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Executive summary

Note by the Secretariat

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II. Executive summary

Bahamas

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

The implementation by the Bahamas 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 18 January 2016 ([CAC/COSP/IRG/I/4/1/Add.29](#)).

The Bahamas follows a dualist approach to the application of international law in its domestic legal system and, therefore, the Convention cannot be applied directly. The country's legal system is based on common law.

The key legislation and administrative measures implementing chapters II and V of the Convention in the Bahamas include the Freedom of Information Act, the Financial Administration and Audit Act, the Mutual Legal Assistance (Criminal Matters) Act, the Proceeds of Crime Act and the Financial Transactions Reporting Act.

The main institutions involved in corruption prevention and asset recovery efforts are the Office of the Attorney General, the Public Service Commission, the Royal Bahamas Police Force and the Financial Intelligence Unit.

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)

In the absence of a national anti-corruption strategy set out within a specific document, the Bahamas relies on a set of legislative and administrative measures to prevent corruption. The Office of the Attorney General, the Royal Bahamas Police Force, the Financial Intelligence Unit, the Insurance Commission, the Securities Commission and other government agencies involved in regulation, enforcement, legal cooperation, information exchange and maintenance in relation to the country's legal framework meet weekly as the Identified Risk Framework Steering Committee, to discuss topics such as combating corruption (sect. 6, read in conjunction with sect. 2, of the Proceeds of Crime Act of 2018). The authorities reported that they also met regularly with civil society.

The Law Reform and Revision Commission periodically reviews all laws to determine their adequacy (sect. 4 of the Law Reform and Revision Act). The frequency with which anti-corruption legislation should be reviewed has not been established and the review does not cover administrative measures.

The Bahamas is a party to the Inter-American Convention against Corruption and participates in the follow-up mechanism for its implementation.

The main preventive anti-corruption bodies are the Office of the Attorney General and the Anti-Corruption Branch of the Royal Bahamas Police Force. At the time of the country visit, bills to establish an integrity commission and an office of the ombudsman were being considered.

The Office of the Attorney General is primarily a law enforcement body, but it also drafts anti-corruption legislation, including on preventive measures, on the basis of the government agenda. The Financial Crime Investigation Branch of the Royal Bahamas Police Force has preventive and law enforcement functions, and anti-corruption investigations are in its remit. The Branch, which also disseminates knowledge on corruption through various media and public service announcements, among other things, reports to the Police Commissioner. While the Branch's budget is requested together with that of other police departments and there is no specific

legislation in place that regulates its activities, the Bahamian authorities indicated during the country visit that the Branch was operationally independent. The Branch has 20 staff members, all of whom are recruited through the same process as is used for other police officers. Its members are trained specifically on corruption matters.

The Bahamas has not yet informed the Secretary-General of the United Nations of the authority or authorities that may assist other States parties in developing and implementing preventive anti-corruption measures, but has been reminded to do so.

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

The power to appoint, exercise disciplinary control over and remove public officers (as defined in sect. 54 of the Interpretation and General Clauses Act) is vested in the Governor General, who acts in accordance with the advice of the Public Service Commission (arts. 107 and 108 of the Constitution). The Commission must make recommendations to the Governor General regarding appointments, promotions and transfers of public officers (sect. 15 (1) (a) of the Public Service Commission Regulations). The Commission supervises and approves any scheme for admission to public office by examination, and any other method of recruitment including the appointment and procedure for the selection of candidates (sect. 16 of the Regulations).

The Bahamas Government Human Resources Policies establish detailed procedures on various aspects of government employment, including on appointment, promotion, retirement, training and disciplinary measures.

Vacancies must be filled through promotion, transfer or advertisement leading to a selection process. Where a vacancy is not to be filled by promotion, the public must be notified of the vacancy by advertisement, unless the Public Service Commission otherwise directs (sect. 17 of the Regulations). The method of vacancy advertisement is not standardized. When a claim of any officer in the public service for promotion is considered, merit and ability have to be taken into account, as do seniority, experience and formal qualifications (sect. 18 of the Regulations). In most cases, recommendations for promotion are submitted through the Commission to the Governor General, who then acts in accordance with those recommendations (sects. 15, 18 and 24 of the Regulations).

While positions considered vulnerable to corruption have not formally been identified and there is no legislation in place that establishes a general rotation system, public servants may be rotated to a different ministry or department at any given time on a case-by-case basis.

The Salary Guidebook establishes salary scales for public officers.

There are no formal education or training programmes for public officials on ethics, integrity and the risks of corruption.

Persons are eligible to be elected to the House of Assembly if (a) they are a citizen of the Bahamas of at least 21 years of age; and (b) they have ordinarily resided in the Bahamas for a period of not less than one year immediately before the date of their nomination for election (art. 47 of the Constitution). A person is disqualified from standing for office if, inter alia, he or she (a) is serving a prison sentence exceeding 12 months or during any suspension of such sentence; (b) has been convicted of any election-related offence; or (c) is interested in any government contract and has not properly disclosed the nature of such contract and interest (art. 48 (1) of the Constitution).

The Bahamas has not adopted legislation on the funding of candidatures for elected public office or political parties.

The accountability rules contained in the Manual of Cabinet and Ministry Procedure establish the obligation for ministers and parliamentary secretaries to disclose conflicts of interest (rules 33–45). However, the rules do not establish sanctions for

non-compliance and there are no rules applicable to other public officials to promote transparency or prevent conflicts of interest. The Integrity Commission Bill under consideration at the time of the country visit was aimed at, inter alia, preventing conflicts of interest. There is no obligation to disclose gifts beyond the limited requirements of the asset declaration (see information provided in discussion of article 52 below). No disclosure of outside activities, employment, investments or benefits is required beyond the aforementioned limited disclosure of conflicts of interest by ministers and parliamentary secretaries.

Certain regulations contain provisions aimed at promoting ethical conduct by public officials. For example, the Manual of Cabinet and Ministry Procedure provides guidelines on impartiality and the prevention of conflicts of interest for ministers and parliamentary secretaries, and other instruments, such as the General Orders, contain provisions that regulate and limit the outside activities of public officers. There is, however, no overarching code of conduct for public officials. The First Schedule of the Integrity Commission Bill, under consideration at the time of the country visit, contained a code of conduct for specified public officers. Sanctions for non-compliance with the Code were foreseen in the Bill but were not yet in force.

There is no specific framework to facilitate the reporting of alleged acts of corruption by public officials. A “crime stoppers” hotline, which can be used for anonymous reporting by anyone, including public officials, has been established.

The judiciary is independent, and the Constitution regulates the appointment and tenure of justices of the Supreme Court (arts. 94 and 96 (1)) and the Court of Appeal (arts. 99 and 102 (1)), but not of magistrates. Judges must recuse themselves if there appears to be bias or conflicts of interest. In the absence of specific local provisions, relevant practice of the English courts must be followed (sect. 9 of the Court of Appeal Act). Parties to proceedings can apply for a judge’s recusal. The Commonwealth Latimer House Principles and the Bangalore Principles of Judicial Conduct are used as codes of conduct for the judiciary.

Prosecutors are appointed in the same way as public officers (art. 117 of the Constitution). They must adhere to the Bahamas Bar Code of Conduct and to the standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors. Prosecutors receive training on ethics.

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

The Financial Administration and Audit (Amendment) Act of 2013 contains some high-level provisions concerning public procurement (sects. 19A–19H) but does not regulate the process in detail. Existing guidelines are internal. At the time of the country visit, a public procurement bill aimed at modernizing the procurement system and aligning it with regional and international standards was under consideration.

The Government Tenders Board, established by the Financial Administration and Audit Act, makes recommendations to the Minister of Finance for the awarding of contracts with a value between 50,000 Bahamian dollars (B\$) (approximately 50,000 United States dollars) and B\$ 250,000. All goods and services with a value exceeding B\$ 250,000 must be approved by the Cabinet.

Tender documents are published in the local media and on the Government’s website.

There are two methods of procurement: public tendering and select tendering. For public tendering, interested members of the public are invited to submit bids. Select tendering is conducted where specialized services are to be provided and contractors meet the relevant criteria/prerequisites.

The Bahamas does not have legal provisions for challenging procurement decisions, a legislative debarment procedure, measures regarding personnel responsible for procurement decisions or an established legal process for disqualifying a bidder.

Selection criteria are not published in advance of the procurement process and unsuccessful bidders are not notified.

Before the end of each financial year, the Minister of Finance shall cause to be prepared annual estimates of revenue and expenditure for public services during the succeeding financial year, which shall be laid before the House of Assembly (art. 129 of the Constitution; art. 20 of the Financial Administration and Audit Act). Similarly, a midterm review of budget performance must be presented (art. 21 of the Act). The preparation of financial statements is governed by the Act and guided by the International Public Sector Accounting Standards. A comprehensive system of internal audits (carried out by the relevant internal audit unit) and annual audits (carried out by the Auditor General) has been established as a means of monitoring the management of public finances (part IV of the Act).¹

Public records selected for permanent preservation must be transferred to the Bahamas Archives (sect. 6 of the Public Records Act). While any public document may in principle be transferred to the Archives, there is no specific legal requirement for documents related to public finances to be archived. Intentional destruction or falsification of any book, paper or account by a public official or officer of a company or corporation is a criminal offence (art. 350 (1) of the Penal Code).

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

The Freedom of Information Act grants the public access to public records other than exempt records (sects. 2 and 5–14). Exempt records are records related to, inter alia, security, defence, international relations, law enforcement, legal privilege, the national economy, commercial affairs, and certain documents concerning the operations of public authorities and sensitive personal data (sects. 15–27). At the time of the country visit, however, the Act was not yet fully in force, and government agencies were not obliged to disclose information.

The Bahamas has not yet taken steps to simplify administrative procedures in order to facilitate public access to competent decision-making authorities and does not periodically publish reports on corruption risks in the public administration.²

There is no formal framework in place for consultation with civil society and other stakeholders. Public information activities, such as an “integrity week” and quarterly meetings of the Attorney General with civil society organizations, were being planned at the time of the country visit.

The authorities disseminate information on their activities through their websites. Anonymous reporting of incidents to the Royal Bahamas Police Force is not possible.

Private sector (art. 12)

International financial reporting standards and auditing standards have been adopted. Sanctions have been established for failure to conduct the required accounting and auditing activities (sect. 117A (5) of the Companies (Amendment) Act of 2013). Any company incorporated pursuant to the International Business Companies Act is required to keep at its registered office a declaration stating that the company is maintaining reliable accounting records which shall be made available to its registered

¹ Development after the country visit: the authorities of the Bahamas indicated that, in February 2021, the Government had tabled a suite of legislation that was aimed at more clearly defining the roles and responsibilities of the Minister of Finance and senior officials of the Ministry of Finance. The legislation further sought to strengthen the sanctions regime for public officials found guilty of misconduct with taxpayers’ money. The following pieces of legislation have been passed by the Parliament of the Bahamas and came into operation on the dates indicated: Public Debt Management Act of 2021: 1 July 2021; Public Finance Management Act of 2021: 1 July 2021; Public Procurement Act: 1 September 2021.

² Development after the country visit: the authorities of the Bahamas indicated that they had implemented a number of online portals whereby the public was able to interact with various ministries and departments such as the Business Licence Department and the Ministry of Public Works.

agent (para. 2 of the International Business Companies (Accounting Records) Order of 2016).

Although the Office of the Attorney General regularly consults with professional associations, no formal framework is in place for cooperation between law enforcement agencies and relevant private entities.

Associations in various professions, such as accounting professionals, lawyers, banks and trust companies, have codes of conduct.

The Bahamas adopted the Register of Beneficial Ownership Act in 2018. The Act is aimed at keeping a register of the identity of legal and natural persons involved in the establishment and management of corporate entities (see, in more detail, below under article 52 of the Convention).

The country does not have specific measures to prevent the misuse of procedures regulating private entities or restrictions on former public officials being employed by private institutions.

While all companies subject to the Companies Act are required to maintain books and records in accordance with the relevant accounting standards (sect. 117A of the Companies (Amendment) Act of 2013), only regulated entities are required to be audited. All banks and trust companies, as well as credit unions, are required to appoint external auditors and provide audited financial statements to the Central Bank (sect. 86 (7) of the Bahamas Cooperative Credit Union Act of 2015).³ Insurance companies are required to submit audited financial statements to the Insurance Commission of the Bahamas (sect. 58 (1) of the Insurance Act, chap. 347; sect. 24 of the External Insurance Act, chap. 348).

The intentional concealment, injury, destruction or falsification of any book, paper or account by a public officer or officer of a company or corporation is a criminal offence (art. 350 (1) of the Penal Code), and the forgery of official documents or the use of such documents is prohibited in general (title xxv, art. 366 ff., of the Penal Code). Financial institutions (as defined in sect. 3 of the Financial Transactions Reporting Act of 2018) are required to maintain all books and records with respect to their facility holders and transactions for not less than five years after the business relationship has ended (sect. 15 of the Act).

As the Bahamas does not have income or corporate taxes, the issue of the tax deductibility of bribes and other illegal payments does not arise.

Measures to prevent money-laundering (art. 14)

Financial institutions (sect. 3 of the Financial Transactions Reporting Act) include banks and trust companies; specified insurance companies; cooperative credit unions; holders of gaming, proxy gaming, mobile gaming, restricted interactive gaming and gaming house operator licences; and broker-dealers. They also include designated non-financial businesses and professions (sect. 3 (1) (j) of the Act).

Designated non-financial businesses and professions include realtors, land developers, dealers in precious metals and stones, payday lenders, accountants, counsels, attorneys, trust and company service providers and other non-financial businesses and professions designated by ministerial order (sect. 4 of the Act).

The Financial Transactions Reporting Act requires financial institutions (including designated non-financial businesses and professions) to, inter alia, (a) carry out customer due diligence using risk-based procedures (sects. 5–7); (b) report suspicious transactions (sect. 25); and (c) maintain information, including customer and transaction information, for at least five years following the termination of the business relationship or completion of the transaction (sects. 15 and 18).

³ Development after the country visit: the Bahamian authorities indicated that section 20 (1) of the Banks and Trust Companies Regulation Act of 2020 was also pertinent in this regard.

The Central Bank is in charge of supervising banks, trust companies, non-bank money transmission businesses and credit unions (sect. 5 (1) (d) of the Central Bank of the Bahamas Act, as amended; sect. 5 of the Bahamas Cooperative Credit Union Act of 2015).

The Insurance Commission is responsible for regulating and supervising the domestic and external insurance industry (sect. 8 of the Insurance Act, chap. 347, as amended; sects. 10 and 41 of the External Insurance Act, chap. 348), and the Securities Commission is responsible for regulating and supervising the securities industry and financial and corporate service providers (sects. 10, 12 and 13 of the Securities Industry Act of 2011, as amended). The Compliance Commission is responsible for regulating and supervising designated non-financial businesses and professions (sects. 31–37 of the Financial Transactions Reporting Act), while the Gaming Board is responsible for licensing and supervising casino and gaming house operators and their employees (sect. 9 of the Gaming Act of 2014).

The Financial Intelligence Unit (see also information provided in discussion of article 58 below) can cooperate with national and international counterparts and receives suspicious transaction reports (sect. 25 of the Act).

The cross-border movement of cash, negotiable instruments, precious metals or precious stones with a value of B\$ 10,000 or above requires the submission of a written declaration to the Bahamian authorities or, in the case of pre-cleared flights to the United States of America, the form prescribed by the Customs and Border Protection agency of the United States (sect. 3 of the Travellers Currency Declaration Act of 2015, as amended). Sanctions have been established for non-compliance (sect. 5 of the Act).

Before executing a wire transfer, the originating financial institution must verify the payer's identity (sect. 3 of the Financial Transactions Reporting (Wire Transfers) Regulations of 2018). Any wire transfer for B\$ 1,000 or above must be accompanied by the payer's and payee's name, the account number or unique transaction identifier, and the payer's address, date and place of birth, national identity number or customer identification number (sect. 4). If the beneficiary financial institution is situated abroad, names and account numbers or unique transaction identifiers must also be included for transfers below the threshold (sect. 7). Domestic wire transfers may be accompanied solely by the account number of the payer or a unique transaction identifier where the originating and beneficiary financial institutions are both situated in the Bahamas and the originating institution provides the complete payer information to any intermediary or beneficiary financial institution requesting such information within three business days (sect. 6). Originating institutions must keep payer and payee information for five years (sect. 8).

An originating institution that is unable to comply with the requirement of verifying the payer and of obtaining and maintaining the required information or that suspects money-laundering or terrorism financing must not execute the wire transfer (sect. 9). Beneficiary institutions must consider missing or incomplete payer or payee information as a factor in assessing whether the transfer or related transactions are suspicious and whether they must be reported to the Financial Intelligence Unit (sect. 15 (4)).

The Bahamas is a member of the Caribbean Financial Action Task Force, the Caribbean Group of Banking Supervisors, the Association of Supervisors of Banks of the Americas and the International Conference of Banking Supervisors and takes into account relevant guidelines and initiatives. As a member of the Caribbean Financial Action Task Force, the implementation by the Bahamas of the Financial Action Task Force's recommendations has been assessed.

2.2. Successes and good practices

- The requirement to declare the cross-border movement of precious metals and stones (art. 14, para. 2).

2.3. Challenges in implementation

It is recommended that the Bahamas:

- Develop and implement effective, coordinated anti-corruption policies (art. 5, para. 1).
- Endeavour to determine the frequency with which anti-corruption legislation should be evaluated and include administrative measures in the evaluation (art. 5, para. 3).
- Grant the preventive anti-corruption body or bodies the necessary independence, providing material resources and specialized staff (art. 6, para. 2).
- Endeavour to standardize the publication of vacancy announcements; to formally identify positions that are especially vulnerable to corruption and adopt adequate procedures for the selection, training and rotation of persons in such positions; and to promote education and training programmes on ethics and integrity (art. 7, para. 1).
- Consider taking comprehensive legislative and administrative measures to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties (art. 7, para. 3).
- Endeavour to adopt systems that promote transparency and prevent conflicts of interest for public officials other than ministers and parliamentary secretaries, and to strengthen existing systems, including through the establishment of sanctions for non-compliance (art. 7, para. 4).
- Promote integrity, honesty and responsibility among public officials, including through the adoption of codes or standards of conduct developed in accordance with relevant initiatives and the conduct of training; and consider establishing and taking disciplinary or other measures against public officials who violate the codes or standards of conduct (art. 8, paras. 1–3 and 6).

The Bahamas is encouraged to adopt the Integrity Commission Bill, ensuring that it complies with these requirements (art. 8, paras. 1–3 and 6).

It is recommended that the Bahamas:

- Consider establishing comprehensive measures to facilitate the reporting by public officials of acts of corruption to appropriate authorities, including dedicated reporting channels for public officials (art. 8, para. 4).
- Endeavour to require all public officials to declare their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may arise (art. 8, para. 5).
- Establish an appropriate, comprehensive procurement system based on transparency, competition and objective criteria in decision-making, including the public distribution of information relating to procurement, the establishment of participation and selection criteria, an effective system of domestic review and, where appropriate, measures regarding procurement personnel (art. 9, para. 1).

The Bahamas is encouraged to adopt the Public Procurement Bill, ensuring that it takes into account these issues (art. 9, para. 1).

It is recommended that the Bahamas:

- Establish an appropriate record retention period to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue (art. 9, para. 3).
- Effectively implement measures allowing members of the general public to obtain information on its public administration and on decisions and legal acts that concern members of the public, such as the Freedom of Information Act (art. 10 (a)).
- Simplify administrative procedures in order to facilitate public access to the competent decision-making authorities and publish periodic reports on corruption risks (art. 10 (b) and (c)).
- Enhance measures to prevent corruption involving the private sector through, inter alia, (a) formalizing cooperation between law enforcement agencies and the private sector; (b) preventing misuse of procedures and licences; (c) expanding internal auditing controls; and (d) imposing appropriate restrictions on the employment of former public officials and providing effective sanctions for non-compliance (art. 12, para. 1 and para. 2 (a), (d), (e) and (f)).
- Extend the requirements regarding the maintenance of books and records, financial reporting and accounting and auditing standards to persons who are not public officials or corporate officers (art. 12, para. 3).
- Promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption, including through public information activities and public education programmes; and ensure that members of the public are aware of and have access to relevant anti-corruption bodies for reporting corruption, including anonymously (art. 13, paras. 1 and 2).
- Beyond the existing obligation for beneficiary institutions to consider missing or incomplete payer or payee information as a factor in assessing whether the transfer or related transactions are suspicious and must be reported to the Financial Intelligence Unit, consider requiring financial institutions to apply enhanced scrutiny to all wire transfers that do not contain complete information on the originator, irrespective of whether they are cross-border or domestic transfers and any thresholds for refusal of such transfers (art. 14, para. 3).

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

The Bahamas has indicated that it needs assistance in consolidating the existing anti-corruption legislation and policies into one coordinated policy document or manual.

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)

In the absence of a dedicated asset recovery law, international cooperation in asset recovery matters can be provided on the basis of bilateral mutual legal assistance treaties or the domestic framework for mutual legal assistance, comprising the Mutual Legal Assistance (Criminal Matters) Act of 1988, the Proceeds of Crime Act, the Criminal Justice (International Cooperation) Act of 2000, the Criminal Justice (International Cooperation) (Enforcement of Overseas Forfeiture Orders) Order of 2002 and the Proceeds of Crime (Designated Countries and Territories) Order. The Bahamas is a member of the Asset Recovery Inter-Agency Network for the Caribbean.

In practice, the Bahamas exchanges information spontaneously, making use of the Egmont Secure Web of the Egmont Group of Financial Intelligence Units and the

Asset Recovery Inter-Agency Network for the Caribbean for such purposes. For offences falling under the Proceeds of Crime Act, section 61 (3) of the Act and section 4.2.g of the Financial Intelligence Unit Act provide the legal basis for such information exchange.

The Bahamas has not signed any agreements specifically intended to increase the effectiveness of international cooperation in asset recovery; however, the bilateral mutual legal assistance treaties with Canada and the United States include provisions on assistance in forfeiture proceedings (arts. 14 and 17, respectively). The Bahamas has signed a general agreement with Canada that provides for the possibility of sharing confiscated assets.

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

Financial institutions, including designated non-financial businesses and professions (sects. 3 and 4 of the Financial Transactions Reporting Act), are obliged to undertake customer due diligence measures and verify the identity of facility holders for all accounts – irrespective of the value of those accounts – using a risk-based approach (sects. 5–7 of the Act). Facility holders include customers and beneficial owners that have a controlling interest (sect. 2 of the Act).

At the time of the country visit, the establishment of a register of beneficial owners was ongoing.⁴

The definition of “politically exposed persons” encompasses domestic and foreign politically exposed persons, persons who are or have been entrusted with a senior position at an international organization or a domestic or foreign branch thereof, and their family members and close associates (sect. 2 of the Act). Close associates are defined as natural persons closely connected to a politically exposed person (para. 152 of the Central Bank Guidelines); they do not include legal persons.

Enhanced scrutiny of accounts held by or on behalf of politically exposed persons is required (sect. 15 of the Act).

The Governor General may enact orders to comply with international obligations related to the freezing, seizure or sequestration of property held in the Bahamas (sect. 3 of the International Obligations (Economic and Ancillary Measures) Act), with the specific aim of implementing United Nations Security Council resolutions. The Identified Risk Framework Steering Committee shall advise financial institutions of obligations to apply enhanced due diligence to transactions emanating from jurisdictions or foreign financial institutions named by the Committee and the Financial Action Task Force, and establish appropriate mechanisms for providing

⁴ After the country visit, the Bahamian authorities indicated the following:

- (a) The Parliament of the Bahamas passed the Register of Beneficial Ownership Act in December 2018. Section 3 of the Act applies to legal entities incorporated, registered, continued or otherwise established in accordance with the Companies Act and the International Business Companies Act, chapters 308 and 309, respectively. The Bahamas also passed the Register of Beneficial Ownership (Amendment) Act of 2019. The amendment to the Act was passed to include partnerships;
- (b) Section 4 of the Act mandates that the competent authority establish a secure search system for the purpose of enabling every registered agent to maintain a database of the required particulars on the beneficial ownership of legal entities for which it has responsibility. Section 9 of the Act imposes a duty on every registered agent to establish and maintain a database that is accessible by the secure search system. Section 18 of the Act further requires legal entities and registered agents to comply with the new requirements within one year of the commencement of the Act, that is, by December 2019;
- (c) The implementation of the decentralized Beneficial Ownership Secure Search system commenced in June 2019. The system will enable searches of the databases of registered agents of legal entities registered or resident in the Bahamas. Beneficial ownership information will be accessible to the Attorney General, the Financial Intelligence Unit and other designated persons in accordance with the Act;
- (d) In September 2019, the Bahamas completed the onboarding process for 100 of its top-priority registered agents of international business companies and companies incorporated under the International Business Companies Act and the Companies Act, respectively.

information on identified risks to relevant financial institutions, self-regulatory bodies and professional associations (sect. 6 (3) (d) and (i) of the Proceeds of Crime Act).

Financial institutions must keep records and supporting information for at least five years after the end of the business relationship or the date of the transaction (sect. 15 of the Financial Transactions Reporting Act). Sanctions have been established for non-compliance (sect. 18 of the Act).

The establishment and running of a shell bank, defined as a “bank that has no physical presence in the jurisdiction in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision”, is prohibited (sect. 24 of the Act). Financial institutions are also prohibited from entering into or continuing correspondent relationships with shell banks or respondent institutions that allow their accounts to be used by shell banks (sect. 24 (1) of the Act).

Chapter 9 of the Public Disclosure Act requires public officers who hold senior positions and members of the Senate and the House of Assembly to annually disclose to the Public Disclosure Commission their assets, income and liabilities. The most recently reported compliance rates differed among the categories of officials obliged to present declarations and, in some categories, were low. Sanctions have been established for failure to declare and for false declarations (sect. 13 of the Act), and all declarations should be verified by the Commission and a summary of their contents published in the Gazette (sect. 6 of the Act). However, at the time of the country visit, no verifications were being carried out; the authorities had no access to databases to cross-check information, which was being submitted on paper; and the last summaries had been published in 2012.

In theory, additional information not contained in the summaries could also be shared with certain institutions, such as the Office of the Attorney General, which could then share them with foreign States by way of mutual legal assistance.

There is no obligation for public officials to declare signature or other authority over financial accounts abroad.

The Financial Intelligence Unit (sect. 3 of the Financial Intelligence Unit Act) is an administrative-type unit and a member of the Egmont Group. The Unit can, upon request from a foreign financial intelligence unit or domestic law enforcement authority, order the freezing of a bank account for a period not exceeding five days if it is satisfied that the request relates to the proceeds of any of the offences specified in the Second Schedule (sect. 4.2.c of the Act). At the time of the country visit, the Unit was seeking to hold consultations on and finalize inter-institutional memorandums with national counterparts and had signed 18 memorandums with international counterparts for the exchange of information.

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)

Under section 2 of the Interpretation and General Clauses Act, foreign States are considered “persons” and, as such, can bring civil action in Bahamian courts to establish title to or ownership of property acquired through the commission of an offence (sect. 2 of the Supreme Court Act; order 6 of the Rules of the Supreme Court). On the basis of the same definition of “persons”, courts can order any party convicted of an offence to pay reasonable compensation to a foreign State for the injury suffered (sect. 122 of the Penal Code). Sections 40, 55 and 74 of the Proceeds of Crime Act – which deal with the protection of interests of legitimate owners and persons who are not relevant persons – allow Bahamian courts to recognize the legitimate property rights of another State party when deciding on confiscation.

Foreign confiscation orders issued by the competent authority of a “designated country” can be enforced once registered by the Supreme Court (paras. 7 (1)

and 10 (1) of the Criminal Justice Order). However, not all States parties to the Convention are designated countries (Second Schedule of the Order).

Bahamian courts may order the confiscation of property of foreign origin in the context of adjudication of a money-laundering offence or any other crime under the general rules applicable to confiscation (sect. 71 of the Proceeds of Crime Act).

Non-conviction-based forfeiture can be ordered if the court is satisfied that property is, on the balance of probabilities, the proceeds of crime, an instrumentality or terrorist property (sect. 50 of the Act). Proceedings are not to be brought if the value is below B\$ 5,000 (sect. 50 (8) of the Act). On the basis of general mutual legal assistance provisions, the Bahamas can provide mutual legal assistance with respect to foreign non-conviction-based forfeiture orders as long as the forfeiture fulfils these same criteria, but it has not yet been requested to do so.

Paragraph 5 of the Criminal Justice Order allows the Supreme Court to issue restraint orders on the basis of a request for freezing or seizure by a designated country, with or without a foreign freezing or seizure order, where proceedings have been instituted against the defendant in the designated country and a forfeiture order has been made or there are reasonable grounds to believe that such an order may be made in such proceedings. The Supreme Court may also issue restraint orders where it is of the opinion that proceedings are to be instituted in a designated country and there are reasonable grounds to believe that a forfeiture order will be made in such proceedings. However, as mentioned above, not all States parties to the Convention are designated countries.

The Bahamas has not yet received any requests from another State regarding the confiscation of assets located in the Bahamas in relation to an offence established in accordance with the Convention. It has, however, received and executed one request for the freezing of assets.

In addition to the general requirements relating to the content of requests for assistance (paras. 10–12 of the Criminal Justice Order), some bilateral mutual legal assistance treaties set forth additional requirements (art. 5 of the mutual legal assistance treaty with the United States).

The Bahamas provided copies of its legislation giving effect to article 55 of the Convention during the review. It does not make the taking of measures pursuant to paragraphs 1 and 2 of article 55 of the Convention conditional on the existence of a treaty.

The authorities confirmed that, in practice, a requesting State party will be given the opportunity to submit its reasons in favour of maintaining any provisional measure in force before such measures are lifted.

Rights of bona fide third parties are protected (sects. 28, 40, 55 and 74 of the Proceeds of Crime Act and para. 7 (3) of the Criminal Justice Order).

Return and disposal of assets (art. 57)

Confiscated assets are to be credited to the Confiscated Assets Fund. Payments may be made from that Fund, including to compensate victims or pay third parties for interests in property as appropriate, if so decided by the Confiscated Assets Committee (sects. 90–92 of the Proceeds of Crime Act). While the legislation contains no obstacles to the return of property to a requesting State party, there are also no specific provisions establishing the obligation to return property in the cases provided for by the Convention.

Rights of bona fide third parties are protected in forfeiture proceedings (sects. 40 (1) and 91 (2) (d) of the Proceeds of Crime Act; para. 7 (3) of the Criminal Justice Order).

The Bahamas defrays all costs associated with the execution of a request for assistance (sect. 19 of the Mutual Legal Assistance (Criminal Matters) Act). Some bilateral agreements allow for the deduction of specific costs such as travel of

witnesses and expert fees (art. 7 (2) of the mutual legal assistance treaty with the United States).

The Bahamas has concluded several ad hoc agreements for the final disposal of assets. However, those agreements concerned the proceeds of drug offences, and the confiscated assets were shared.

3.2. Successes and good practices

- A procedural manual on international cooperation is available on a government website to assist other States in determining how to best seek cooperation (art. 51).
- The Financial Intelligence Unit organizes public events to share information on its role and responsibilities (art. 58).

3.3. Challenges in implementation

It is recommended that the Bahamas:

- Require financial institutions to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of all close associates of politically exposed persons, including those close associates that are legal persons (art. 52, para. 1).
- Consider modernizing and implementing in practice effective financial disclosure systems for appropriate public officials and establishing sanctions for non-compliance, ensuring that the body competent for verifications of such declarations has adequate resources (art. 52, para. 5); and consider adopting measures to require relevant public officials who have an interest in or signature or other authority over a financial account abroad to report that relationship and to maintain appropriate records thereof, and consider establishing adequate sanctions for non-compliance (art. 52, para. 6).
- Ensure that international cooperation for the purposes of article 55, paragraphs 1 and 2, of the Convention can be provided to all States parties to the Convention (art. 54, paras. 1 and 2, and art. 55, paras. 1 and 2).
- Ensure that confiscated property is returned to the requesting State party in accordance with article 57, paragraph 3, of the Convention, including in cases in which bilateral treaties would allow for the sharing of assets (art. 57, paras. 1, 3 and 5).
- Consider concluding specific agreements or arrangements with other States to increase the effectiveness of international cooperation in asset recovery (art. 59).