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to the United Nations  
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**Executive summary**

**Note by the Secretariat**

**Addendum**

**Contents**

	<i>Page</i>
II. Executive summary .....	2
Philippines .....	2

\* [CAC/COSP/IRG/2022/1](#).



## II. Executive summary

### Philippines

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

The Philippines signed the United Nations Convention against Corruption on 9 December 2003 and ratified it on 8 November 2006.

The legal system of the Philippines is a combination of civil law and common law. Public law is substantially patterned after common law doctrines, while private law follows the civil tradition.

The national legal framework against corruption includes the Constitution, the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713), the Government Procurement Reform Act (Republic Act No. 9184), the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019), the Anti-Money-Laundering Act (Republic Act No. 9160, as amended), the Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee (Republic Act No. 1379), the Rules of Civil Procedure and the Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing under the Anti-Money-Laundering Act (Administrative Matter 05-11-04-SC).

Institutions involved in the prevention of and fight against corruption include the Office of the Deputy Executive Secretary for Legal Affairs and the Presidential Anti-Corruption Commission (both under the Office of the President), the Office of the Ombudsman, the Anti-Money-Laundering Council, the Central Bank (Bangko Sentral ng Pilipinas), the Commission on Audit, the Inter-Agency Anti-Graft Coordinating Council, the National Economic and Development Authority, the Inter-Agency Committee on Good Governance, the Commission on Elections and the Civil Service Commission.

The competent authorities of the Philippines cooperate through various mechanisms and networks. The Philippines is a member of the Asia/Pacific Group on Money-Laundering, the Egmont Group of Financial Intelligence Units, and the Asset Recovery Inter-Agency Network for Asia and the Pacific. The Philippine Center on Transnational Crime formulates and implements concerted action of all law enforcement, intelligence, and other government agencies to prevent and control transnational crime.

#### 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 Philippines has adopted several policies to prevent and combat corruption. The Philippine Development Plan 2017–2022, a medium-term economic blueprint of the long-term vision AmBisyon Natin 2040, identifies in its chapter 5 specific action points to improve transparency and integrity in public administration and to strengthen the national anti-corruption framework, including a five-year Strategic National Anti-Corruption Action Plan, adopted in 2015. The Philippine Development Plan incorporates other focused and sector-specific anti-corruption policies, such as the Integrity Management Program, a national corruption prevention programme for public institutions, and relevant commitments under the Open Government Partnership National Action Plan.

The National Economic Development Authority, through the Inter-Agency Committee on Good Governance, coordinates and monitors the implementation of chapter 5 of the Philippine Development Plan. The Authority tracks overall progress

of the plan implementation with a view to adjusting it during midterm reviews, as necessary.

The Integrity Management Program requires public entities to review and adopt the measures necessary to reduce corruption vulnerabilities and to adopt the Integrity Management Program Handbook as a guide in implementing the measures adopted. Public entities must also create an integrity management committee to manage and guide the development and enforcement of integrity measures. The Program Management Committee, co-chaired by the Office of the Deputy Executive Secretary for Legal Affairs and the Office of the Ombudsman, oversees the Program.

Effective anti-corruption practices are regularly established and promoted. In addition to the Integrity Management Program, the Office of the Ombudsman also manages a number of corruption prevention programmes and activities, such as training on integrity, transparency and accountability in public service; the enhanced income and asset disclosure system (or electronic statement of assets, liabilities and net worth); and the Campus Integrity Crusaders.

Relevant legislation and administrative measures are reviewed primarily in the development of and during midterm reviews of the Philippine Development Plan.

The main prevention bodies are the Civil Service Commission, which is mandated to promote morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the civil service, the Office of the Ombudsman, which is constitutionally mandated to ensure integrity in the public sector, and the Commission on Audit, which audits the use of public funds and property and recommends measures to improve the efficiency and effectiveness of government operations.

The Constitution establishes the Office of the Ombudsman, the Commission on Audit, the Commission on Elections and the Civil Service Commission and provides for their independence and budgetary autonomy and for specific procedures on the appointment and removal of their office holders. They all have sufficient resources and specialized staff to carry out their respective mandates.

The Philippines is a member of several international organizations and initiatives that deal with anti-corruption issues. The Office of the Ombudsman and other authorities have entered into agreements and partnerships with their foreign counterparts to cooperate in the prevention of and fight against corruption.

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

The Civil Service Commission is the central personnel agency of the Government and is mandated, inter alia, to establish a career service, including through recruitment examinations and appointments, and adopt measures to promote efficiency and integrity in the civil service.

The Career Executive Service Board administers a recruitment programme to select candidates eligible for the Career Executive Service. The President, who makes appointments to positions in the Career Executive Service, may choose among such eligible candidates. Non-Career Executive Service positions are filled through open competitions on the basis of merit and fitness. Candidates for both Career Executive Service and non-Career Executive Service positions must have no prior criminal record to be considered for appointment.

Civil servants may be reassigned to different positions upon their consent or in accordance with internal agency rules and policies. Reassignment is determined on the basis of the judgment of the respective agency heads, taking into account the needs of the service and subject to Civil Service Commission general rules on reassignment. Agencies may also undertake personnel movements that take into account factors such as corruption risks. Furthermore, while public positions considered especially vulnerable to corruption have not been identified in Philippine law, certain high-level and highly accountable positions in the Government are subject to more stringent

restrictions than those of other public officials. For example, the Constitution provides that the President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him; the Commission on Appointments is an independent body that is separate and distinct from the Legislature, although its membership is confined to members of the Congress (art. VII, sect. 16).

The Civil Service Commission offers civil servants non-mandatory training programmes on anti-corruption themes, such as the Public Service Values Program and the Ethical Leadership Program. In addition, civil servants may receive training offered by the Office of the Ombudsman. Some positions, especially in the Career Executive Service, may require public officials to take specific ethics courses.

The Constitution, the Omnibus Election Code of the Philippines and the Local Government Code set out qualification and disqualification criteria for election to public office. Section 12 of the Omnibus Election Code states that any person who has been sentenced by final judgment, inter alia, to a penalty of more than 18 months' imprisonment or for a crime involving moral turpitude is to be disqualified for being a candidate and holding any office, unless that person has been given plenary pardon or granted amnesty.

Furthermore, the Omnibus Election Code contains specific rules on permissible contributions to candidates and political parties (sects. 94–95) and requires statements and records related to electoral funding to be disclosed and filed by candidates in both campaign and non-campaign periods (sects. 105–112). Anonymous donations are not permitted (sect. 98). The Commission on Elections enforces those rules.

The Constitution and the Code of Conduct and Ethical Standards for Public Officials and Employees contain provisions on integrity, transparency and the prevention of conflicts of interest. The Code of Conduct and its Implementing Rules and Regulations provide for the definition of conflict of interest, the duty of public officials and employees to declare their business and financial interests periodically in statements of assets, liabilities and net worth, and the duty to divest or resign if their financial or business interests may lead to conflicts of interest (sect. 9 of the Code of Conduct and Ethical Standards for Public Officials and Employees). In addition, the Anti-Graft and Corrupt Practices Act establishes specific classes of conflict of interest as unlawful. Some outside activities of public officials that may be in conflict with their official functions, where those activities do not represent business or financial interests, such as those involving nepotism, are covered in other regulations, such as the Administrative Code (Executive Order No. 292) and the Local Government Code. While there is no specific procedure to report and manage conflicts of interest when they arise, government agencies have adopted mechanisms to facilitate such reporting.

Article VII of the Constitution prohibits public officials listed therein from having secondary employment. Other public officials may have secondary employment provided that they meet the requirements of the Code of Conduct and Ethical Standards for Public Officials and Employees and the Anti-Graft and Corrupt Practices Act.

While there is no comprehensive legal framework regarding whistle-blowing in the public sector in the Philippines, a number of related bills are pending before the Congress and the enactment of a whistle-blower protection law is one of the President's legislative priorities. At present, public officials may use various publicly accessible channels to report acts of corruption.

In addition to the Code of Conduct and Ethical Standards for Public Officials and Employees, staff of various government institutions, congressional staff, and staff of the judiciary and the Office of the Ombudsman are bound by dedicated codes of conduct that contain detailed rules and policies on ethics. These include the New Code

of Judicial Conduct for the Philippine Judiciary, the Code of Conduct for Court Personnel, the Code of Conduct for Prosecutors, the Code of Conduct for Members of the Prosecution Service Support Staff and the Norms of Behaviour for Officials and Employees of the Office of the Ombudsman. For members of the Congress, the Committees on Ethics and Privileges in both the Senate and the House of Representatives have jurisdiction over all matters relating to their conduct, rights, privileges, safety, dignity, integrity and reputation.

The Code of Conduct and Ethical Standards for Public Officials and Employees, in its section 11, provides for sanctions for violations of its provisions, including dismissal from public office. The Code is supplemented by other laws that enforce these obligations, such as the Administrative Code (Executive Order No. 292, book V, title I.A, chap. 7, sect. 46), which provides specific grounds for disciplinary action.

The Constitution provides for the independence of the Supreme Court and outlines the appointment and removal procedure for justices of the Court (art. VIII). The independence and appointment procedures for lower courts, such as the Court of Appeals, the Sandiganbayan (the anti-graft court) and the Court of Tax Appeals are provided in relevant enabling and other laws.

The Philippine Judicial Academy provides training to judges, including on judicial ethics.

Codes of conduct and disciplinary mechanisms applicable to members of the judiciary are available. In addition, officers and employees of the judiciary are subject to the Government Procurement Reform Act and the Code of Conduct and Ethical Standards for Public Officials and Employees, and are required to submit statements of assets, liabilities and net worth periodically. The Revised Rules of Court lay down the grounds for recusal or inhibition, both compulsory and discretionary (sect. 1, rule 137).

Prosecutorial functions are exercised by the National Prosecution Service of the Department of Justice, as established pursuant to the Prosecution Service Act (Republic Act No. 10071), and the Office of the Ombudsman.

In addition to their agency-specific rules on integrity (e.g. the Code of Conduct for Prosecutors and the Code of Conduct for Members of the Prosecution Service Support Staff in the National Prosecution Service) and codes of the legal profession (Code of Professional Responsibility), officials and employees of both of these prosecution agencies are bound by the Code of Conduct and Ethical Standards for Public Officials and Employees.

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

Public procurement in the Philippines is decentralized and all procuring entities must follow the unified legal framework established under the Government Procurement Reform Act and its Revised Implementing Rules and Regulations of 2016. The Government Procurement Policy Board is the central procurement policymaking body that issues relevant policies, rules and regulations and amends the Implementing Rules and Regulations, whenever necessary (sect. 63 of the Government Procurement Reform Act and Implementing Rules and Regulations).

Procuring entities, suppliers, contractors, distributors and consultants are required to use the Philippine Government Electronic Procurement System, an electronic platform that contains tender opportunities, tender documentation and contract award information.

Procuring entities must establish bids and awards committees, which review bids and make recommendations to the head of the procuring entity for selection decision. Unsuccessful bidders may request the bids and awards committee to reconsider its decision. If the request is denied, a protest could be made to the head of the procuring entity. The head's decision is final but may be challenged in court (sect. 58.1 of the Implementing Rules and Regulations).

Public officials and employees involved in procurement follow the Code of Conduct and Ethical Standards for Public Officials and Employees. Suppliers may be excluded from procurement if they fail to observe the terms of bid security declarations or are found to have violated competition laws, in accordance with guidelines established in resolution No. 40-2017 of the Government Procurement Policy Board.

The Commission on Audit conducts audits of procurement processes, including performance and compliance audits, as provided under the Government Auditing Code of the Philippines (Presidential Decree No. 1445).

The Department of Budget and Management submits the proposed national budget to the President, who submits it to the Congress. Both chambers of the Congress review the proposed budget separately and adopt it following a joint review in a bicameral conference committee. Consultations with various stakeholders, including civil society organizations, are conducted during the preparation of the budget.

The Department publishes budget accountability reports, including mid-year and year-end reports. Agencies also publish budget and financial accountability reports on their websites.

The Department has also developed the National Guidelines on Internal Control Systems (guidance to agency heads on internal controls) and the Philippine Government Internal Audit Manual (guidance on establishing internal audit) in the public sector.

Furthermore, the Commission on Audit prescribes the adoption of the Philippine Public Sector Accounting Standards, based on the International Public Sector Accounting Standards, and provides guidance on internal risk management and audit matters by means of the Philippine Internal Auditing Framework for the Public Sector and the Philippine Internal Control Framework for the Public Sector.

The National Archives of the Philippines Act (Republic Act No. 9470) establishes the system of management and administration of government records, including those related to public procurement and finances, and provides for criminal sanctions against any person who, wilfully or negligently, damages a public record or disposes of or destroys a public record other than in accordance with the provisions of the law (sect. 41). In addition, the Revised Penal Code criminalizes the falsification of official government accounting books, records, financial statements or other documents (arts. 171–172).

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

The Constitution (art. II, sect. 28) enshrines the right to information on matters of public concern. Pursuant to the Code of Conduct and Ethical Standards for Public Officials and Employees, all public officials and employees are under obligation to make documents available to the public (sect. 5). Furthermore, rule IV of the Implementing Rules and Regulations of the Code of Conduct and Ethical Standards for Public Officials and Employees requires heads of agencies to establish measures to ensure public access to information (sect. 2) and specifically enumerates defined categories of information exempted from disclosure (sect. 3).

Consistent therewith, the Administrative Code requires heads of agencies to prepare and submit reports to the President. Such reports are deposited with the National Archives of the Philippines and are open to the public for inspection, pursuant to the terms prescribed under the National Archives of the Philippines Act and its Implementing Rules and Regulations. Furthermore, the General Appropriations Act requires the websites of government agencies to maintain transparency seals as proof that pertinent information about the specific agency is available to the public (sect. 93).

In addition, Executive Order No. 2 (s. 2016) on the freedom of information establishes detailed rules on the procedure for and categorical exceptions to access to information and requires executive entities to establish freedom of information manuals and

appoint officers responsible for handling requests for information. A bill on freedom of information is currently pending before the Congress and the enactment of a law on freedom of information is one of the President's legislative priorities.

The Philippines has adopted a number of administrative and legislative measures to simplify regulatory burdens and reduce bureaucracy, including the Anti-Red Tape Act of 2007 (Republic Act No. 9485). To strengthen these measures, the Philippines passed the Ease of Doing Business and Efficient Government Service Delivery Act (Republic Act No. 11032), amending Republic Act No. 9485 and creating the Anti-Red Tape Authority, as well as the Ease of Doing Business and Anti-Red Tape Advisory Council.

While the Commission on Audit publishes on its website observations and recommendations regarding each audited body, including any detected violations of laws, there is no systematic approach for other anti-corruption authorities to publish periodic reports on corruption risks. The National Economic Development Authority, if it deems necessary, and through the Inter-Agency Committee on Good Governance, reviews and monitors reports on corruption risks by government entities for consideration by the overall planning secretariat of the Philippine Development Plan.

The Philippines promotes the involvement of representatives from outside the public sector in decision-making processes, including by providing membership or representation to civil society organizations in oversight bodies and holding regular consultations or dialogues. Examples include the Program Management Committee of the Integrity Management Program, which includes representatives of civil society organizations, the private sector and academia engaged in anti-corruption advocacy and initiatives, and the Government Procurement Reform Act, which requires procuring entities to have observers from non-governmental organizations in their bids and awards committees (sect. 13).

Similarly, broad public and multi-stakeholder consultations were conducted in drafting the Open Government Partnership National Action Plan 2017–2019 through the holding of regional dialogues and workshops.

An anti-corruption education programme has been developed in partnership between the Office of the Ombudsman and the Department of Education and integrated into the secondary and tertiary education curriculum.

Members of the public can report acts of corruption to the Office of the Ombudsman, the 8888 Citizens' Complaint Center and other similar contact centres. Reports can be made, including anonymously, by telephone, Short Message Service, email and mail.

#### *Private sector (art. 12)*

Among the main legal frameworks to prevent corruption in the private sector is the Corporation Code of the Philippines, which contains provisions on the registration of companies and their duty to comply with applicable corporate governance rules and annual reporting requirements. The Securities and Exchange Commission registers corporations and maintains a public registry of corporations. At the time of the country visit, information on the identity of their directors and beneficial owners was not available.

Furthermore, the Securities and Exchange Commission has issued the Revised Code of Corporate Governance and the Code of Corporate Governance for Publicly Listed Companies.

The Ease of Doing Business Act streamlines the business permit and licensing system through a number of measures.

Section 7 of the Code of Conduct and Ethical Standards for Public Officials and Employees prohibits former public officials and employees from engaging in certain activities and having interests in the private sector that relate to their prior official functions for a period of one year.

Measures facilitating whistle-blowing in the private sector include a recommendation in the Code of Corporate Governance for Publicly Listed Companies, as well as penalties for retaliatory acts against whistle-blowers in section 179 of the Corporation Code. Other laws provide for legal protection and incentives to those who report cartel conduct and tax evasions (e.g. the Tax Reform Act (Republic Act No. 8424)).

The National Internal Revenue Code (Republic Act No. 8424, as amended) established under the Tax Reform Act provides for an offence of wilfully falsifying any report or statement or of certifying financial statements containing an essential misstatement of facts or omission in respect of the transactions, taxable income, deduction and exemption (sect. 257).

Section 34, paragraph A.1 (b) and (c), of the Tax Reform Act disallow the deduction from taxable income of any corrupt payments or payments that cannot be substantiated. Furthermore, internal revenue officers must report any detected violations of laws to the Commissioner of Internal Revenue for referral to law enforcement authorities, as appropriate.

*Measures to prevent money-laundering (art. 14)*

The anti-money-laundering legal framework is composed principally of the Anti-Money-Laundering Act, its Revised Implementing Rules and Regulations, and the anti-money-laundering regulations issued by supervisory authorities and appropriate government authorities. This framework requires “covered persons” to perform preventive measures, such as customer identification, customer due diligence, record-keeping, and the reporting of suspicious transactions (sect. 9 of the Anti-Money-Laundering Act). While real estate brokers are not included in the definition,<sup>1</sup> there are temporary measures to address the risks of money-laundering in the real estate sector, which are considered to be low. For example, section 7 (12) of the Anti-Money-Laundering Act requires the Registries of Deeds of the Land Registration Authority to submit reports on all real estate transactions exceeding 500,000 Philippine pesos to the Anti-Money-Laundering Council.

The Philippines conducted national risk assessments in 2015 and 2017 and underwent mutual evaluations under the Asia/Pacific Group on Money-Laundering in 2003 and 2008. A National Anti-Money-Laundering and Countering the Financing of Terrorism Strategy was adopted in November 2018 through the President’s issuance of Executive Order No. 68 (s. 2018).

To strengthen cooperation at the national and international levels, supervisory authorities (notably the Anti-Money-Laundering Council, the Central Bank, and the Securities and Exchange Commission) have signed cooperation agreements with domestic and foreign counterparts. There is also a National Law Enforcement Coordinating Committee and a National Anti-Money-Laundering and Countering the Financing of Terrorism Coordinating Committee.

The Anti-Money-Laundering Council (pursuant to sect. 2 and sect. 7, para. 8 of the Anti-Money-Laundering Act) and supervisory authorities (notably the Central Bank, the Insurance Commission and the Securities and Exchange Commission) are authorized to cooperate and exchange information at the national and international levels.

Under the rules of the Central Bank, all cash amounts in excess of 50,000 Philippine pesos and foreign currency and foreign exchange-denominated bearer monetary instruments in excess of 10,000 United States dollars must be declared upon arrival

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<sup>1</sup> In a development after the country visit, the authorities of the Philippines reported that amendments had been made to the Anti-Money-Laundering Act, by means of enactment of the “Act Further Strengthening the Anti-Money Laundering Law” (Republic Act No. 11521) in January 2021, to, inter alia, modify the definition of “covered persons, natural or judicial” to include real estate developers and brokers.



or departure. False declarations and/or failures to declare are punishable by fine, imprisonment, or both (Central Bank Circular No. 308).

Rule 9.A of the Revised Implementing Rules and Regulations establishes requirements for cross-border and domestic wire or fund transfers and related messages. Transfers amounting to or exceeding 10,000 United States dollars or its foreign currency equivalent must be accompanied by required originator and beneficiary information. Otherwise, the beneficiary institution must require additional information from the originating or intermediary institution. Information and records must be maintained and stored for five years from the transaction date (rule 9.b.1).

## 2.2. Successes and good practices

- The enactment and issuance of legislative, administrative and institutional measures to simplify regulatory burdens and reduce bureaucracy, including the Anti-Red Tape Act (art. 10 (b)).

## 2.3. Challenges in implementation

It is recommended that the Philippines:

- Continue to implement anti-corruption strategies and strengthen measures to monitor and evaluate the implementation of those strategies effectively; and monitor inter-agency coordination in the implementation and oversight of corruption prevention strategies, to avoid the duplication and fragmentation of efforts (art. 5, para. 1).
- Consider: (a) adopting explicit rules and policies identifying public positions considered especially vulnerable to corruption and providing for the rotation of persons in such positions; and (b) introducing mandatory and comprehensive anti-corruption training for civil servants (art. 7, para. 1).
- Endeavour to take further measures to strengthen the prevention of conflicts of interest in the public sector, by expanding the definition of conflict of interest to cover a wider scope of interests other than business and financial interests, and by establishing clear procedures to report and manage conflicts of interest when they arise (art. 7, para. 4, and art. 8, para. 5).
- Consider adopting comprehensive legislative and administrative measures to facilitate the reporting of corruption by public officials and to protect them effectively against retaliation, including through the adoption and implementation of a whistle-blower protection law (art. 8, para. 4).
- Take steps to strengthen the public procurement system by: (a) considering the adoption of additional conflict of interest disclosure and management rules for procurement officials; (b) extending the grounds for excluding bidders found to have been previously engaged in corrupt practices; and (c) establishing an independent and effective appeal mechanism for procurement decisions (art. 9, para. 1).
- Adopt a comprehensive legislative and institutional framework to regulate in detail the procedure for access to information held by public bodies beyond the executive departments (Executive Order No. 2), including legislative, judicial and constitutional bodies, as well as public service contractors engaged in government transactions (art. 10 (a)).
- Ensure that anti-corruption authorities periodically prepare and publish reports on corruption risks (art. 10 (c)).
- Adopt further measures to improve transparency and public accessibility of company ownership and management information (art. 12, para. 2 (c)).

- Consider including real estate brokers within the definition of “covered persons” (art. 14, para. 1 (a)).<sup>2</sup>
- Consider eliminating the threshold of \$10,000 or above for electronic transfers to be accompanied by required originator and beneficiary information (art. 14, para. 3).

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

- Institution-building (arts. 5, 8 and 12).
- Capacity-building (arts. 5, 8 and 12).
- Research and data-gathering and analysis (arts. 5 and 12).
- Facilitation of international cooperation with other countries (arts. 5 and 8).

### **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)*

The Philippines responds to requests for asset recovery primarily on the basis of the Anti-Money-Laundering Act, mutual legal assistance treaties and, for non-treaty-based requests, the principle of reciprocity. It may further consider the Convention as a legal basis for mutual legal assistance.

The spontaneous exchange of information is authorized under existing mutual legal assistance treaties, cooperation agreements and legislation, including the rules and regulations of the Anti-Money-Laundering Council, the Central Bank, the Securities and Exchange Commission, the Office of the Ombudsman and the Office of the Solicitor General.

The Philippines is party to nine bilateral mutual legal assistance treaties and the Treaty on Mutual Legal Assistance in Criminal Matters of the Association of Southeast Asian Nations.

The Philippines has not formally refused any request for asset recovery.

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

Section 9 of the Anti-Money-Laundering Act establishes requirements for customer identification, record-keeping and suspicious transaction reporting. Beneficial owner identification is required regardless of the value of the account (rule 9.A.1 (b) and (e) of the Revised Implementing Rules and Regulations).

With regard to covered persons (designated non-financial businesses and professions), the Revised Implementing Rules and Regulations and the Anti-Money-Laundering/Counter-Terrorism Financing Guidelines provide preventive measures and enhanced due diligence for specific customers and activities, such as politically exposed persons, including their immediate family members, close relationships and associates (see, for example, rule 9.a of the Revised Implementing Rules and Regulations). In case of heightened money-laundering risk, covered persons must apply enhanced due diligence or file a suspicious transaction report, if warranted.

Financial institutions are advised of the identities of high-risk persons through circulars issued by the supervisory authorities (the Central Bank, the Securities and Exchange Commission and the Insurance Commission) and instructed to submit suspicious transaction reports regarding those persons, where warranted. Supervisory

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<sup>2</sup> Ibid.

authorities conduct regular examinations of covered persons to verify the existence of mechanisms to identify, monitor and report high-risk persons.

Section 9 (b) of the Anti-Money-Laundering Act, together with rule 9.B of the Revised Implementing Rules and Regulations, sets out record-keeping requirements, which prescribe, inter alia, that records of transactions must be maintained for five years from the dates of transactions, and that, with respect to closed accounts, records on customer identification, account files and business correspondence must be preserved for at least five years from the dates when the accounts were closed.

The Central Bank Manual of Regulations of Banks (sect. X806.2.p) and rule 9.A.3 of the Revised Implementing Rules and Regulations (Shell company/bank and bearer share entities) prohibit the establishment of shell banks. Rule 9.A.3 also requires that covered persons guard against establishing relations with foreign financial institutions that permit their accounts to be used by shell banks. Rule 9.A.2 (Correspondent banking) prohibits covered persons from entering into, or continuing, correspondent banking relationships with shell banks and requires covered persons to ensure that respondent financial institutions do not permit their accounts to be used by shell banks.

All public officials and employees are required to disclose their financial interests, including accounts deposited in banks, through the regular filing of statements of assets, liabilities and net worth. Such statements are available for public inspection and reproduction, subject to the conditions set out in the Code of Conduct and Ethical Standards for Public Officials and Employees and the guidelines issued by the Office of the Ombudsman in memorandum circular No. 03, series of 2012. The statements are verified by receiving offices specified in the rules. The Office of the Ombudsman, the Office of the President and the Civil Service Commission are spearheading a project for the online submission of the statements. Nothing in the legislation precludes the sharing of information pertaining to these statements with foreign States.

There is no distinction between assets, liabilities and interests to be declared in the Philippines and those to be declared overseas.

The Anti-Money-Laundering Council is the Financial Intelligence Unit of the Philippines and has the capacity to receive, analyse, and disseminate suspicious transaction reports, conduct money-laundering supervision, investigate and refer cases for prosecution, and institute civil forfeiture and other remedial proceedings.

*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)*

The State, its political subdivisions and other juridical persons (as defined in art. 44 of the Civil Code) can be plaintiffs in civil actions before the Philippine courts (rule 3 (a) of the Rules of Civil Procedure). This provision has not been applied in cases involving foreign Governments.

The Civil Code (art. 2197) and the Rules of Civil Procedure (rule 3, sects. 1–2) provide for actual or compensatory damages that the Philippine courts may award. Corresponding provisions are included in the Revised Penal Code (arts. 38, 100 and 104) and the Revised Rules of Criminal Procedure (rule 120).

In forfeiture proceedings for property derived from money-laundering offences under the Anti-Money-Laundering Act, any person claiming an interest therein may apply for a declaration that the same legitimately belongs to him or her (sect. 12 (b) of the Anti-Money-Laundering Act and sect. 35 of the Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing). For offences under the Anti-Graft and Corrupt Practices Act, section 9 (Penalties for violations) establishes the right of a complaining party to recover the value of the object of the offence in a criminal action with priority over the forfeiture in favour of the Government of the Philippines. For all other offences, a foreign State, as a juridical person under Philippine law, is

considered a real party in interest and, as such, may be a party to a case pursuant to the Rules of Court.

Enforcement of foreign confiscation orders requires judicial proceedings, as there is no mechanism for the direct enforcement of foreign confiscation orders. For proceeds of money-laundering and predicate offences, the main action to be filed in court is a petition for civil forfeiture (sect. 13 (b) (3) of the Anti-Money-Laundering Act and sect. 2 of the Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing). Applications must be accompanied by the order of a court in the requesting State ordering the forfeiture of property of a person who has been convicted of a money-laundering offence in that State (sect. 13 (b) (3) of the Anti-Money-Laundering Act). The foreign judgment or order is considered to be conclusive where there is no evidence of a want of jurisdiction, want of notice to the party, collusion, fraud or a clear mistake of law or fact (rule 39, sect. 48, of the Rules of Civil Procedure). In the absence of a money-laundering conviction, section 13 (a) of the Anti-Money-Laundering Act is applied, although the section is limited by its terms to assistance in investigations and prosecutions of money-laundering offences. According to the authorities, section 13 is applicable to stand-alone offences not linked to money-laundering.

Where the Anti-Money-Laundering Act is not applicable, and in the absence of a law on mutual legal assistance, the Philippines responds to requests for asset recovery on the basis of existing mutual legal assistance treaties, applying the Rules of Civil Procedure (rules 38–39), or to those made through diplomatic channels on the basis of reciprocity.

Where probable cause exists that property, whether domestic or foreign, is related to a money-laundering or predicate offence, the Anti-Money-Laundering Council, through the Office of the Solicitor General, must file an ex parte petition for forfeiture, and the Rules of Civil Procedure apply (sect. 12 (a) (Civil forfeiture) of the Anti-Money-Laundering Act).

Regarding non-conviction-based forfeiture, notwithstanding section 13 (b), the Philippines applies section 13 (a) of the Anti-Money-Laundering Act in practice. Furthermore, section 27 of the Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing provides that no prior criminal charge or conviction for money-laundering or a predicate offence is necessary for petitions for civil forfeiture.

The Philippines may freeze or seize proceeds of money-laundering offences on the basis of either a foreign court order or, if there is no final judgment, a foreign request for mutual legal assistance, through an application under section 13 (a) of the Anti-Money-Laundering Act. Furthermore, the authorities may trace, freeze, restrain and seize proceeds of any unlawful activity, pursuant to section 13 (b) (1) of the Anti-Money-Laundering Act.<sup>3</sup> The case of *Republic v. Gyron Crew* and other cases were provided as examples. Section 10 of the Anti-Money-Laundering Act allows the court, upon application by the Anti-Money-Laundering Council, to issue a freezing order, with immediate effect, for up to 20 days and, by extension, for up to six months after a summary hearing. However, in practice, the Anti-Money-Laundering Council applies directly for forfeiture and preliminary asset preservation orders, which allow for restraint of property for an indefinite period (sect. 13 (a) of the Anti-Money-Laundering Act and sect. 11 of the Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing). According to the authorities, the aforementioned measures are applicable to stand-alone offences not linked to money-laundering.

Where the costs and expenses involved in processing requests exceed the value of the assets involved, the Anti-Money-Laundering Council coordinates with requesting States on whether to pursue forfeiture despite the de minimis value of the assets

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<sup>3</sup> The 2018 Implementing Rules and Regulations of the Anti-Money-Laundering Act define unlawful activities to include “felonies or offenses of a nature similar to the aforementioned unlawful activities that are punishable under the penal laws of other countries”.

involved. The Philippines consults with requesting States as a matter of practice before lifting provisional measures or refusing assistance.

Section 12 of the Anti-Money-Laundering Act, sections 35 to 42 of the Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing and article 1544 of the Civil Code protect the rights of bona fide third parties.

*Return and disposal of assets (art. 57)*

Proceeds of money-laundering offences are forfeited in favour of the Philippines, through the Anti-Money-Laundering Council as petitioner, if a preponderance of evidence exists (sect. 12 (b) of the Anti-Money-Laundering Act and sect. 35 of the Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing). On the basis of those provisions, a court may order the return of forfeited assets to a requesting State having rightful ownership or any other person claiming an interest therein. These measures apply in money-laundering cases. There is no provision for the mandatory return of confiscated assets in cases covered by article 57, paragraph 3, of the Convention.

The costs of asset recovery are charged against the property to be recovered, upon agreement with the requesting State.

Decisions on asset return are reached by ad hoc arrangements with requesting States. There have been no formal asset-sharing agreements with other countries to date. The newer mutual legal assistance treaties also contain asset-sharing provisions.

### **3.2. Challenges in implementation**

It is recommended that the Philippines:

- Adopt measures to ensure that its competent authorities may recognize and enforce confiscation orders issued by foreign courts in respect of all offences under the Convention. In particular, in the absence of a law on mutual legal assistance, clarify the application of section 13 (a) and (b) of the Anti-Money-Laundering Act to requests involving stand-alone offences not linked to money-laundering and predicate crimes to money-laundering, and irrespective of a conviction of the offender for a money-laundering offence, as required under section 13 (b) of the Anti-Money-Laundering Act (art. 54, para. 1 (a), and art. 55, para. 1).
- For provisional measures (asset identification, tracing, freezing and seizure), clarify the scope of application of the Anti-Money-Laundering Act to stand-alone offences not linked to money-laundering, in particular all offences under the Convention (art. 54, para. 2, and art. 55, para. 2).
- Consider adopting additional guidance for requesting States that would spell out more clearly the required content of asset recovery requests and the procedure for consultations with requesting States in cases not involving money-laundering and associated activities (art. 55, paras. 3 and 8).
- Clarify the scope of application of the Anti-Money-Laundering Act to stand-alone offences not linked to money-laundering, to ensure that property may be returned to prior legitimate owners in cases involving offences under the Convention (art. 57, paras. 1 and 2).
- Adopt measures providing for the return of proceeds to requesting States in cases described under paragraph 3 of article 57.

### **3.3. Technical assistance needs identified to improve implementation of the Convention**

- Summary of good practices and lessons learned (art. 53).