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**State of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

Addendum

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* [CAC/COSP/IRG/2023/1](#).



II. Executive summary

Haiti

1. Introduction: overview of the legal and institutional framework of Haiti in the context of implementation of the United Nations Convention against Corruption

The implementation by Haiti of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was published on 6 March 2017 ([CAC/COSP/IRG/II/4/1/Add.54](#)). The country report is available on the website of the United Nations Office on Drugs and Crime (UNODC).¹

Legislation incorporating chapters II and V of the Convention includes the Decree of 8 September 2004 establishing the Anti-Corruption Unit (Decree on the Anti-Corruption Unit), the Decree of 17 May 2005 amending the General Civil Service Regulations, the Asset Declaration Act of 12 February 2008, the Act of 11 November 2013 on money-laundering and the financing of terrorism, the Act of 21 February 2001 on the laundering of assets derived from drug trafficking and other serious offences, the Act of 10 June 2009 establishing the general rules relating to public procurement and concession agreements for public works, the Act of 12 March 2014 on preventing and combating corruption, and the Act of 4 May 2017 replacing the Decree of 16 February 2006 on the process of drafting and enforcing finance acts. Treaties or agreements that have been duly ratified or approved – including the Convention – form part of the country's legislation and abrogate all laws that conflict with them (article 276.2 of the Constitution).

The main institutions responsible for preventing corruption are the Anti-Corruption Unit, the National Public Procurement Commission, the General Inspectorate of Finance, the Central Financial Intelligence Unit and the Superior Court of Auditors and Administrative Disputes.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

The Anti-Corruption Unit is responsible for, inter alia, defining a strategy for combating corruption with the participation of the public sector and civil society, monitoring the implementation of the strategy and updating it (art. 4 of the Decree on the Anti-Corruption Unit).

The National Anti-Corruption Strategy adopted in 2009 expired in 2018. It had been envisaged that a steering committee, comprising representatives of the Government, civil society, the media and non-governmental organizations, would be established to enable the implementation and monitoring of the Strategy; however, the committee was never established and the new strategy had not yet been finalized at the time of the virtual country visit.

Measures aimed at preventing corruption include the obligation for public institutions that grant subsidies to publish the list of beneficiaries and the amounts awarded (art. 1 of the Decision of 22 March 2017 on subsidies granted by the public administration) and the assignment of public accountants and financial controllers to institutions of the public administration.

The Anti-Corruption Unit is responsible for identifying factors that contribute to corruption with a view to recommending reforms aimed at the elimination of those

¹ <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fhti.html>.

factors and proposing legislative amendments (arts. 4 and 7 of the Decree on the Anti-Corruption Unit). Following a review of the Decree of 8 September 2004, the Anti-Corruption Unit prepared a preliminary bill aimed at strengthening the Unit's autonomy and independence. In addition, in the context of the preliminary draft of the new Constitution, recommendations were made by the Anti-Corruption Unit to elevate all oversight bodies to the rank of independent institution, such as the Superior Court of Auditors and Administrative Disputes and the Permanent Electoral Council.

Haiti participates in regional and global anti-corruption initiatives such as those led by the Organization of American States, the Caribbean Financial Action Task Force, the Caribbean Community and UNODC.

The Anti-Corruption Unit, the Superior Court of Auditors and Administrative Disputes, the National Public Procurement Commission and the General Inspectorate of Finance are the main bodies responsible for preventing corruption.

The Anti-Corruption Unit is an administrative body under the supervision of the Minister of Economic Affairs and Finance and has legal personality and administrative and financial autonomy (art. 1). Its Director General is appointed by presidential decree (art. 8 of the Decree on the Anti-Corruption Unit) and does not have security of tenure. The role of the Anti-Corruption Unit is to combat corruption in all its forms within the public administration (art. 2), and its board of directors is tasked with, inter alia, raising public awareness of the dangers of corruption and referring cases to the judicial authorities upon completing its investigations in order to initiate criminal proceedings (art. 7 of the Decree on the Anti-Corruption Unit).

The General Inspectorate of Finance, which is supervised by the Minister of Economic Affairs and Finance, verifies, monitors and handles the technical, administrative, financial and accounting audits of the public administration (art. 2 of the Decree of 17 March 2006).

The Superior Court of Auditors and Administrative Disputes is an independent institution (art. 200 of the Constitution) that is responsible for reviewing the official documents of the public administration and auditing accounts maintained by officials who authorize expenditure and accountants who handle public funds, and for assisting Parliament and the executive in overseeing the enforcement of laws and regulations (art. 2 of the Decree of 23 November 2005).

Haiti has informed the Secretary-General of the United Nations that the Director General of the Anti-Corruption Unit and the Minister of Economic Affairs and Finance may assist other States parties in developing and implementing specific measures for the prevention of corruption.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The public administration must be managed with honesty and efficiency (art. 234 of the Constitution). Civil servants may be recruited only through a competitive selection process or under other conditions prescribed by the Constitution and by law, and may be dismissed only on the grounds specifically determined by law (art. 236.2 of the Constitution; arts. 16, 50 et seq. of the General Civil Service Regulations).

The General Civil Service Regulations establish the rules governing the recruitment, promotion and separation from service of public officials. They include the principles of merit, aptitude and the efficiency of public services (arts. 1, 10 and 47 of the General Civil Service Regulations; art. 236.1 of the Constitution). They provide for a mandatory competitive selection process, with certain exceptions (arts. 16, 50 et seq.). By adopting the Decision of 2 April 2013 establishing the procedures and modalities for the organization of recruitment competitions enabling access to positions in the civil service, Haiti established rules governing any transfer from a position in a lower category to a position in a higher category (art. 99). In practice, however, not all officials are recruited and promoted through a competitive process. Ethics training is

also provided for (arts. 114 and 115). The human resources management system was undergoing reform at the time of the country visit.

Positions considered especially vulnerable to corruption have not been identified.

Haitian law provides for an indexed salary scale, which, together with bonuses and benefits, constitutes the system of remuneration (art. 161 of the General Civil Service Regulations). However, that scale has not yet been established.²

The criteria concerning candidature for or election to public office are listed in articles 65, 70 and 79 of the Constitution and article 7 of the Criminal Code. In order to be elected President of the Republic or Senator, a candidate who has served as an accounting officer handling public funds is additionally required to have been relieved of his or her responsibilities in that capacity (for election to the office of President, art. 135 of the Constitution). There are similar provisions with respect to the appointment of the Prime Minister (art. 157 of the Constitution). The Constitution also sets out incompatibilities with respect to the election of members of the legislature (arts. 131 and 132).

Political parties are financed by private contributions and public grants (art. 34 of the Act on the Establishment, Operation and Financing of Political Parties (Political Parties Act)). There are restrictions on funding, including a prohibition on receiving contributions and donations in excess of certain amounts (art. 43 of the Political Parties Act). Every political party must submit its accounts to the Superior Court of Auditors and Administrative Disputes (arts. 40 and 42 of the Political Parties Act) and provide the Ministry of Finance with: (a) a detailed list of all donations of 500,000 gourdes (art. 44 of the Political Parties Act); and (b) a detailed balance sheet accompanied by supporting documentation. In addition, each political party must submit a detailed and complete list of all donations and donors to the Provisional Electoral Council on the first of each month (art. 132 of the Electoral Decree of 2 March 2015).

Restrictions also apply to donations made to candidates (art. 130 of the Electoral Decree of 2 March 2015). Any candidate, political party or political group must regularly submit a list of all donations and donors to the Provisional Electoral Council (art. 132 of the Electoral Decree of 2 March 2015). The General Inspectorate of Finance may audit expenses (art. 5 of the Decree establishing the General Inspectorate).

There are provisions governing disqualification and incompatibilities in the case of certain persons who are prohibited from receiving orders or subcontracts from the State, local authorities or autonomous bodies, including companies in which members of the contracting administrative entity or of the tender opening and evaluation committee have financial interests, spouses of public servants and of officials of the contracting administrative entity, and public officials (art. 22 of the Act of 10 June 2009).

The Code of Ethics, adopted through a decision of 2 April 2013, applies to all civil servants (arts. 1 and 2 of the Code). It states that civil servants must maintain integrity, discretion, impartiality and rigour in the performance of their functions and act with justice, rectitude and probity, fulfilling the duties imposed by administrative law and the rules in force (arts. 10, 11 and 11-1; see also art. 181 of the General Civil Service Regulations and arts. 235 and 236.1 of the Constitution).

Civil servants take an oath of office when taking up their duties.

The Office of Management and Human Resources provides training on public sector ethics, including the content of the Code.

Civil servants who, in the course of their duties, become aware of any crime or offence are required to notify the Government Commissioner immediately (art. 19 of the Code

² Development after the country visit: The Haitian authorities indicated that the Ministry of Economic Affairs and Finance was working on a proposal for a salary scale that would come into effect at the beginning of the next fiscal year, i.e. on 1 October 2022.

of Criminal Procedure). There are several channels, available to all, for reporting acts of corruption, in particular the “5656” telephone line and anti-corruption reporting boxes in several public institutions. However, there is, as yet, no internal reporting system enabling civil servants to report corruption.

Certain categories of politicians, civil servants and other public officials, including all staff of the law enforcement agencies, inspectors of the General Directorate of Taxes and of the General Customs Administration, and officials responsible for combating money-laundering, drugs and corruption, must declare their assets (art. 238 of the Constitution and arts. 1 and 7 of the Asset Declaration Act).

Declarations are made at the time of appointment and upon separation from service. During their tenure or assignment, obliged persons are required to submit a declaration only if the total value of their assets increases by more than 40 per cent of their annual taxable income (arts. 8 to 8.2 and 10 of the Asset Declaration Act). Declarations cover the property of obliged persons and the property of individuals related to such persons by marriage, common-law marriage, filiation or adoption, except for children who have reached the age of majority (chapter 5 of the Asset Declaration Act).

The Anti-Corruption Unit verifies the content of the declarations (arts. 4 and 17 of the Asset Declaration Act). At the time of the country visit, the asset declaration system was in the process of being updated.

Although there is no requirement to declare conflicts of interest, civil servants are prohibited from acquiring a direct pecuniary interest in supplies, tenders and other activities of interest to the State and from having interests that may compromise their independence (arts. 173 and 175 of the General Civil Service Regulations).³

Civil servants are also prohibited from accepting gifts, hospitality or other benefits except those that are customary and of modest value. Any other gift or benefit must be returned to the donor or handed over to the State (art. 20 of the Decision of 2 April 2013).

There is no register of gifts or benefits, nor is there a definition of a gift or benefit that is “customary and of modest value”. The asset declaration form also requires a declaration of outside activities.

Violations of the Code of Ethics may entail civil or criminal proceedings, without prejudice to disciplinary sanctions (arts. 9 and 92 of the Code).

The judges of the Court of Cassation, the courts of appeal and the courts of first instance have security of tenure, and the functions of a judge are incompatible with any other salaried employment, except teaching (arts. 177 and 179 of the Constitution).

The Act on the Status of Judges establishes the independence of judges (part IV, chap. I) and governs their appointment and promotion (part III, chaps. II and III). Articles 65 to 67 establish the disciplinary regime.

Haiti has not yet adopted a code of ethics for the judiciary.

Officials of the public prosecution service are supervised by the Minister of Justice and Public Security. Accordingly, the general Code of Ethics for civil servants is applicable to them. The Judicial Training Institute offers continuous training to judges and members of the prosecution services, including training on corruption-related topics.

³ Development after the country visit: The Haitian authorities indicated that a preliminary bill on strengthening ethical standards in public life was being drawn up by the Anti-Corruption Unit and that the bill would take into account issues relating to the prevention of conflicts of interest.

Public procurement and management of public finances (art. 9)

The Act of 10 June 2009 establishing the general rules relating to public procurement and concession agreements for public works (Public Procurement Act) establishes the modalities for public procurement, according to which public contracts must be awarded either on the basis of open tendering, which is the general rule, or restricted or two-stage tendering, or by mutual or direct agreement (arts. 27 and 29).

The principles governing public procurement include free access to public procurement, equal treatment of bidders and transparency of procedures, regard for ethics, and effectiveness of public spending (art. 1 of the Public Procurement Act). Public procurement by tender must be advertised, including online; otherwise, the procedure is invalid (art. 39 of the Public Procurement Act).

Each contracting authority is responsible for its procurement procedures. The National Public Procurement Commission regulates and oversees the public procurement system and validates the procedures for awarding contracts whose value is equal to or greater than the intervention thresholds (arts. 9 and 62 of the Public Procurement Act; Decision of 25 May 2012 establishing the thresholds for the award of public procurement contracts and the thresholds for intervention by the National Public Procurement Commission).

Tender documents must contain predetermined criteria (arts. 41, 43, 44-1 and 57-1); deadlines are set by law (arts. 48 and 49 of the Public Procurement Act).

Decisions may be contested, without suspensive effect, through an application for reconsideration (arts. 231 and 231-1 of the Decision establishing the implementing regulations for the Act), by referral to the dispute settlement committee (art. 95 of the Public Procurement Act) or by application to the Superior Court of Auditors and Administrative Disputes (art. 95-5 of the Public Procurement Act) and subsequently to the Court of Cassation.

Civil servants responsible for public procurement receive special training and are not permitted to bid for public contracts (art. 23 of the Public Procurement Act).

The procedures for the preparation and execution of the budget are determined by law and the execution of the budget is overseen by the Superior Court of Auditors and Administrative Disputes and the Budget Office (arts. 222 and 223 of the Constitution).

The Act of 4 May 2016 replacing the Decree of 16 February 2005 on the drafting and enforcement of finance acts establishes the procedures for the adoption of the national budget (art. 44 et seq.) and states that the Finance Act must be published no later than 30 September prior to the beginning of any fiscal year, i.e. 1 October. However, if the draft Finance Act is not passed by both houses of the Parliament by 1 October, the provisions of the finance act passed previously remain in force (art. 52 of the Act of 4 May 2016).

Revenues must be entered by institutions into systems computerized for that purpose. However, the mechanisms for reporting information are not computerized and do not ensure the reliability or availability of that information.

The Decision of 16 February 2005 on the general regulations governing public accounting establishes the basic rules for managing public funds (art. 2).

The State's chief accountant exercises administrative control over the operations of his or her delegated accountants, secondary accountants and special State accountants, and all State accountants are subject to verification by the General Inspectorate of Finance (art. 94).

There is no system of risk management or internal control.

The alteration of documents, records or signatures is prohibited, as is the distortion by any civil servant or public official responsible for drafting documents of the substance of or information concerning those documents (arts. 107 and 108 of the Criminal Code). Criminal prosecution of a civil servant does not prejudice the

disciplinary process. Any other person who commits forgery in an authentic or public document, or in a commercial or banking document, is liable to punishment (art. 109 of the Criminal Code).

Public reporting; participation of society (arts. 10 and 13)

The State is obliged to publish “laws, decisions, decrees, international agreements, treaties, conventions and information on any matter concerning national life, except information relating to national security” (art. 40 of the Constitution). However, Haiti does not have a law on access to information. At the time of the country visit, a preliminary bill had been prepared.⁴

Haiti has taken steps to simplify administrative procedures, such as the establishment of “one-stop shops” for certain procedures and the implementation of an electronic declaration system that makes it possible to file tax returns online.

Although entities publish information, that information does not include periodic reports on corruption risks.

The Anti-Corruption Unit organizes awareness-raising activities with different sectors of society, including student competitions and university initiatives relating to integrity and ethics.

Since its inception, the Anti-Corruption Unit has organized communication campaigns to increase awareness of the institution and its mandate.⁵

Private sector (art. 12)

Articles 9 to 17 of the Commercial Code set out provisions relating to bookkeeping.

In 2018, the Anti-Corruption Unit signed a memorandum with the Private Sector Forum concerning a programme on preventing corruption in private sector businesses. An anti-corruption pact was being prepared at the time of the country visit.

The Act of 12 March 2014 on preventing and combating corruption establishes criminal liability for such practices as the establishment of off-the-books accounts, the making of off-the-books transactions, the intentional destruction of bookkeeping documents earlier than foreseen by the law, the use of false documents and the recording of non-existent expenditure (arts. 9, 10 and 25).

According to the government authorities, the tax deductibility of expenses that constitute bribes is not possible because the Constitution provides that no privileges can be established with respect to taxes (art. 219; see also art. 72 of the Decree of 29 September 2005 on income tax).

Measures to prevent money-laundering (art. 14)

The regime for preventing and combating money-laundering consists mainly of the Act of 21 February 2001 on the laundering of assets derived from drug trafficking and other serious offences (Act of 21 February 2001), the Act of 11 November 2013 on money-laundering and the financing of terrorism (Act of 11 November 2013), as amended by the Act of 28 September 2016, and circular No. 99-3 of 27 August 2020 of the Bank of the Republic of Haiti (circular No. 99-3).

The Central Financial Intelligence Unit (see also art. 58 of the Convention) is responsible for receiving, analysing and processing declarations submitted by obliged entities (art. 2 of the Act of 8 May 2017 on the organization and operation of the Central Financial Intelligence Unit (Act of 8 May 2017)). The Unit cooperates with national

⁴ Development after the country visit: The Haitian authorities indicated that the text had been presented to civil society representatives on 2 February 2022 in order to collect their comments and suggestions.

⁵ Development after the country visit: The Haitian authorities indicated that a booklet entitled “Ten things to know about the Anti-Corruption Unit” had also been published in 2022, in the country’s two official languages.

law enforcement and supervisory authorities for the purpose of information exchange, and with foreign institutions that have a similar remit (art. 3 (d) of the Act of 8 May 2017), and has signed memorandums of understanding with other financial intelligence services. The Unit is not a member of the Egmont Group.⁶

Obligated entities are those referred to in article 2 of the Act of 11 November 2013, namely banks, insurance companies, institutions that manage credit cards, savings and credit cooperatives, transfer agencies (financial institutions) and any natural or legal person listed in article 3 (non-financial companies and professions, including casinos, non-governmental development aid organizations and real estate agents).

All obliged entities must: (a) exercise continuous vigilance regarding any business relationship and carefully monitor the transactions carried out (art. 13 of the Act of 11 November 2013, as amended); (b) take all necessary measures to prevent money-laundering when they maintain business relations with a customer who is not physically present for identification purposes (art. 14 of the Act of 11 November 2013, as amended); and (c) report suspicious transactions (art. 31 of the Act of 11 November 2013).

In particular, financial institutions must: (a) develop and implement money-laundering prevention programmes (art. 16 of the Act of 11 November 2013); (b) identify and verify the identity of their customers, including in the case of occasional transactions involving an amount equal to or greater than 110,000.00 gourdes or its equivalent in foreign currency (arts. 17 to 19 of the Act of 11 November 2013 and circular 95-2 of the Bank of the Republic of Haiti); (c) exercise enhanced due diligence with respect to certain transactions described in article 20 of the Act of 11 November 2013; and (d) keep records (art. 23 of the Act of 11 November 2013). Chapter 2 of the Act establishes penalties for violations.

Non-profit organizations must have mechanisms for combating money-laundering and must keep records for five years (art. 28 of the Act of 11 November 2013). Casinos and gaming establishments are required to verify the identity of players and to keep records for five years (art. 29). Persons who carry out, oversee or advise on real estate transactions are obliged to identify the parties in accordance with article 18 (art. 30).

Most obliged entities do not have an assigned oversight body.

Haiti has established a system for detecting and monitoring the cross-border movement of cash equivalent to or exceeding \$10,000 in value (art. 10 of the Act of 11 November 2013). If such cash is not declared, or an incomplete or inaccurate declaration is made, the entire amount of the cash detected may be seized (art. 55 of the Act of 11 November 2013). The declaration requirement does not apply to negotiable instruments.

Electronic transfers involving an amount equal to or greater than the threshold amount established by the Bank of the Republic of Haiti must indicate the full name, account number (or a unique reference number) and address (or national identity number and date of birth) of the originator throughout the payment chain (art. 21 of the Act of 11 November 2013 and art. 8 of circular 99-3). If that information is missing or cannot be obtained, financial institutions may refuse to carry out the transfer (art. 22 of the Act of 11 November 2013).

⁶ The Haitian authorities indicated that the Central Financial Intelligence Unit is undergoing a process of integration that has yet to be finalized.

2.2. Successes and good practices

- Complaints or reports can be filed online on the website of the Anti-Corruption Unit (art. 8, para. 4)
- Launch of a scientific journal entitled “Transparency” as a joint project of the Anti-Corruption Unit and a university, aimed at raising public awareness with regard to the prevention of corruption (art. 13)

2.3. Challenges in implementation

It is recommended that Haiti:

- Draw up a new corruption prevention strategy that promotes the participation of society (art. 5, para. 1)
- Grant preventive bodies the necessary resources and independence, inter alia by providing the Director General of the Anti-Corruption Unit with a stable mandate and by ensuring the provision of financial resources (art. 6, para. 2)
- Endeavour to reform the human resources system in accordance with the Convention, particularly in relation to recruitment, and to identify public positions considered especially vulnerable to corruption; and adopt adequate procedures for the selection, training and, where appropriate, rotation of individuals holding such positions (art. 7, para. 1)
- Endeavour to adopt more systems that promote transparency and prevent conflicts of interest, and to strengthen existing systems (art. 7, para. 4)
- Consider establishing specific measures to facilitate the reporting by civil servants of acts of corruption (art. 8, para. 4)
- Endeavour to reform the asset declaration system so that reporting persons submit regular declarations while in office and the system for verifying declarations is strengthened; to provide for declarations of interests; to define gifts or other benefits that are “customary and of modest value”; and to establish a register of gifts (art. 8, para. 5, and art. 52, para. 5)
- Establish a system of risk management and internal control and strengthen the accounting system (art. 9, para. 2)
- Adopt procedures allowing users to obtain information about the public administration. Haiti is encouraged to adopt a law on access to information (art. 10 (a))
- Haiti could include periodic reports on corruption risks in the information that each entity publishes (art. 10 (c))

It is also recommended that Haiti:

- Take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary and prosecution services; Haiti is encouraged to adopt a code of ethics applicable to judges (art. 11, paras. 1 and 2)
- Strengthen activities to prevent corruption in the private sector, in particular through closer cooperation with law enforcement agencies and the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest (art. 12, para. 1)
- Strengthen measures to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption (art. 13, para. 1)

- Continue to strengthen the regulatory and supervisory regime for designated non-financial businesses and professions, including customer identification; and ensure that each entity has an assigned oversight body (art. 14, para. 1)
- Consider establishing the requirement to report the cross-border movement of appropriate negotiable instruments (art. 14, para. 2)
- Consider requiring that enhanced scrutiny be applied to transfers of funds that do not contain complete information on the originator (art. 14, para. 3)

2.4. Technical assistance needs identified to improve implementation of the Convention

Haiti indicated the following technical assistance needs:

- Capacity-building in the area of digital investigations (art. 6, para. 2)

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Haiti does not have a law dealing specifically with asset recovery. International cooperation in asset recovery is provided for by the Act of 11 November 2013, the Act of 21 February 2001 and the bilateral treaties to which Haiti is party.

Although the law does not preclude spontaneous information-sharing, the country has no established practice in that regard.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Financial institutions are prohibited from maintaining anonymous accounts or accounts under fictitious names (art. 13 of the Act of 11 November 2013, as amended). Such institutions must identify and verify the identity of their clients (arts. 17 to 19 of the Act of 11 November 2013 and arts. 2 and 3 of circular 99-3). When customers do not act on their own behalf, banks are required to obtain the necessary information on the identity of the natural persons who ultimately have a stake of at least 25 per cent in the legal entity concerned (art. 5.1 of circular 99-3).

Financial institutions are also required to have adequate risk management systems in place in order to determine whether a customer is a politically exposed person and, if so, to take all reasonable steps to identify the origin of the funds concerned and ensure enhanced scrutiny (art. 15 of the Act of 11 November 2013 and art. 5.2 of circular 99-3).

The term “politically exposed person” is defined as any person who performs or has performed important public functions in a foreign country or in Haiti, or within or on behalf of an international organization, as well as members of his or her family, or any other persons who are closely related to or associated with him or her, subject to constitutional requirements covering the acts of certain Haitian political figures (art. 4 (13) of the Act of 11 November 2013).

Haiti has not conducted a money-laundering risk assessment. The Haitian authorities indicated that a sectoral assessment of money-laundering risks in the financial system has been conducted.⁷

Article 5 of circular 99-3 lists the cases in which banks must apply enhanced due diligence measures. There is no mechanism enabling the authorities to notify financial

⁷ The Haitian authorities indicated that a national risk assessment was forthcoming (scheduled for 2023).

institutions of the identity of persons whose accounts should be subject to enhanced scrutiny.

Financial institutions are required to keep records of the identity of customers and transactions carried out for at least five years after the closure of the accounts, the termination of the relationship or the completion of the transaction concerned (art. 23 of the Act of 11 November 2013 and art. 9 of circular 99-3).

The establishment of banks that have no physical presence and that are not affiliated with a regulated financial group is not prohibited. Financial institutions are not permitted to enter into a correspondent banking relationship with a shell bank and are required to take measures to ensure that they do not enter into or maintain a correspondent banking relationship with a bank known to permit a shell bank to use its accounts (art. 24 of the Act of 11 November 2013, as amended, and art. 5.3 of circular 99-3). The law does not define the term “shell bank”.

Asset declarations encompass all income, assets and revenue in Haiti (chap. 5 of the Asset Declaration Act). There is no explicit requirement to declare an interest in or signature or other authority over a financial account in a foreign country. Declarations are confidential (art. 5) and cannot be shared with the competent authorities of other States parties. The making of a false declaration, or failure to submit a declaration, is punishable (arts. 16 to 19 of the Asset Declaration Act).

The Central Financial Intelligence Unit is an autonomous administrative body with legal personality and operates under the supervision of the Ministry of Justice and Public Security (art. 1 of the Act of 8 May 2017). Its Director General is appointed by presidential decree. The Director General may be dismissed in the case of serious misconduct (art. 13). However, the law does not provide for a procedure for determining whether serious misconduct has been committed.

Where there is substantial evidence of money-laundering, the Central Financial Intelligence Unit must transmit a report to the Government Commissioner for appropriate action (art. 35 of the Act of 11 November 2013). The Unit may block a transaction that is the subject of a suspicious transaction report for a period not exceeding 48 hours. Upon the expiry of that period, the Unit may order the freezing of the transaction or of accounts, instruments or funds for an additional period of 10 days (art. 34 of the Act of 11 November 2013).

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Other States cannot initiate civil action to establish title to or ownership of property acquired through the commission of an offence. The courts may, in theory, order persons who have committed offences to pay compensation or damages to another State party that has been harmed by such offences (art. 1, para. 2, of the Code of Criminal Procedure and art. 1168 of the Civil Code). At the time of the country visit, such a situation had not yet occurred. There is no provision permitting the courts, when having to decide on confiscation, to recognize another State’s claim as an owner of property acquired through the commission of an offence.

The authorities can give effect to a foreign order of confiscation only if the order concerns a money-laundering offence (arts. 79 and 82 of the Act of 11 November 2013).

In cases in which the offenders cannot be convicted, the property to which the offence relates and, in the case of conviction for a money-laundering offence, the property that was the object of the offence may be confiscated (art. 64 of the Act of 11 November 2013). The law does not distinguish between property of domestic origin and property of foreign origin.

A freezing or seizure order issued by a foreign court, or a mutual assistance request relating to seizure in connection with money-laundering, may be executed (art. 81 of

the Act of 11 November 2013 and art. 5.2.1 of the Act of 21 February 2013). According to the authorities, provisional measures in preparation for confiscation in connection with money-laundering may be requested on the basis of article 81 of the Act of 11 November 2013.

Haiti has not yet received a request for confiscation from another State in connection with an offence established in accordance with the Convention. Articles 5.2.5 and 5.4.2 of the Act of 21 February 2001 specify the procedure for executing confiscation requests linked to money-laundering.

There are no additional requirements for mutual legal assistance requests concerning the recovery of assets relating to a money-laundering offence (art. 5.4.3 of the Act of 21 February 2001).

Haiti submitted copies of the relevant laws at the time of the review.

The country does not make the adoption of confiscation and seizure measures conditional on the existence of a relevant treaty (art. 276.2 of the Constitution). A request for assistance in relation to money-laundering may be refused if the significance of the case does not justify the measures requested (art. 5.2.2 (j) of the Act of 21 February 2001). The legislation does not explicitly stipulate that, before a provisional measure is lifted, the requesting State party must be given an opportunity to present its reasons in favour of continuing the measure. However, according to the authorities, that obligation arises from the direct application of the Convention.

The protection of bona fide third parties in the case of confiscation is limited to the possibility of restitution of the price previously paid to the bona fide acquirer, in the event of cancellation of that party's contract (art. 67 of the Act of 11 November 2013).

Return and disposal of assets (art. 57)

According to the government authorities, Haiti can return confiscated property in direct application of the Convention. However, according to article 69 of the Act of 11 November 2013, funds and other property confiscated in money-laundering cases become the property of the State and are used as contributions to the Special Fund for Combating Organized Crime.

Cooperation requests are, in principle, executed free of charge. However, there is nothing to prevent Haiti from deducting reasonable expenses.

Haiti has not concluded any agreements or arrangements for the final disposal of confiscated property.

3.2. Successes and good practices

- The efforts made by Haiti to modernize its asset declaration system were commended by the reviewing experts (art. 8, para. 5, and art. 52, para. 5)

3.3. Challenges in implementation

It is recommended that Haiti:

- Notify financial institutions of the identity of particular persons to whose accounts such institutions will be expected to apply enhanced scrutiny (art. 52, para. 2)
- Prevent the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group; and define the term "shell bank" in accordance with the requirements of the Convention (art. 52, para. 4)
- Consider taking such measures as may be necessary to make it possible for the information contained in asset declarations to be shared with other States Parties (art. 52, para. 5)

- Consider requiring that asset declarations include any interest in or signature or other authority over a financial account in a foreign country and that appropriate records related to such accounts be maintained (art. 52, para. 6)
- Take measures to permit another State to take legal action in Haiti in order to establish title to or ownership of property (art. 53 (a))
- Ensure that in practice its courts can order those who have committed offences established in accordance with the Convention to pay compensation or damages to another State party that has been harmed by such offences; if, in the future, the courts do not interpret the law in that way, it will be necessary to clarify the law through legislative reform (art. 53 (b))
- Take measures to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State's claim as a legitimate owner of property (art. 53, para. (c))
- Take measures to permit its competent authorities to give effect to an order of confiscation in cases other than money-laundering cases (art. 54, para. 1 (a))
- In cases in which the offenders cannot be convicted, consider taking measures to extend the possibility of confiscating the property to which the offence relates to all offences established in accordance with the Convention (art. 54, para. 1 (c))
- Take measures to permit the freezing or seizure of property pursuant to a foreign request (with or without an order issued by a foreign court) in respect of all offences established in accordance with the Convention (art. 54, para. 2 (a) and (b), and art. 55, para. 2)
- Ensure that in practice, before a provisional measure is lifted, the requesting State party is given an opportunity to present its reasons in favour of continuing the measure; if this does not happen in practice, legislative reform may be necessary (art. 55, para. 8)
- Ensure the establishment of an effective system for protecting the rights of bona fide third parties in the case of the freezing, seizure or confiscation of property connected with any of the offences established in accordance with the Convention, including when legal assistance is provided for the purposes of such measures (art. 55, para. 9)
- Endeavour to take measures to permit the spontaneous transmission of information (art. 56)
- Adopt measures for the return and disposal of confiscated property in accordance with article 57, paragraphs 1–3, of the Convention, taking into account the rights of bona fide third parties; and ensure that confiscated property is returned to the requesting State party in accordance with article 57, paragraph 3, of the Convention (art. 57, paras. 1 to 3)
- Consider concluding agreements to enhance the effectiveness of international cooperation undertaken pursuant to chapter V of the Convention (art. 59)

3.4. Technical assistance needs identified to improve implementation of the Convention

Haiti indicated the following technical assistance needs:

- Technical assistance in the implementation of chapter V of the Convention (legislation and institutional strengthening in relation to asset recovery) (chap. V).