end of the EU transition period (December 2020) to ensure they contain information on all the relevant information on tools available for MLA including those for asset recovery.

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<sup>335</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>336</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>337</sup> You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response



**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>338</sup>**

The NCA-hosted IACCC has disseminated intelligence of grand corruption to countries that have never received international law enforcement assistance previously. The IACCC works with law enforcement partners from states affected by grand corruption to secure the intelligence and evidence needed to progress their criminal investigations. This has included the identification and dissemination of intelligence relating to over £100 million of worldwide suspicious assets, as well as support to facilitate the submission of formal letters of request for evidence of grand corruption.

The NCA will use its International Liaison Officer The concept of Joint Investigation Teams through Eurojust has been used but this has been limited to a small number.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

N/A

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>339</sup>**

The UK has amended the Proceeds of Crime Act to make it more robust and to ensure more assets can be recovered, both domestically and for overseas jurisdictions.

Also, see answer to question 1

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<sup>338</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>339</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

## Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

Improving recognition of non-conviction based orders would help improve the recovery of assets.

We would also like to see improved information sharing (ad hoc through existing systems) to improve cooperation.

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

The G20 could encourage countries to explore the scope to utilize non-conviction based approaches.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

We are standardising our approach to asset return cases to ensure that all asset return cases are treated in the same way, and are underpinned by an agreement (generally a memorandum of understanding) regarding the use of funds.

## B. DENIAL OF SAFE HAVEN

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

The Immigration Act 1971 provides the statutory basis to refuse entry to the UK to foreign nationals. The Immigration Rules set out the grounds on which such decisions may be made. Part 9 of the Immigration Rules contains general grounds for refusal, which include previous criminal convictions, unacceptable behaviour and where it is not conducive to the public good to admit the person to the UK. There is currently no specific ground for refusal on the basis of corruption.

The UK considers an applicant's complete background and criminal history, where known, when deciding whether to grant entry at the border or issue a visa to travel to the UK. The visa application process requires the applicant to declare criminality and provide biometrics. Entry clearance officers check biometric, Home Office and police databases to identify criminal record, travel bans or exclusion orders.

The Home Secretary has the power to exclude a foreign national if their presence in the UK would not be conducive to the public good. EU nationals may be excluded on grounds of public policy or public security. A person may be excluded for a range of reasons including corruption and unacceptable behaviour.

On 29 March 2019, the UK made changes to its Tier 1 (Investor) visa route in response to concerns about its robustness against financial crime. The route is designed for high net worth individuals making an investment of at least £2 million in the UK. The following changes were made:

- Previously, applicants had to provide evidence that they held the funds that they will invest in the UK for at least 90 days or, if they have not held them for 90 days, provide evidence of the source of those funds. This 90-day requirement was extended to a 2-year requirement, to provide greater assurance of the provenance of applicants' funds.
- Applicants are required to open a UK bank account for the purpose of making their investment before making a Tier 1 (Investor) application. This requirement was tightened to make explicit that the bank must carry out all required due diligence checks and Know Your Customer enquiries, and confirm that these have been done.
- The rules relating to qualifying investments were also tightened to increase transparency and demonstrate better where applicants are ultimately investing their funds.
- Tests relating to the source of the funds were extended to extension and settlement applications, to make clear that subsequent applications may be refused where new evidence has come to light since the initial application was granted.

The NCA has created the Immigration Disruptions Team to ensure it maximises the use of nationality and immigration powers against individuals involved in serious and organised crime. Successful recommendations to the Home Secretary have resulted in outcomes such as the head of an Albanian organised crime group having their leave to remain revoked and prevented from entering the UK and a third-country foreign national being barred from entering the UK due to their substantial links to serious and organised crime.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

N/A

**Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>340</sup>**

**B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>341</sup>**

Due to data protection legislation, the Home Office does not comment on individual cases. Please refer to the answer to question B1 for details of the relevant legislative provisions.

The UK publishes wider immigration statistics on Gov.uk, here, but they do not show figures of those denied entry on the grounds of corruption, as that is not specified in the Immigration Rules.

**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

N/A

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>342</sup>**

The UK is unable to comment on individual cases

<sup>340</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>341</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

<sup>342</sup> You may refer to principles 6 & 7 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

N/A

**Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>343</sup>**

**B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>344</sup>**

N/A

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

N/A

**Holistic questions**

**B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

No

**B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

N/A

<sup>343</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>344</sup> You may refer to principle 3 in the “G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery” in providing your response.

**B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

No

**C. GENERAL QUESTIONS**

**C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

The UK has completed both cycles of the UNCAC Implementation Review Mechanism and we will shortly be publishing the full report of the second cycle. The UK has been and remains fully committed to involving private sector, academia and civil society.

**C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

Yes

In March 2019, the UK presented its two year written follow-up report to the OECD Working Group on Bribery (WGB), outlining the steps taken to implement the recommendations received and to address the follow-up issues identified during its Phase 4 evaluation in March 2017. At the 'half-time' mark, the WGB considered that the UK has fully implemented 16 recommendations, partially implemented 18 recommendations, and not implemented 10 recommendations. The UK continues to work on implementing the outstanding recommendations and is currently scheduled to report against them in March 2021.

**C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

The UK's Anti-Corruption Strategy was first released in December 2017. This cross-government anti-corruption plan brings together all of the UK's activity against corruption in one place. The plan demonstrates the breadth of the UK's current anti-corruption activities; clearly setting out the actions that will be taken to improve how corruption is tackled domestically and the priorities for raising international standards and leading the global fight against corruption. The plan ensures that activity to tackle corruption is joined up and collaborative across government, civil society organisations, law enforcement and other partners. We use it to track progress and report to Parliament on each year's progress. The Year Two Update is [here](#).

The UK has also developed an Economic Crime Plan, which sets out how the UK is tackling a range of crimes closely related to corruption such as fraud and money laundering from 2019-2022. It includes a particular emphasis on the professional enablers and enablers - complicit, negligent and unwitting - who are key facilitators in the money laundering process and are often crucial in integrating illicit funds into the UK and global banking systems. Within professional services, criminal exploitation of accounting and legal professionals, particularly trust and corporate service providers (TCSPs), pose a cross-cutting money laundering threat through the establishment of complex and secretive offshore structures that enable high-end money laundering, particularly corruption and tax fraud.

## USA

### A. ASSET RECOVERY

**A.1. Please provide a brief overview of the current asset recovery framework in place. Please consider including entities involved, their roles and the interaction between them, and domestic laws in place that encourage and facilitate international cooperation. Where applicable, this can be provided in the form of links to other reviews or published work.**

Asset Recovery Legal Framework: Confiscation

The United States has parallel civil (in rem) and criminal (in personam) forfeiture systems, which provide for the forfeiture of both the instrumentalities and proceeds of crime. Bribery and corruption offenses

are listed as “specified unlawful activities” in Title 18, United States Code (U.S.C.) Section 1956(c)(7) and Title 18, U.S.C., Section 1961(l), and the proceeds of these offenses may be forfeited civilly under Title 18, U.S.C. Section 981(a)(1)(C). Moreover, Title 28, U.S.C., Section 2461(c) authorizes criminal forfeiture for any offense for which there is civil forfeiture authority. Corruption crimes constitute both domestic and foreign predicates for money laundering under U.S. law, and property involved in a money laundering offense includes proceeds and facilitating property. Title 18, U.S.C., Sections 981(a)(1)(A) and 982(a)(1) make all “property involved in” money laundering violations, such as Title 18, U.S.C., Sections 1956 and 1957 subject to civil and criminal forfeiture, respectively. Thus, the proceeds of corruption offenses are both criminally and civilly forfeitable either as property involved in money laundering, if a money laundering offense is the predicate for forfeiture, and through 981 or 2461. Proceeds under U.S. law are considered to be the direct proceeds generated by the criminal offense, as well as any indirect proceeds, meaning any property into which the direct proceeds were converted. Section 2461(c) also explicitly incorporates the Federal Rules of Criminal Procedure. Rule 32.2 of the Federal Rules of Criminal Procedure allows for a criminal forfeiture judgment in the form of a money judgment for the amount of proceeds, which may be executed against any property of the defendant. Also, if specific property is forfeited in a criminal forfeiture order and it is no longer available, other assets of the defendant can be forfeited as substitute property under Title 18, U.S.C., Section 982(b) and Title 21, U.S.C., Section 853(p).

#### Asset Recovery Legal Framework: Freezing and Seizure

As part of financial investigations, federal law enforcement agencies are empowered to identify and trace property that is subject to forfeiture under the relevant statutes. Those powers include the use of Grand Jury subpoenas and/or administrative subpoenas as well as search warrants. Property subject to forfeiture can be seized, restrained, or otherwise preserved prior to trial in order to ensure that it remains available, provided that there is probable cause to believe that the property is subject to confiscation. The court in a criminal case is permitted to issue both pre-indictment and post-indictment restraining orders under 21 U.S.C. § 853(e). The property can also be seized with a criminal seizure warrant (§853(f)) which requires a showing that a restraining order would not be adequate to preserve the property. Similarly, federal courts have broad authority in forfeiture proceedings in rem to “take any...action to seize, secure, maintain, or preserve the availability of property subject to...forfeiture,” pursuant to 18 U.S.C. § 983(j), as well as authority to issue a seizure warrant pursuant to 18 U.S.C. § 981(b).

#### Asset Recovery Legal Framework: International Cooperation

There are two basic ways to request legal assistance from the United States: informal and formal. Informal requests through law enforcement channels can provide prompt access to information from public or voluntary sources, or where evidence can be obtained through non-coercive investigative techniques. Typically, formal requests are



necessary where information or evidence must be obtained through coercive means or in a particular manner to ensure its admissibility in court, such as for the collection of financial records or compulsory witness statements.

Countries can make an informal request asking the United States to undertake routine investigative measures such as witness interviews, visual surveillance, and public record searches, such as corporate formation data or real estate records. Confirming information through informal requests is often helpful before preparing and transmitting a formal MLA request for restraint or confiscation in order to avoid delays caused by the need to supplement formal requests.

In addition to U.S. representatives posted at embassies abroad and in U.S. offices, there are networks of asset recovery practitioners through which member practitioners can discuss cases, ideally on secure computer systems or by telephone. These informal conversations may also smooth the way for making effective formal investigative or confiscation assistance. The United States is a member of the Camden Assets Recovery Inter-Agency Network ("CARIN"), ARIN-CARIB, The Global Focal Points Network on Asset Recovery, coordinated by INTERPOL and the Stolen Asset Recovery Initiative, and The Egmont Group.

The general rule is that formal MLA requests are required if obtaining the information will require a coercive measure under U.S. law. This includes: requests for bank account records or wire transfer records; requests for records from businesses or third parties where the person or entity refuses to provide records voluntarily; certificates or other documents authenticating business or public records; searches of premises, computers, or other electronic devices; telephone, text, and/or e-mail records; enforcement of a foreign restraining order or confiscation order; and compelling or otherwise obtaining sworn testimony which a person refuses to provide voluntarily. When a foreign jurisdiction requests formal legal assistance from the United States, they should state in the MLA request the legal basis under which the request is made, if one exists. Usually the MLA request is based upon either bilateral treaty or a United Nations or other multilateral treaty. Even where no treaty basis exists, an MLA request can be executed on the basis of comity and reciprocity, if sufficient support for the assistance requested is provided.

#### Asset Recovery Legal Framework: Recognition of Third Party Claims

United States law (whether constitutional, statutory or otherwise) does not preclude or prohibit another State Party from submitting and litigating claims to be declared the legitimate owner of property that is the subject of United States confiscation proceedings related to the commission of an offense established in accordance with the Convention. Provisions of U.S. law governing procedures for such claims and petitions include, among others, 18 U.S.C. §§ 981, 982, and 983, the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (particularly, but not limited to Supplemental Rule G), and the Federal Rule of Criminal Procedure 32.2(c).

The United States often conducts asset recovery *in cooperation with* foreign competent authorities whereby the United States initiates legal proceedings and then its established legal authorities can either share successfully forfeited assets with a requesting jurisdiction and/or transfers assets for use to the benefit of those harmed by corruption. Litigating claims or petitions from foreign countries in U.S. non-conviction based forfeiture proceedings can burden the resources of both countries; therefore, while countries are free to seek the appropriate legal remedy in each situation, the United States is committed to the return of the proceeds of corruption offenses to countries harmed by corruption in appropriate circumstances.

#### U.S. Agencies Involved in Asset Recovery Cases

Department of Justice, Criminal Division, Money Laundering and Asset Recovery Section (MLARS): This is the lead U.S. litigating agency on asset recovery in kleptocracy matters; its personnel also assist in requests from foreign jurisdictions for information and assistance in recovering assets from corruption and other crimes. Within MLARS, the Department of Justice has a team of specialized prosecutors dedicated to this type of case under a program known as the Kleptocracy Asset Recovery Initiative. Prosecutors working as part of this initiative are responsible for investigating and litigating to recover the proceeds of foreign official corruption. The United States encourages partners to first contact MLARS to discuss how the United States can help obtain evidence and information formally and informally.

Department of Justice, Criminal Division, Office of International Affairs (OIA): This office is the designated Central Authority for the United States in criminal matters and is authorized to receive and execute or refer for execution all formal MLA requests. Foreign governments should send all formal requests to OIA for assistance from the United States. OIA should also be consulted, through designated Central Authorities, on how best to submit such a written request before it is transmitted.

Federal Bureau of Investigation (FBI) and the Department of Homeland Security, Homeland Security Investigations (HSI): These law enforcement agencies have specialized investigative units of dedicated financial investigators responsible for investigation international corruption offenses. In particular, the FBI has established an International Corruption Unit with its headquarters in Washington, D.C. and agents based in Washington, D.C. and other key cities in the United States. In addition, each of these agencies has representatives posted in many U.S. embassies around the world who can facilitate assistance in support of foreign investigations, particularly by providing informal assistance directly and by reaching back to their colleagues in other foreign posts and in U.S. offices. Practitioners from other jurisdictions can contact the FBI or HSI agents working in their country through the U.S. embassies in their countries to make inquiries or discuss their cases before making any formal request.

- A.2. If possible, please provide statistics relevant to asset recovery efforts in your country in recent years. This may include number of cases filed, number of cases which are ongoing, number of cases which are resolved, number of cases in which assets have been returned, etc. Where applicable, this can be provided in the form of links to other reviews or published work.**

Since 2010, the United States has recovered and repatriated over two billion dollars in confiscated assets that were the proceeds of corruption offenses identified in UNCAC.

- A.3. If applicable, please briefly outline key updates to the asset recovery and mutual legal assistance framework related to corruption in your country since the executive summary/country report under the UNCAC Implementation Review Mechanism and the latest version of your FATF Mutual Evaluation report was published.**

UNCAC Review and Updates:

The United States is currently under review under the Second Cycle of the UNCAC Implementation Review Mechanism. There are no major updates to report since completion of the Self-Assessment Checklist. All documents related to the United States' review under the UNCAC IRM can be found on its country profile page here:

<https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fusa.html>

Mutual Legal Assistance Update:

For more than ten years, the Department of Justice's Office of International Affairs (OIA), the U.S. Central Authority for mutual legal assistance in criminal matters, has been working to enhance the gathering of evidence in the United States on behalf of foreign partners. Specifically, OIA created two teams to respond to MLA requests to the United States—the Incoming MLA Team and the Cyber Team.

The Incoming MLA Team is staffed with attorneys with expertise in and authority to implement the Foreign Evidence Request Efficiency Act of 2009, Pub. L. No. 111-79, 123 Stat. 2086, which is codified at Title 18, United States Code, Section 3512. Congress enacted this law to make it “easier for the United States to respond to foreign requests by allowing them to be centralized and by putting the process for handling them within a clear statutory scheme.” 155 Cong. Rec. 6,810 (2009) (statement of Sen. Whitehouse). Under Section 3512, when executing a treaty or non-treaty request for assistance from a foreign authority, an attorney for the U.S. government may file an application to obtain any requisite court orders. Section 3512 authorizes a federal court to issue such orders, and provides clear authority for the federal courts, upon application duly authorized by

an appropriate official of the Department of Justice, to issue orders that are necessary to execute a foreign request.

The Cyber Team is staffed with attorneys with expertise in navigating the complexities of and high standard of proof required by the Electronic Communications Privacy Act of 1986 (ECPA) for obtaining content and non-content data from communication service providers.

FATF Review and Updates:

The United States has put in place a number of Anti-Money Laundering and Combatting the Financing of Terrorism measures since its FATF Mutual Evaluation Report in 2016. For example, as of May 2018, *31 Code of Federal Regulations (CFR) § 1010.230 (Beneficial ownership requirements for legal entity customers)* requires covered financial institutions to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their anti-money laundering (AML) compliance program. The requirements to identify and verify BO, as applied to legal persons (such as corporations and limited liability companies), is clear with respect to both its ownership threshold and its control element.

In addition, the U.S. has introduced ongoing CDD requirements for financial institutions, which included the need to have appropriate risk-based procedures on understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile, and ongoing monitoring of the customer relationship to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. These changes were the principal basis for upgrading Recommendation 10 on Customer Due Diligence from a Partially Compliant to a Largely Compliant rating. More information on these updates can be found here: <http://www.fatf-gafi.org/countries/u-z/unitedstates/documents/fur-united-states-2020.html>

## Questions relevant to the Nine Key Principles on Asset Recovery<sup>345</sup>

### **A.4. Has your country engaged in the proactive pursuit of cases, for example through peer-to-peer outreach, rather than waiting to receive a mutual legal assistance (MLA) request? Please elaborate, and provide representative examples where possible<sup>346</sup>.**

The United States routinely proactively shares information on asset recovery cases. The Federal Bureau of Investigation (FBI) and Department of Homeland Security's Homeland Security Investigations (HSI), for instance, have specialized investigative units of dedicated financial investigators assigned to specifically combat global corruption. Each of these agencies have representatives posted in many U.S. embassies around the world who can facilitate assistance in support of foreign investigations, particularly by sharing information and by reaching back to their colleagues in other foreign posts and in U.S. offices. Practitioners from other jurisdictions can contact the FBI or HSI agents working in their country through the U.S. embassies in their countries to make inquiries or discuss their cases before making any formal request. This approach is particularly effective when accessing information from public or voluntary sources or when employing non-coercive investigative techniques to obtain evidence.

The United States welcomes and encourages inquiries outside MLA channels because substantial information can be exchanged without compulsory measures. A country that needs to verify financial intelligence it has on the location of property or other illegally obtained assets located in the United States generally need not make a MLA request for such a routine investigative measure. Other routine measures include voluntary witness interviews, visual surveillance, and public record searches, such as corporate formation data or real estate records. Confirming information before preparing and transmitting a MLA request for restraint or confiscation is often helpful in order to avoid delays caused by the need to supplement requests to ensure compliance with the requirements of the Convention or other multilateral or bilateral treaty or agreement.

As mentioned above, the United States is also a member of several investigative networks. Through these networks, the United States can often discuss cases and share information informally. The United States is currently a member of the Camden Asset Recovery Inter-Agency Network ("CARIN"), The Global Focal Point Network on Asset Recovery, and the Egmont Group.

<sup>345</sup> We have not referenced content covered by the majority of principles for the following reasons:

- Principle 2: Covered in the review of arts. 14 and 52 of UNCAC and the assessment of FATF Recs. 9 to 21.
  - Principle 3: Covered in the review of arts. 39 and 40 of UNCAC and the assessment of FATF Recs. 29 to 31.
  - Principle 5: Covered in the review of Ch. IV of UNCAC and the assessment of FATF Recs. 36 to 40.
- Certain principles have been included despite coverage of the broader topic in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>346</sup> You may refer to principles 1 and 7e in the "Nine Key Principles on Asset recovery" in providing your response.

**A.5. If possible, please provide an overview of constraints or barriers you have encountered (if any) in pursuing such action.**

Over reliance on formal Mutual Legal Assistance

Many foreign partners prematurely seek assistance through formal cooperation channels and processes before establishing a nexus to the United States. Without justification to employ coercive measures in the United States, U.S. prosecutors are unable to apply to a U.S. court for authorization to provide the assistance sought.

Limited Technical and Technological Capacity of Partners

Often foreign law enforcement partners lack the training and equipment to effectively engage in informal as well as formal cooperation. For example, many foreign practitioners do not have secure office email accounts and other communication tools. This causes significant delays in providing assistance because OIA attorneys are unable to address deficiencies in a timely manner.

Limited Partner Participation in Practitioner Networks

Many of the issues listed above, particularly related to sharing information, can be addressed through participation in practitioner networks. These include the Camden Asset Recovery Inter-Agency Network and the other regional ARINs, or the Egmont Group. Yet, many countries, including several G20 countries, are not members of such networks or do not utilize them.

**A.6. Has your country established focal points of contact for law enforcement to facilitate formal and informal communication in asset recovery cases? Please elaborate.<sup>347</sup>**

The principal focal point for international asset recovery cases is the Department of Justice's Money Laundering and Asset Recovery Section (MLARS), which can be reached at [kleptocracy@usdoj.gov](mailto:kleptocracy@usdoj.gov) and/or +1 202 514-1263 (ask for an attorney in the International Unit)

The principal focal point for international legal cooperation in criminal matters is the Department of Justice's Office of International Affairs (OIA), which can be reached at :+1 202-514-0000. OIA attorneys are assigned responsibility for particular countries so ask for an attorney who is assigned responsibility for assistance issues involving your country.

**A.7. If possible, please provide an overview of constraints or barriers you have encountered (if any) in establishment of these focal points.**

No constraints to report

<sup>347</sup> You may refer to principle 7b in the "Nine Key Principles on Asset recovery" in providing your response

**A.8. Please provide a brief overview of your country's experience in the use of existing networks (policy or operational), such as UNCAC COSP and its subsidiary bodies, Interpol/StAR, International Corruption Hunters Alliance, CARIN, and the meeting of law enforcement authorities at the OECD, amongst others, to facilitate multi-jurisdictional cooperation over the past five years. For example, this may include the frequency of use, platforms which are most employed and the extent to which use has facilitated resolution of asset recovery cases.<sup>348</sup>**

The United States also engages and takes leadership roles in certain topic-specific fora that provide for global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering. One such example is our membership in CARIN, an informal network of law enforcement and judicial practitioners, specialist in the field of asset tracing, freezing, seizure and confiscation. Another example is the United States' active participation in the G20's Anti-Corruption Working Group (ACWG), a leading mechanism for cooperation in raising the standards of transparency and accountability across the G20 and contributing to the global fight against corruption.

**A.9. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of these networks.**

No constraints to report at this time.

**A.10. Please comment on whether your country allows for non-conviction based (NCB) confiscation to take place for asset recovery purposes, and whether NCB methods apply in a limited number of cases or more broadly. If possible, please provide representative examples of successful cases using this technique<sup>349</sup>.**

U.S. law permits U.S. courts, where they have jurisdiction, to order the confiscation of property, consistent with UNCAC Article 54(1)(c), without a criminal conviction, when that property is involved in or traceable to certain offenses. Pursuant to 18 U.S.C. § 981, U.S. courts can order "in rem" forfeiture in connection with a wide variety of offenses, including but not limited to money laundering (§ 981(a)(1)(A)), certain offenses against a foreign nation (§ 981(a)(1)(B)), and certain domestic or transnational offenses related to foreign corruption, among others (§ 981(a)(1)(C)). This

<sup>348</sup> You may refer to principle 7c in the "Nine Key Principles on Asset recovery" or your answers provided under art. 54(1)(c) of your second cycle UNCAC review in providing your response

<sup>349</sup> You may refer to principle 4 in the "Nine Key Principles on Asset recovery" in providing your response



non-conviction based forfeiture is an “in rem” proceeding in that U.S. Government files suit as plaintiff against real or personal property as the defendant due to its nexus to criminal acts. The defendant is not an individual, and thus, this statute can be used in cases in which the underlying offender cannot be prosecuted criminally for reasons of death, flight, fugitivity, or in other appropriate cases. The standard of proof for the Government in civil forfeiture actions is “preponderance of the evidence,” which is lower than the criminal forfeiture standard (“beyond a reasonable doubt”), however, bona fide third party rights (such as “innocent owners,” under U.S. terminology) are protected through a through claim and answer process, whereby claimants may contest and thoroughly litigate the forfeiture.

**A.11. If possible, please provide an overview of constraints or barriers you have encountered (if any) in use of such techniques.**

One challenge presented in seeking enforcement of non-conviction based forfeiture orders is the limited application of such tools in other jurisdictions where cooperation is necessary.

**A.12. If possible, please provide an overview of any other new measures your country has implemented which allow for increased flexibility in asset recovery, and which could be beneficial to share with the group.**

Although not a “new practice”, the United States non-conviction based forfeiture authority permits U.S. courts, where they have jurisdiction, to order the confiscation of property, consistent with Article 54(1)(c), without a criminal conviction, when that property is involved in or traceable to certain offenses. Pursuant to [18 U.S.C. § 981](#), U.S. courts can order “in rem” forfeiture in connection with a wide variety of offenses, including but not limited to money laundering ([§ 981\(a\)\(1\)\(A\)](#)), certain offenses against a foreign nation ([§ 981\(a\)\(1\)\(B\)](#)), and certain domestic or transnational offenses related to foreign corruption, among others ([§ 981\(a\)\(1\)\(C\)](#)). This non-conviction based forfeiture is an “in rem” proceeding in that U.S. Government files suit as plaintiff against real or personal property as the defendant due to its nexus to criminal acts. The defendant is not an individual, and thus, this statute can be used in cases in which the underlying offender cannot be prosecuted criminally for reasons of death, flight, fugitivity, or in other appropriate cases. The standard of proof for the Government in civil forfeiture actions is “preponderance of the evidence,” which is lower than the criminal forfeiture standard (“beyond a reasonable doubt”), however, bona fide third party rights (such as “innocent owners,” under U.S. terminology) are protected through a through claim and answer



process, whereby claimants may contest and thoroughly litigate the forfeiture.

**A.13. Has your country established specialized asset recovery teams of investigators and prosecutors?<sup>350</sup> If so, please provide a brief overview of the set-up of such teams, and any relevant statistics to indicate their effectiveness if possible.<sup>351</sup>**

In 2010, the United States established The Kleptocracy Asset Recovery Initiative. The Kleptocracy Asset Recovery Initiative is led by a team of dedicated prosecutors in the Criminal Division's Money Laundering and Asset Recovery Section, in partnership with federal law enforcement agencies, and often with U.S. Attorney's Offices, to forfeit the proceeds of foreign official corruption and, where appropriate, to use those recovered asset to benefit the people harmed by these acts of corruption and abuse of office. In 2015, the FBI formed International Corruption Squads across the country to address national and international implications of foreign corruption.

**A.14. If possible, please provide an overview of constraints or barriers you have encountered (if any) in set up of such teams.**

No constraints to report.

**A.15. Is your country providing technical assistance to other jurisdictions on building up expertise in asset recovery (how to trace, restrain and confiscate the proceeds of corruption), including training or mentorship programmes? If yes, please share examples.<sup>352</sup>**

The United States supports a number of projects, programs, and initiatives that help build the capacity of foreign partners to engage in effective asset recovery measures. Below is an illustrative, rather than comprehensive, list of some of these programs.

Support for Mongolian Asset Recovery Efforts

The Department of State's INL Bureau is funding the UNODC/World Bank's Stolen Asset Recovery Initiative (StAR) to support the government of Mongolia in developing institutional, legal and operational capacity to effectively investigate, prosecute and adjudicate criminal, to trace and recover stolen assets, particularly from abroad, as well as combat money laundering and terrorist financing.

FBI Anticorruption Advisor Programming

<sup>350</sup> In some jurisdictions, an asset recovery office may fulfil this role.

<sup>351</sup> You may refer to principle 6 in the "Nine Key Principles on Asset recovery" in providing your response

<sup>352</sup> You may refer to principle 8 in the "Nine Key Principles on Asset recovery" in providing your response

The training and mentoring FBI anticorruption advisors provide through this project provides the specific skills and experience foreign investigators need to investigate transnational anticorruption cases, particularly those involving foreign bribery and asset recovery. It also strengthens the ability of foreign investigators to more effectively cooperate with U.S. law enforcement on corruption cases with a U.S. nexus.

#### Distributed Ledger Programming

This project seeks to develop and launch a platform powered by distributed ledger technology (DLT) that will increase transparency and accountability around the disposition of assets returned by the United States to a recipient country. The solution will provide immutable information about how funds are spent and by whom -- institutionalizing transparency and advancing the rule of law in recipient countries. This open-source system will provide the U.S. Government and the recipient country with a decentralized chain of evidence that will enhance accountability and transparency in asset return.

#### Seized Asset Management in Southeastern Europe

The U.S. Department of State is funding OSCE to improve regional cooperation against transnational organized crime in Albania, Bosnia and Herzegovina, Croatia, the Republic of North Macedonia, Montenegro, and Serbia by enhancing their approach to the entire cycle of asset seizure and confiscation. The project will set up effective asset management networks and institutions as well as build capacity across countries to efficiently seize, manage, and re-use assets.

**A.16. Is your country collecting and sharing information on asset recovery cases to demonstrate functionality of the system? Is information being shared within existing forums, such as the UNCAC Asset Recovery Working Group, the OECD Anti-Bribery Working Group or CARIN and similar networks? Please provide a brief overview of such efforts<sup>353</sup>.**

The United States actively participates in a variety of international anticorruption fora. In these fora, the United States often discusses challenges, best practices, and lessons learned from asset recovery cases. For example, the United States frequently responds to the data requests for the UNCAC Asset Recovery Working Group circulated by the UNCAC Secretariat. These responses are available on the Asset Recovery Working Group website. The United States has also published its full Self-Assessment Checklist for the UNCAC IRM Second Cycle of Review and pledged to publish the full Second Cycle Report once it is complete. The United States is also an active participant in the OECD Working Group on Bribery and Financial Action Task Force Plenary.

<sup>353</sup> Where possible, countries may share their response to the questionnaire developed by the Stolen Asset Recovery Initiative (StAR), "StAR Data Collection : International Asset Recovery Efforts in Corruption Cases, 2010–2019". You may refer to principle 9 in the "Nine Key Principles on Asset recovery" in providing your response

Information on U.S. asset recovery cases are also publicly available on the Department of Justice website.

**A.17. If possible, please provide an overview of constraints or barriers you have encountered (if any) in collecting and sharing such data.**

No constraints to report

**Questions relevant to the G20 High-Level Principles on Mutual Legal Assistance<sup>354</sup>**

**A.18. Is your country providing up-to-date and accessible information regarding procedural requirements for MLA? If possible, please provide an overview of the channels through which this is being achieved (e.g. through the StAR Asset Recovery Guides, or other government websites) and the relevant links.<sup>355</sup>**

The United States has publicly published a number of guides and resource materials for countries interested in requesting Mutual Legal Assistance. For example, information on U.S. MLA processes can be found in the *G20 Step-by-step guide: Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries*, located here: [https://star.worldbank.org/sites/star/files/los\\_cabos\\_2012\\_mla\\_guide.pdf](https://star.worldbank.org/sites/star/files/los_cabos_2012_mla_guide.pdf).

In 2017, the United States also updated the resource guide, *U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation*. This guide provides an overview on the type of cooperation the United States can provide in asset recovery cases and how countries should request such cooperation. This guide can be found here: <https://star.worldbank.org/ArabForum/asset-recovery-guides>

Additionally, the Department of Justice's Office of International Affairs (OIA) regularly consults with its counterparts regarding procedures for submission of an MLA request for assistance. In 2017, OIA sent notices to its counterparts regarding an inbox ([OIA.MLA@usdoj.gov](mailto:OIA.MLA@usdoj.gov)) created for more efficient electronic submission of MLA requests. When an MLA request is submitted electronically, a paper version does not need to be mailed to OIA.

<sup>354</sup> Principles 1, 2 and 5 are directly covered in the review of Ch. IV and more specifically arts. 43, 46 and 48 and the assessment of FATF Recs. 37 and 40. They are hence not covered here. Principle 4 is included despite coverage of the broader topics in UNCAC reviews for specific insights on challenging aspects of asset recovery to be drawn out.

<sup>355</sup> You may refer to principle 3 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

**A.19. Has your country conducted, or developed mechanisms for, joint, related or parallel investigations with other jurisdictions in the past five years? Please elaborate. If such investigations have been conducted or such mechanisms have been developed, if possible, please share examples of successful cases that led to criminal prosecution and/or the denial of safe haven to a conviction-based or non-conviction-based confiscation order, and relevant statistics.<sup>356</sup>**

The United States does not have anything to share at this time.

**A.20. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such investigations or setting up such mechanisms.**

No constraints to report at this time.

**A.21. Has your country developed or reviewed domestic legislation or practices to enable greater flexibility in providing assistance in execution of asset recovery requests from other jurisdictions? If so, please share examples based on your country's experience.<sup>357</sup>**

Please see the response to A18.

## Holistic questions

**A.22. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of asset recovery and mutual legal assistance which could be addressed by the G20 ACWG in the future?**

### Need for Stronger Informal Cooperation

As mentioned before, the United States believes informal, or pre-MLA, cooperation plays a critical role investigating and prosecuting international anticorruption cases, including those involving asset recovery. However, many countries, including many G20 countries, frequently do not utilize informal cooperation. An important way to address this issue is to secure full G20 commitment to join and actively use informal practitioner information sharing networks, such as CARIN or the regional ARINs.

<sup>356</sup> You may refer to principle 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

<sup>357</sup> You may refer to principles 3 and 4 in the "G20 High-Level Principles on Mutual Legal Assistance" in providing your response

Need for better understanding and use of Article 57(5) Agreements

With more asset recovery cases coming to successful conclusion, countries are grappling with how to return or dispose of confiscated assets in a manner that is consistent with their domestic laws and international obligations. This includes ensuring assets are returned in a transparent and accountable manner. UNCAC Article 57(5) allows countries to reach concluding agreements or mutually accepted arrangements, on a case-by-case basis, for final disposal of confiscated property. These agreements can facilitate more timely returns that meet the needs and objectives of all stakeholders involved. The G20 should use its expertise to better understand these agreements, with the objective of using them in future returns.

**A.23. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

All G20 countries should make leader level commitments to join and actively participate in informal practitioner information sharing networks, such as CARIN or the regional ARINs. Additionally, the G20 Anticorruption Working Group should continue to share experiences of how members used Article 57(5) agreements to return confiscated assets. Further, the G20 ACWG should continue to explore best practices for ensuring greater transparency and accountability in the disposition of recovered assets.

**A.24. Aside from examples already given, has your country implemented any new initiatives related to asset recovery / MLA which you would like to share with the group?**

Nothing to report.

**B. DENIAL OF SAFE HAVEN**

**B.1. Please provide a brief overview of the current policies, legal frameworks and enforcement measures in place for denial of entry in your country. In particular, has your country defined corrupt practices or offences triggering denial of entry? Where appropriate, you may refer to your response in the “Denial of Entry Arrangements in G20 DoEEN Member States” (2017) publication, and outline any relevant updates.**

The United States denies visas to corrupt foreign officials and their immediate family members through Presidential Proclamation 7750 (PP 7750) and the Anti-Kleptocracy and Human Rights Provision in the annual appropriations bill (“Section 7031(c)”). PP 7750 applies to current

or former foreign officials, who took bribes, misappropriated public funds, or interfered with the electoral or judicial process which such actions had adverse effects on U.S. interests. PP 7750 also applies to non-officials who bribed a foreign official when the bribery had adverse effects on U.S. interests and to certain family or household members who benefited from the corruption. Under Section 7031(c), the Secretary of State makes officials of foreign governments who have been involved, directly or indirectly, in significant corruption or a gross violation of human rights, ineligible to enter the United States. These restrictions under 7031(c) also be applied to certain family members of the foreign official. Additionally, under Section 7031(c), the Secretary of State may publicly announce individuals who are deemed subject to the restriction. In 2019, the State Department publicly designation over 40 public officials and their immediate family members under the corruption prong of this authority.

The State Department supports law enforcement efforts to bring significant narcotics traffickers and transnational criminals to justice through the Narcotics Rewards and Transnational Organized Crime Rewards Programs. These programs allow the Department to offer rewards of up to \$25 million for information leading to the arrest or conviction of such criminals and have brought over 75 fugitives to justice.

On their own or as part of a multifaceted approach, the United States has found that visa restrictions and financial sanctions can be effective tools for combating and deterring public corruption and transnational crime and supporting more government transparency and accountability. These legal tools are an effective way to deny safe haven to corrupt actors and the proceeds of corruption, and they send a powerful message against impunity. The United States has also seen positive impacts with increased media attention to certain cases and even local authorities opening investigations after the sanctions or visa restrictions are announced by the United States.

**B.2. If applicable, please briefly outline key updates to the framework for denial of safe haven and international cooperation on persons sought for corruption in your country since the executive summary of your first cycle review under the UNCAC Implementation Review Mechanism was published.**

## Questions relevant to the G20 Common Principles for Action: Denial of Safe Haven<sup>358</sup>

### **B.3. If available, please cite examples of enforcement measures taken to deny entry to individuals under the laws or policies outlined in question B.1. If possible, please include any relevant statistics.<sup>359</sup>**

Information on visa sanctions under the Global Magnitsky Act can be found on the U.S. Department of State's website <<https://home.treasury.gov/news/press-releases>>.

#### Designations under Section 7031(c)(1)(A) of the Department of State, Foreign Operations, and Related Programs Appropriations Act

As mentioned above, Section 7031(c)(1)(A) of the Department of State, Foreign Operations, and Related Appropriations Act renders ineligible for entry into the United States current and former officials of foreign governments and their immediate family members about whom the Secretary of State has credible information that they have been involved, directly or indirectly, in significant corruption, including corruption relating to the extraction of natural resources, or a gross violation of human rights (GVHR). Section 7031(c)(4) of the Act directs the Secretary to report to Congress periodically on these designations. These reports can be found on the U.S. Department of State's website < <https://www.state.gov/report-to-congress-on-anti-kleptocracy-and-human-rights-visa-restrictions-2/>>

Examples of such designations include:

On July 21, 2020, the Secretary of State publicly designated Maikel Jose Moreno Perez, and his wife, for his involvement in significant corruption. In his capacity as the President of the Supreme Tribunal of Justice in Venezuela, Moreno Perez has personally received money or property bribes to influence the outcome of civil and criminal cases in Venezuela.

On July 30, 2019 the Secretary of State publicly designated the former Director of Passport and Visas at the Liberian Ministry of Foreign Affairs Andrew Wonplo, and his spouse and children, due to his involvement in significant corruption. In his official capacity at the Ministry of Foreign Affairs from 2018 to 2019, Mr. Wonplo was involved in passport fraud that undermined the rule of law, reduced the Liberian public's faith in their government's management of identification and travel documents, and compromised the integrity and security of immigration processes.

<sup>358</sup> For this HLP, questions relating only to principles 4-7 have been included as principles 1-3 do not contain concrete commitments for action by the group.

<sup>359</sup> You may refer to principles 4 and 5 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response



**B.4. If possible, please provide an overview of constraints or barriers you have encountered (if any) in implementation of policies, legal frameworks and enforcement measures in place for denial of entry in your country.**

One particular challenge is ensuring coordination between countries to deny safe haven to corrupt officials. Many countries do not have laws or measures in place to deny entry to corrupt actors, which means these individuals are still allowed to travel with impunity to other countries to enjoy the proceeds of their corruption. Further, it is difficult for the United States to share certain information with other countries regarding visa ineligibilities because of certain confidentiality restrictions.

**B.5. In the past five years, has your country denied entry absent a prior conviction to family members or to close associates who have derived personal benefit from corrupt behavior of the principal target (for example, by broadening the definition of corrupt persons to capture such individuals)? Please provide examples and available statistics if possible.<sup>360</sup>**

A prior conviction is not necessary for the United States to impose the various corruption-related sanctions or visa denial authorities on the immediate relatives who are subject to those restrictions. The standard of proof is dependent on the specific authority, but none require a conviction. For example, Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act does not require that the corrupt foreign official or his immediate relatives be charged or convicted of a crime for U.S. authorities to impose this restriction. Similarly, Presidential Proclamation 7750 does not require a criminal conviction to impose restrictions on members of a corrupt actor's household where such household members derived a benefit from the corruption.

Additionally, in general, individuals who have been convicted of, or admit to commission of, certain crimes that involve moral turpitude, whether under U.S. law or foreign law, are ineligible to receive a U.S. visa under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act.

**B.6. If possible, please provide an overview of constraints or barriers you have encountered (if any) in denying entry absent a prior conviction to family members, or to close associates who have benefited from corrupt acts, as referenced in B.5.**

No constraints to report

<sup>360</sup> You may refer to principles 6 & 7 in the "G20 Common Principles for Action: Denial of Safe Haven" in providing your response



## Questions relevant to the G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery<sup>361</sup>

- B.7. Has your country reviewed relevant immigration programmes or policies to prevent them from being abused by persons seeking safe haven for themselves and their proceeds of crime? If so, please provide a brief overview of results of such a review, and subsequent action taken. This can be provided in the form of links to relevant reviews or published work.<sup>362</sup>**

### **Immigration Legal Framework:**

#### *Immigration and Nationality Act*

Section 212(a)(3)(A)(i) of the Immigration and Nationality Act (INA) provides for inadmissibility for any alien who the consular or immigration officer knows or has reason to believe seeks to enter the United States to engage solely, principally, or incidentally in any activity which violates any United States law relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

Section 237(a)(4)(A)(i) of the INA provides for deportability of any alien who has engaged in or who, after admission, engages in any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information.

In *Matter of Luis* [22 I&N Dec. 747 (BIA 1999)] the Board of Immigration Appeals held that section 237(a)(4)(A)(i) does not require a conviction. *Id.* Rather, the provision requires only engagement, past or present, in any activity in violation of a law relating to espionage. *Id.* at 757.

### **U.S. Agencies involved in immigration programs and policies:**

The United States has a rigorous vetting framework in place to help ensure criminals are not able to abuse U.S. immigration programs and policies. U.S. Citizenship and Immigration Services (USCIS) is the agency within the Department of Homeland Security (DHS) that administers the nation's lawful immigration system. USCIS was founded to enhance the security and efficiency of national immigration services by focusing exclusively on the administration of benefit applications. The Homeland Security Act of 2002 created Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) to oversee immigration enforcement and border security. USCIS has specialized units of

<sup>361</sup> Principles 1,2, and 4-9 contained overlap with principles previously covered in this questionnaire and the work of the Denial of Entry Experts Network. They are hence not covered here.

<sup>362</sup> You may refer to principle 3 in the "G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery" in providing your response.

dedicated adjudication officers as well as investigative units comprised of fraud detection and national security officers.

For example, a prominent immigration program aimed at prospective immigrant investors is the employment-based fifth preference (EB-5) program. This program makes immigrant visas available to qualified immigrants who invest or are actively in the process of investing in a new commercial enterprise (NCE) that creates or preserves permanent full-time jobs for qualifying U.S. workers. As part of the program, among other requirements, all immigrant investors must file individual petitions supported by evidence that the invested capital was acquired through lawful sources. EB-5 regulations state that any assets acquired directly or indirectly by unlawful means, such as criminal activity, will not be considered capital. 8 C.F.R. § 204.6(e). If approved, the immigrant investor may ultimately be admitted to the United States as a conditional permanent resident, subject to termination if information comes to light that the investor has not conformed to statutory requirements. The EB-5 team at USCIS consists of highly trained professionals, including economists, adjudication officers, compliance officers, auditors, Fraud Detection and National Security (FDNS) Immigration Officers (IOs), Intelligence Research Specialists (IRS), and legal counsel. Staff includes Certified Public Accountants (CPAs), Certified Fraud Examiners (CFEs), Certified Anti Money Laundering Specialists (CAMS), and Certified Global Sanctions Specialists (ACAMS-CGSS). Team members are skilled in financial intelligence, business and labor markets analysis, compliance, policy and regulatory expertise, and in multiple languages, such as Chinese, Korean, and Russian. USCIS has partnered with U.S. Immigration and Customs Enforcement (ICE) / Homeland Security Investigations (HSI), and with other agencies, including the Federal Bureau of Investigation (FBI) and the U.S. Securities and Exchange Commission (SEC), Department of Justice, Department of Commerce and Department of Treasury to coordinate activities on persons sought for corruption and asset recovery in criminal prosecution.

USCIS staff not only reviews funds from prospective immigrant investors, but reviews projects that may be used as a vehicle for laundered funds. For example, the Park Lane Hotel was a project that intended to pool funds from immigrant investors through the EB-5 program. Jho Low, the majority equity investor in the Park Lane Hotel, was alleged by DOJ to have unlawfully diverted funds to the project as part of a conspiracy to misappropriate and launder \$4.5 billion from 1MDB, the state-backed fund from Malaysia. In the proceedings against Mr. Low, the Park Lane Hotel was seized by the U.S. Department of Justice and was sold. USCIS worked with Department of Justice when reviewing this case to ensure interagency coordination, cooperation, and integrity to the EB-5 program.

**B.8. If possible, please provide an overview of constraints or barriers you have encountered (if any) in conducting such a review.**

No constraints to report

**Holistic questions**

**B.9. Based on your response to the previous questions in this section, or otherwise, have you identified any gaps or weaknesses in the area of denial of safe haven which could be addressed by the G20 ACWG in the future?**

The major challenge U.S. practitioners have identified is the lack of strong enforcement among countries of anticorruption laws and measures. The lack of enforcement of domestic anticorruption laws, including but not limited to bribery and money laundering laws, requires U.S. authorities to take action to deny entry to corrupt officials and the proceeds of their crime. Further, as mentioned earlier, individuals convicted of criminal acts, including corruption, can in the jurisdictions where crimes took place more easily be denied entry into the United States under existing authority in the Immigration and Nationality Act.

**B.10. If possible, can you outline any specific ways in which the G20 ACWG could address these gaps or weaknesses in the future?**

The G20 should continue to press countries to criminalize acts of corruption and actively enforce their anticorruption laws.

**B.11. Aside from examples already given, has your country implemented any new initiatives related to denial of safe haven which you would like to share with the group?**

The United States has nothing to share in addition to the information already provided.

## C. GENERAL QUESTIONS

- C.1. Has your country completed the first and second cycles of the UNCAC Implementation Review Mechanism as a State party under review? Please indicate the status of each cycle (begun or completed), and if possible, please indicate if your country remains committed to making use, on a voluntary basis, of the options in its terms of reference, including: hosting country visits; involving the private sector, academia and civil society, including by inviting them to country visits; publishing the full reports of reviews and self-assessment checklists.**

The United States' UNCAC Implementation Review Mechanism reports and associated documents can be found on the U.S. UNCAC country profile page:

<https://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=USA>

The United States continues to make use of the voluntary measures in the UNCAC IRM Terms of Reference that allow for in-country site visits and the participation of civil society in the reviews. For example, for the United States' First Cycle Review, a country visit took place April 4-8, 2011 by Sweden and Macedonia. During the country visit, the reviewing experts met with a variety of independent civil society organizations and representatives from the private sector, including Transparency International-U.S.A.; Pfizer; Paul Weiss Rifkind Wharton and Garrison LLP; Regulatory Data Corp, Inc.; Government Accountability Project; and Public Citizen

For the United States' Second Cycle Review, a country visit took place July 16-18, 2019 by The Netherlands and Bangladesh. During the country visit, the reviewing experts met with a variety of independent civil society organizations, including the Sentry, Trace International, The Sunlight Foundation, the Open Contracting Project, Global Witness, Global Financial Integrity, Project on Government Oversight, Public Citizen, the Coalition for Responsibility and Ethics in Washington, and the FACT Coalition.

The Executive Summary of the U.S. Second Cycle Review Report is expected to be finalized by the end of 2020. Once the full report is finalized, the United States will post it online.

The United States has also published its full Self-Assessment Checklists for both the First and Second Cycles.

- C.2. Is your country party to the OECD Anti-Bribery Convention? If not, please give an update on steps taken by your country to participate actively with the OECD Working Group on Bribery for possible adherence to the OECD Anti-Bribery Convention. If so, please give an update on the status of your country in the OECD Anti-Bribery Convention peer review process as a country under review.**

The United States is a party to the Anti-Bribery Convention, and an active member of the Working Group on Bribery. The United States is currently finalizing its Phase 4 evaluation.

- C.3. Are there any national developments related to other work conducted by the ACWG which you would like to highlight? Please outline developments related to one topic.**

None to report at this time.