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Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Antigua and Barbuda

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

Antigua and Barbuda acceded to the United Nations Convention against Corruption on 21 June 2006. The Convention entered into force for the country on the same date.

The implementation by Antigua and Barbuda 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 issued on 19 July 2016 (CAC/COSP/IRG/I/4/1/Add.40).

The main authorities with functions relevant to preventing and countering corruption are the Integrity Commission, the Anti-Corruption Unit within the Ministry of Justice and Legal Affairs, the Public Service Commission, the Electoral Commission, the Judicial and Legal Services Commission, the Office of the Director of Public Prosecutions, the Procurement Board, the Office of the Attorney General and the Office of National Drug and Money-Laundering Control Policy.

Antigua and Barbuda is a member of international organizations, including the Organization of American States, the Organisation of Eastern Caribbean States, the Asset Recovery Inter-Agency Network for the Caribbean (ARIN-CARIB), the Caribbean Financial Action Task Force and the Hemispheric Network for Legal Cooperation on Criminal Matters.

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 country's anti-corruption measures are contained principally in the Integrity in Public Life Act, the Prevention of Corruption Act and the Freedom of Information Act. The Integrity in Public Life Act contains a code of conduct for persons in public life, as defined in the Act, and rules concerning asset declarations (parts III and IV of the Act). However, the existing legislation on the prevention of corruption is not always adequately implemented in practice, including because of insufficient resources. Apart from the existing legislation, there is no dedicated national anti-corruption policy.

An anti-corruption bill was being prepared at the time of the country visit in order to strengthen corruption prevention measures, including by establishing a specialized body tasked with developing and implementing anti-corruption policies, public education programmes and awareness-raising activities.

The Anti-Corruption Unit, established by a Cabinet decision within the Ministry of Justice and Legal Affairs, is responsible for corruption-related legislative reforms and policy development and conducts some activities aimed at increasing and disseminating knowledge about the prevention of corruption. Practices intended to prevent corruption include the implementation of codes of conduct for public officials and disclosure obligations under the Integrity in Public Life Act. However, there are no systematic efforts to raise awareness and increase knowledge of corruption prevention.

Consultations involving civil society and other stakeholders in the development of laws and policies are organized by the relevant ministries.

Domestic legal instruments are evaluated by the Legislative Drafting Unit of the Attorney General's Chambers and the Anti-Corruption Unit on the basis of feedback from various public bodies. There is no formal framework or methodology for

conducting periodic evaluations, other than through international processes. There have been no comprehensive assessments of anti-corruption measures or risks at the national level. However, the existing preventive measures have been evaluated under the Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption.

Antigua and Barbuda is a member of the Organization of American States and the Organisation of Eastern Caribbean States and a party to the Inter-American Convention Against Corruption.

The Integrity Commission is responsible for monitoring the implementation of the Integrity in Public Life Act. Its functions include examining anti-corruption practices of public bodies, collecting and verifying asset declarations and investigating corruption complaints (sect. 12 of the Act). However, the Integrity Commission is not yet fully operational owing to a lack of resources and specialized staff. Although the independence of the Integrity Commission is formally protected under section 13 of the Integrity in Public Life Act, there are several shortcomings that affect its independence and effectiveness, including the short tenure periods of the integrity commissioners and the fact that the commissioners are appointed on a discretionary basis by the Governor General (sects. 4 and 6 of the Act). As a government unit within the Ministry of Justice and Legal Affairs, the Anti-Corruption Unit is not considered to be independent. Given the scope of the Unit's functions, the current staffing level and budget appear to be sufficient to allow it to perform those functions. However, there are no structured training programmes on integrity for staff of the Integrity Commission or the Anti-Corruption Unit.

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

Antigua and Barbuda adopted the Civil Service Act and the Civil Service Regulations to govern matters pertaining to the public sector. The Civil Service Act governs matters related to, inter alia, the appointment, remuneration and tenure of civil servants (sects. 6–13), and the Civil Service Regulations prescribe specific rules on the processes and terms for appointment, promotion, termination, remuneration and professional conduct (regulations 6, 7, 10, 28, 42–46 and 58). The Civil Service Act and Regulations do not apply to non-established personnel, that is, personnel who work on a temporary or contractual basis.

Recruitment criteria are determined by the minister responsible for the civil service (regulation 5 of the Civil Service Regulations). Vacancies are advertised in the Official Gazette and online (regulation 6 of the Regulations). The Civil Service Regulations do not prescribe general recruitment criteria, such as merit, equity and aptitude, except in relation to promotion (regulation 21), or procedures for competitive examinations. Salaries of civil servants are determined on the basis of the general salary rates specified by the minister responsible (regulation 57 of the Regulations). There is no regular integrity training for civil servants. Nor are there specific rules on the selection and training of individuals for public positions considered especially vulnerable to corruption, or on the periodic rotation of such individuals to other positions.

Criteria concerning candidature for public office are prescribed in sections 29 and 30 of the Constitution. Antigua and Barbuda publishes annual reports containing the names of persons who are disqualified from holding public office owing to criminal convictions (sect. 17 of the Representation of the People Act). Political parties are required to keep records of all donations and audit their accounts after each election (sect. 83 of the Act). Anonymous donations of more than 25,000 East Caribbean dollars (approximately US\$9,300) are prohibited (sect. 83). Breaches of the campaign financing rules are punishable by a fine of 2,000 East Caribbean Dollars a day (sect. 83). There are no restrictions on foreign donations and no obligation for candidates to disclose assets or interests. Political parties must file reports on contributions received with the Electoral Commission (sect. 83). Authorities reported

a need for comprehensive campaign financing reform, including the establishment of a political party funding database.

The Civil Service Regulations establish general rules of conduct for civil servants, including in relation to outside employment, acceptance of gifts, and private investments (regulations 43–53). Civil servants must disclose outside employment to the Public Service Commission and abstain from any employment that may contravene the Civil Service Regulations (regulation 43). The Civil Service Regulations also prohibit civil servants from accepting gifts that may influence the performance of their public duties (regulation 53); however, these rules are not enforced consistently. The Civil Service Regulations contain a general provision on disciplinary measures (regulation 143), but authorities reported that sanctions are not specified, which presents challenges in resolving conflicts of interest. Although there is no general code of conduct for all public officials, the code of conduct for persons in public life in the Integrity in Public Life Act contains provisions on conflicts of interest and acceptance of gifts (second schedule of the Integrity in Public Life Act). Breaches of the code of conduct are punishable by a fine and imprisonment (sect. 21 (2) of the Act). Owing to the limited resources available to the Integrity Commission, however, the code is not enforced consistently. Additional codes of conduct are in place within certain authorities (the Ministry of Finance, Corporate Governance and Public-Private Partnerships, the Inland Revenue Department, the Office of the Director of Public Prosecutions and the Office of National Drug and Money-Laundering Control Policy).

Although there is no obligation for public officials to report corruption, complaints concerning breaches of the Integrity in Public Life Act or the Prevention of Corruption Act can be submitted to the Integrity Commission or the police (sect. 12 of the Integrity in Public Life Act). Persons filing complaints in good faith cannot be held liable in civil or criminal proceedings (sect. 22 of the Integrity in Public Life Act). Apart from the Integrity in Public Life Act, there is no legislation governing the protection of reporting persons.

The Constitution provides formal guarantees concerning the independence of the judiciary (sect. 15 (8)). The judiciary consists of the magistrates' courts and the Eastern Caribbean Supreme Court. The appointment and removal of magistrates is conducted by the Governor General, acting on the advice of the Judicial and Legal Services Commission (sect. 103 of the Constitution), while judges of the Eastern Caribbean Supreme Court may be removed only for inability or misbehaviour by order of the Judicial and Legal Services Commission, in accordance with the procedure stipulated in section 8 of the Supreme Court Order. Judges and magistrates are subject to the Code of Judicial Conduct of the Organisation of Eastern Caribbean States, breaches of which may result in disciplinary sanctions. Magistrates and the Director of Public Prosecutions are also subject to the code of conduct in the Integrity in Public Life Act (first schedule of the Act). The Director of Public Prosecutions is appointed by the Governor General on the advice of the Judicial and Legal Services Commission and may be removed for misconduct by the Governor General on the basis of the recommendation of a specially appointed tribunal (sect. 87 of the Constitution). The Director of Public Prosecutions is independent (sect. 88 (5) of the Constitution) but may be subject to general or special directions by the Attorney General in cases involving offences against laws relating to official secrets, mutiny or international law (sect. 89 of the Constitution). The code of ethics in the Legal Profession Act prescribes rules of ethical conduct for attorneys and prosecutors (sects. 5 and 25 and schedule 4 of the Act). There are no ongoing training requirements for judges and prosecutors concerning ethical conduct.

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

Public procurement is governed by the Procurement Administration Act and the Procurement Administration (Transitional) Regulations. The Procurement Administration Act does not apply to cooperative procurement agreements or foreign-funded procurements (schedule of the Act). Subject to several exceptions, public

procurement must be conducted by soliciting competitive sealed bids (sects. 18 and 19 of the Act). If practical and advantageous, procuring authorities may conduct procurement in the form of competitive sealed proposals, emergency procurements, small procurements (with a value of 100,000 East Caribbean dollars (approximately US\$37,000) or less, as established by Cabinet Decision), and sole source procurements (sects. 19–22 of the Act). However, there are no robust or clearly defined criteria for the selection of non-standard procurement procedures. Evaluation criteria differ depending on the type of solicitation procedure (sects. 30 and 31 of the Act and regulations 9 and 17 of the Regulations). Solicitation notices must be published in at least one newspaper of general circulation for a reasonable period of time (sect. 26 of the Act).

The Procurement Administration (Transitional) Regulations contain provisions on the content of solicitation documents and on bidding periods and general rules on the qualification, eligibility and disqualification of bidders (regulations 11, 17 and 26). The procurement process is conducted on paper and has not been digitalized. There is no obligation to publish contract award notices.

The Procurement Board is responsible for issuing contract awards and approving sole source and emergency solicitations, and it has the power to suspend or debar persons (sect. 44 of the Procurement Administration Act). The Procurement Administration Act imposes penalties for seeking to unduly influence procurement processes (sects. 14–15). Complaints regarding contract awards are examined by the Ombudsman, who can recommend that the Procurement Board take remedial action (sects. 47 and 48 of the Act). The Ombudsman must report his or her findings to the Minister of Finance, who is responsible for submitting the report to the Parliament (sect. 49 of the Act). Although there is a mechanism for challenges and appeals, there is no administrative complaints procedure in place. The Government has developed a code of conduct for vendors that includes rules concerning gifts, conflicts of interest and corrupt practices. Furthermore, the Procurement Administration (Transitional) Regulations prescribe rules concerning conflicts of interest for procurement officers, but they do not set out disclosure obligations or penalties (regulation 31). Antigua and Barbuda is in the process of reforming the transitional procurement framework, including through a review of procurement thresholds, enhancing the capacity of the Procurement Board and providing training for procurement officers.

The management of public finances is governed by the Finance Administration Act and the Finance Administration Regulations. The annual budget is prepared by the Minister of Finance, Corporate Governance and Public-Private Partnerships, adopted by the Parliament and published in the Official Gazette (sect. 25 of the Finance Administration Act). However, there is no substantive public input during the adoption of the budget. Spending limits are applied (sect. 23 of the Act), and accounting officers are responsible for the prompt collection of revenues and the control of expenditures (sect. 8 of the Act). Under section 64 of the Act, statutory bodies must keep proper accounting books of income and expenditures and ensure that all transactions are correctly reflected and authorized. International Public Sector Accounting Standards and integrated financial management software are used. In addition, internal audits of public departments are conducted annually (sect. 193 of the Finance Administration Regulations).

The Director of Audit is responsible for auditing all public accounts (sect. 22 of the Office of the Director of Audit Act). The Public Accounts Committee is responsible for examining public audit reports (sect. 98 of the Constitution). However, it was reported that the Public Accounts Committee does not meet regularly and, at the time of the country visit, had not been functioning for several years. The current accounting system is paper-based, but there are plans to digitize it. Antigua and Barbuda is in the process of amending public finance laws to enhance internal audit and control functions and increase the capacity of the Office of the Director of Audit.

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

Section 12 of the Constitution protects the freedom to receive and disseminate information without interference. The Freedom of Information Act was adopted in order to guarantee, facilitate and secure access to information (preamble to the Act). Under section 10 of the Act, public authorities are required to publish basic information about their functions, structure, decision-making and bookkeeping. The Act sets out procedures for submitting information requests, time limits for responding to requests, fees and means of communicating the information requested (sects. 17–22). Part IV of the Act establishes grounds for refusal to grant information, including legal privilege, the confidential nature of the information, public safety, and interference with law enforcement and national security (sects. 26–33).

The Information Commissioner is responsible for monitoring compliance with the Freedom of Information Act, training public officials and preparing recommendations on access to information (sects. 35 and 37 of the Act). The Act also sets out the role in public authorities of information officers, who are responsible for processing requests for information (sect. 9). However, authorities reported that the Act is not implemented consistently, owing to issues such as the failure to appoint information officers in government institutions and the irregular submission of annual reports under the Act.

The Legislative Drafting Division holds consultations with various stakeholders and the public during the legislative drafting process. Measures to facilitate public access to decision-making authorities and simplify administrative procedures include the online publication of laws and civil service vacancies and the creation of an electronic company register. No comprehensive corruption risk assessments are carried out at the national level and no periodic reports or studies are conducted on the risk of corruption in the public administration. Moreover, there are no ongoing public information campaigns on non-tolerance of corruption or anti-corruption educational initiatives in schools or universities. The freedom to seek, receive and publish information concerning corruption is protected under section 12 of the Constitution.

Individuals can report breaches of the Prevention of Corruption Act and the code of conduct in the Integrity in Public Life Act to the Integrity Commission, and complaints regarding administrative decisions to the Ombudsman (sect. 22 of the Integrity in Public Life Act and sect. 5 of the Ombudsman Act). It was reported that there is limited awareness among the public of the channels for reporting corruption. Although persons who file complaints in good faith cannot be held liable in civil or criminal proceedings (sect. 22 of the Integrity in Public Life Act), there is no specific legislation that protects whistle-blowers.

Private sector (art. 12)

The Companies Act establishes corporate registration and transparency rules, accounting and auditing standards, financial disclosure obligations, rights and duties of directors and other integrity rules for corporate entities (divisions H and G of the Act).

Companies are required to file annual financial returns with the registrar (sects. 149, 154 and 155 of the Companies Act). Although public companies are required to have audit committees, there are no compulsory audit requirements for non-public companies (sect. 156 of the Act). The Companies Act prescribes general rules concerning the rights, duties and qualifications of company auditors (sects. 156–174). Furthermore, the Act establishes penalties for acts such as abuse of corporate status, violation of reporting and auditing rules and insider trading (sects. 466 and 528–537).

Other legal documents and guidelines that regulate professional and corporate conduct include the Legal Profession Act and the Securities Act. Antigua and Barbuda has, among other initiatives, approved the Corporate Governance Principles of the Organisation of Eastern Caribbean States for publicly and privately held companies.

The Institute of Chartered Accountants of the Eastern Caribbean Agreement Act regulates the powers of that Institute to develop professional and ethical standards for accountants, conduct training and examinations and impose disciplinary measures (sect. 6).

Antigua and Barbuda maintains a public registry of companies, containing basic corporate information (sects. 4 and 5 of the Companies Act). Basic information regarding company names and addresses is publicly accessible, and more specific company details can be obtained from the public registry for a fee (sect. 27 of the Companies Regulations). Companies and other legal persons are required to submit annual attestation reports on their beneficial owners (sect. 194A of the Companies Act), as detailed in the section on article 52 of the Convention, below.

There are no restrictions on the professional activities of public officials who move to the private sector. It was also reported that cooperation between law enforcement agencies and the private sector is limited in terms of outreach and there is no whistleblower legislation applicable to private sector entities.

The specific accounting practices referred to in article 12, paragraph 3, of the Convention, such as the establishment of off-the-books accounts and the making of inadequately identified transactions, are not explicitly prohibited. There are no specific provisions that disallow the tax deductibility of expenses that constitute bribes.

Measures to prevent money-laundering (art. 14)

Antigua and Barbuda has developed laws, regulations and policies for the implementation of a comprehensive anti-money-laundering regulatory and supervisory regime, including the Money-Laundering (Prevention) Act, the Money-Laundering Prevention Regulations and the Money-Laundering and Financing of Terrorism Guidelines.

Anti-money-laundering supervision of financial institutions¹ is required by the Money-Laundering (Prevention) Act and conducted by the Office of National Drug and Money-Laundering Control Policy and the Eastern Caribbean Central Bank as supervisory authorities. The Office is supported in its supervisory efforts by the Financial Services Regulatory Commission under a memorandum of understanding. The supervisory staff of both the Office and the Financial Services Regulatory Commission are deemed to have adequate anti-money-laundering knowledge and expertise, and the resources for risk-based supervision have been strengthened, as have the sanctioning powers for non-compliance with the Act or the Money-Laundering Prevention Regulations (sect. 17C of the Money-Laundering (Prevention) Act). There is no legal or regulatory framework extending anti-money-laundering obligations to the non-profit sector.

Entities subject to anti-money-laundering compliance under the Money-Laundering (Prevention) Act are required to identify and verify the identity of their customers, including customers who are natural persons, legal persons or legal arrangements. Entities are also required to identify beneficial owners of their customers and take reasonable measures to verify their identity (regulation 4 (3) (h) of the Money-Laundering Prevention Regulations).

¹ Financial institutions subject to money-laundering monitoring and compliance as specified in schedule I of the Money Laundering (Prevention) Act include banks, non-bank financial institutions and designated non-financial businesses and professions, such as credit unions, insurance businesses, securities businesses, money service businesses, real estate businesses, trust and company service providers, casinos, attorneys-at-law, notaries, accountants and virtual asset service providers. Also covered are entities conducting pawnbroking activities, car dealerships, and dealers in precious metals, art or jewellery. The list of financial institutions subject to monitoring and compliance is updated as emerging money-laundering risks are identified.

Record-keeping requirements are in place, as described in the section on article 52 of the Convention, below. Section 13 (2) of the Money-Laundering (Prevention) Act provides for the filing of suspicious transaction or activity reports to the Office of National Drug and Money-Laundering Control Policy where there is a reasonable suspicion of money-laundering.

The Office of National Drug and Money-Laundering Control Policy serves as the national centre for the receipt, analysis and dissemination of information relevant to money-laundering and associated predicate offences. At the policy level, members of the National Oversight Committee for Financial Action can share information relating to money-laundering, while at the operational level, information is shared under memorandums of understanding signed between the relevant agencies.

As a member of the Egmont Group of Financial Intelligence Units, the Office of National Drug and Money-Laundering Control Policy can make use of the Egmont Secure Web platform to receive and share information with foreign financial intelligence units both spontaneously and upon request. Other judicial, law enforcement and regulatory authorities maintain cooperation with their international counterparts (such as the Financial Services Regulatory Commission, the Royal Police Force, the Customs and Excise Division and the Inland Revenue Department). Furthermore, officers of the Royal Police Force participate in the Asset Recovery Inter-Agency Network for the Caribbean, and information requested through this channel is processed with urgency.

Section 18 of the Money Laundering (Prevention) Act establishes a cross-border cash declaration requirement for persons who transfer currency above the value of US\$10,000 across the border. Currency is defined in section 18C of the Money Laundering (Prevention) Act as cash or bearer negotiable financial instruments. A report must be made when currency is transferred into or out of Antigua and Barbuda, when a person sends or consigns currency through the post and when a person receives currency transferred from outside the country. Reports are made to customs officers when currency is moved across the border in person (sect. 18 of the Money-Laundering (Prevention) Act) and to supervisory authorities in all other instances (regulation 10 of the Money-Laundering Prevention Regulations).

Failure to file a report or the provision of false information are punishable offences (sect. 18 (3) of the Money-Laundering (Prevention) Act and regulation 12 (2) of the Money-Laundering Prevention Regulations). Under section 18A of the Money-Laundering (Prevention) Act, an officer of customs, the police or the Office of National Drug and Money-Laundering Control Policy or a member of the Defence Force may seize for up to seven days cash suspected of being proceeds or instrumentalities of crime, unless an order is made for its continued detention.

Financial institutions are required by regulation 4 (3) (m) of the Money-Laundering Prevention Regulations to ensure that wire transfers are accompanied by accurate and meaningful originator information. Section 3.9.1 of the Money-Laundering and Financing of Terrorism Guidelines requires financial institutions processing intermediary elements in the wire transfer chain to ensure that all originator information accompanying the wire transfer is retained with the transfer.

Beneficiary financial institutions are required by section 3.10.2 of the Money-Laundering and Financing of Terrorism Guidelines to take measures to identify cross-border wire transfers that lack the required originator information. Section 3.10.5 of the Guidelines also requires financial institutions to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer that lacks the required originator information.

In the fourth round of the mutual evaluation conducted by the Caribbean Financial Action Task Force and the associated follow-up reports, Antigua and Barbuda was found to be compliant or largely compliant with 36 of the 40 Financial Action Task Force recommendations.

The Office of National Drug and Money-Laundering Control Policy can make use of the Egmont Secure Web platform to exchange information both spontaneously and upon request with other financial intelligence units. Other cooperation platforms include the Organisation of Eastern Caribbean States, the Asset Recovery Inter-Agency Network for the Caribbean and the Caribbean Financial Action Task Force. Antigua and Barbuda is also a member of the Hemispheric Network for Legal Cooperation on Criminal Matters.

2.2. Successes and good practices

- The procurement code of conduct for vendors sets out rules on gifts, conflicts of interest and corrupt practices (art. 9, para. 1).
- Laws and regulations are published online (art. 10 (a)).

2.3. Challenges in implementation

It is recommended that Antigua and Barbuda:

- Continue efforts to prioritize adoption of the anti-corruption bill, including by allocating the necessary resources for its implementation, and to adequately implement existing anti-corruption laws (art. 5, para. 1).
- Strengthen domestic corruption prevention measures by adopting a comprehensive anti-corruption policy, implementing more systematic efforts to prevent corruption and developing a more structured process for periodically evaluating domestic anti-corruption laws and administrative measures (art. 5, paras. 1–3).
- Continue efforts to establish a specialized anti-corruption body with adequate resources, specialized staff and the necessary independence; pending the establishment of that body, strengthen existing domestic anti-corruption bodies by providing sufficient staff and resources and appropriate training to enable them to carry out their mandate and by ensuring their independence, including by revising the appointment process for and the short tenure period of the integrity commissioners (art. 6, para. 2).
- Enhance the domestic framework governing the recruitment and retention of public officials by establishing competitive examination rules and general recruitment criteria, such as merit, equity and aptitude, in the Civil Service Regulations, ensuring that non-established workers are subject to the rights and privileges stipulated in the Civil Service Act and the Civil Service Regulations, and by establishing more structured integrity training for public officials; furthermore, consider identifying public positions considered especially vulnerable to corruption and adopting rules for the selection and training of individuals for such positions and their periodic rotation, as appropriate (art. 7, para. 1 (a) and (b)).
- Consider comprehensively reforming campaign financing, which may include introducing restrictions on foreign donations, disclosure requirements for candidates' assets and interests, a transparent political party funding database and periodic audits of political party finances, and the lowering or removal of the disclosure threshold for political donations (art. 7, para. 3).
- Consider strengthening the system for the prevention of conflicts of interest by reviewing and strengthening the enforcement of existing rules, including those related to the prohibition and reporting of gifts, specifying applicable sanctions for breaches of such rules, and providing adequate guidance to civil servants on conflicts of interest (art. 7, para. 4, and art. 8, para. 5).
- Endeavour to strengthen integrity in the civil service by adopting a general code of conduct applicable to all public officials and strengthening enforcement of the existing code for persons in public life (art. 8, para. 2).

- Consider adopting and implementing legislative measures to ensure the protection of reporting persons and introducing an obligation for public officials to report corruption (art. 8, paras. 2 and 4).
- Reform the public procurement framework by accelerating the adoption and implementation of the new procurement law, prescribing and enforcing clearly defined conditions for the use of non-standard procurement procedures and lowering the threshold for small procurements, considering digitalizing the procurement process and providing training on procurement and integrity to procurement officials; furthermore, consider adopting additional integrity measures for public procurement, including an obligation for procurement personnel to disclose conflicts of interest, specific penalties for misconduct under the Procurement Administration (Transitional) Regulations, the creation of an independent administrative mechanism for appeals of procurement decisions and the publication of contract awards (art. 9).
- Promote transparency and accountability in the management of public finances by allowing public input concerning the adoption of the national budget, completing the reform of the public finance management laws concerning internal audit and digitalization, increasing the capacity of the Office of the Director of Audit and ensuring that the Public Accounts Committee meets regularly and implements its mandate (art. 9, paras. 2 (a) and 3).
- Strengthen public access to information by enforcing the provisions of the Freedom of Information Act, including through the appointment of information officers in public authorities and the submission of annual reports to the Information Commissioner (art. 10 (a)).
- Consider conducting and publishing a national corruption risk assessment (art. 10 (c)).
- Further promote integrity in the judiciary, including by considering the implementation of comprehensive training requirements for judges and prosecutors on ethical conduct (art. 11).
- Strengthen integrity in the private sector by strengthening cooperation between law enforcement agencies and the private sector and considering the adoption of provisions governing whistle-blower protection and the professional activities of public officials moving to the private sector; furthermore, adopt specific provisions that disallow the tax deductibility of expenses that constitute bribes and prohibit the accounting practices referred to in article 12, paragraph 3, of the Convention (art. 12, paras. 2 (a), (e) and (f), 3 and 4).
- Consider undertaking public information activities that contribute to the non-tolerance of corruption, such as education initiatives in schools and universities and public information campaigns; furthermore, increase public awareness of the channels for reporting corruption (art. 13, paras. 1 (c) and 2).
- Extend anti-money-laundering obligations to the non-profit sector and continue to ensure adequate capacity for anti-money-laundering supervisors and risk-based supervision (art. 14, para. 1 (a)).

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

- Assistance relating to corruption risk assessments (art. 10 (c)).

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 Proceeds of Crime Act and Money Laundering (Prevention) Act provide measures that enable the confiscation and forfeiture of proceeds or instrumentalities of crime. Competent authorities are legally empowered to identify and trace property subject to confiscation and to apply provisional measures to restrain dealing in property that may be subject to confiscation.

The Mutual Assistance in Criminal Matters Act provides for assistance among Commonwealth member countries and other foreign countries upon the issuance of a corresponding regulation pursuant to an international treaty (sect. 30), on the basis of reciprocity and dual criminality (sect. 19 (2) (d) and (3) (a)). Section 27 of the Act provides for a range of cooperation related to the enforcement of foreign orders for confiscation, pecuniary penalties and restraint. Section 22 of the Act provides for assistance to Commonwealth member countries in obtaining property by search and seizure.

Under section 6 (1) of the Mutual Assistance in Criminal Matters Act, cooperation in criminal matters with any foreign agencies, whether formal or informal, is not precluded. Information can be shared through various means, including by the Office of National Drug and Money-Laundering Control Policy (sect. 10 (e) of the Office of National Drug and Money-Laundering Control Policy Act), the Central Bank (sect. 32 (2) (1) of the Banking Act) and the Royal Police Force through secure channels or the International Criminal Police Organization (INTERPOL).

Antigua and Barbuda is a party to several multilateral agreements relevant to crime prevention and crime control and two bilateral treaties on mutual legal assistance (one with the United Kingdom of Great Britain and Northern Ireland and one with the United States of America). The treaty with the United States has led to the registration of a foreign forfeiture order and forfeiture of property held in Antigua and Barbuda at the request of the United States.

There have been no concluded cases of asset return in corruption cases.

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

Financial institutions subject to anti-money-laundering monitoring and compliance (as set out in the section on article 14 of the Convention, above) are required by regulation 4 (2) (a) of the Money-Laundering Prevention Regulations to establish customer due diligence procedures that apply when establishing business relationships and carrying out occasional transactions above specified thresholds, when carrying out wire transfers and when there is a suspicion of money-laundering or doubt about previously obtained customer data (regulation 2 of the Regulations).

Pursuant to section 2.1.4 of the Money-Laundering and Financing of Terrorism Guidelines, businesses regulated under the Money Laundering (Prevention) Act and the Money-Laundering Prevention Regulations must use a risk-based approach to prevent money-laundering. This includes the requirement to carry out a detailed risk assessment of the business and design and put in place controls to manage and mitigate risks. In addition, regulation 4 (3) of the Regulations requires financial institutions and designated non-financial businesses and professions to implement a risk-based approach to customer due diligence procedures.

As noted in the section on article 14 of the Convention, above, financial institutions are required to identify and verify the identity of their customers, including customers who are natural persons, legal persons or legal arrangements, and to identify beneficial owners of their customers and take reasonable measures to verify their identity (regulation 4 (3) (h) of the Money-Laundering Prevention Regulations).

Legal entities are required to submit annual attestation reports on beneficial ownership and control to the Financial Services Regulatory Commission. By law, the public has access to the register of beneficial ownership information.

Enhanced customer due diligence must be taken in respect of politically exposed persons (regulation 4 (3) of the Money-Laundering Prevention Regulations). Legislation in Antigua and Barbuda does not distinguish between domestic and foreign politically exposed persons. The definition of a politically exposed person in regulation 2 of the Money-Laundering Prevention Regulations includes that person's immediate family members and close associates. Ongoing and enhanced monitoring of a business relationship with a politically exposed person is required under regulation 4 (3) (d) (iv) of the Regulations. No guidance has been issued regarding the identification of foreign politically exposed persons.

Supervisory authorities may notify financial institutions of the identity of specific higher-risk persons, accounts or transactions, at the request of another State or spontaneously, through directives, guidelines and public advisories.

The Money-Laundering (Prevention) Act and the Money-Laundering Prevention Regulations establish requirements for record retention by financial institutions. The records that must be maintained are set out in regulation 5 (2) of the Regulations and include customer due diligence information, records of business correspondence and transaction records. Records must be kept for at least six years after the closure of an account or the completion of an occasional transaction (sect. 12 of the Act).

Licensing requirements under part II of the Banking Act prohibit the establishment of shell banks. Corresponding provisions also exist in part II of the International Banking Act. Financial institutions are prohibited from entering into or continuing correspondent banking relationships with shell banks and are required to satisfy themselves that foreign respondent banks do not permit their accounts to be used by shell banks (regulation 7A of the Money-Laundering Prevention Regulations).

As noted in the section on article 8, paragraph 5, of the Convention, above, the Integrity in Public Life Act requires the high-level public officials listed in the schedule of the Act to provide annual declarations regarding their personal assets and investments, the assets of their spouse and children and any gifts, with a view to detecting possible conflicts of interest (sect. 16). Section 17 of the Act prescribes the schedule for submitting declarations. Information in the declarations is considered confidential. The Integrity Commission is mandated to examine declarations and, if necessary, conduct further enquiries to verify the accuracy of the information submitted (sect. 12 of the Act). However, the Integrity Commission has been hampered in carrying out its functions by a lack of resources and capacity, resulting in the asset declaration requirements not being enforced effectively in practice. It was further reported that not all public authorities have identified the relevant persons who are required to file a declaration.

There is no requirement for public officials to declare their interest in or signature or other authority over foreign financial accounts or to maintain appropriate records.

The Office of National Drug and Money-Laundering Control Policy serves as the national centre for the receipt, analysis and dissemination of information relevant to money-laundering and predicate offences.

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)

There is no legal provision that would allow a foreign State to file a civil action in the domestic courts of Antigua and Barbuda to establish title to or ownership of property.

Similarly, there is no provision allowing the courts to order those who have committed offences established in accordance with the Convention to pay compensation or damages to another State. However, in the context of forfeiture and confiscation

proceedings, section 68 of the Proceeds of Crime Act provides for the payment of compensation, and section 13 of the same Act allows a person who claims an interest in property to apply to the court for an order directing that property be returned or its value be paid before a forfeiture order is made. The provisions do not, however, refer specifically to foreign States.

Antigua and Barbuda has adopted measures to register and give effect to orders made by foreign courts or requests from overseas authorities for the recovery of proceeds, instrumentalities or benefits of crime in Antigua and Barbuda that are or are believed to have been obtained as a result of or in connection with criminal conduct (sect. 67 of the Proceeds of Crime Act). In accordance with section 67A of the Proceeds of Crime Act, the Attorney General or the Director of the Office of National Drug and Money-Laundering Control Policy may apply to the court to give effect to a foreign forfeiture or confiscation order, and the court must register such an order, provided that the conditions set out in sections 67 (4) and 67B of the Act are met. A registered foreign order has the same effect as a domestic order (section 67C of the Act).

In addition, section 27 of the Mutual Assistance in Criminal Matters Act provides for assistance to Commonwealth member countries in relation to the registration of orders to confiscate property obtained through the commission of specified offences (including corruption) and orders imposing pecuniary penalties on persons or restraining dealings in property. As noted above, the Mutual Assistance in Criminal Matters Act provides for assistance among Commonwealth member countries and other foreign countries upon the issuance of a corresponding regulation pursuant to an international treaty, on the basis of reciprocity and dual criminality.

Measures are in place to permit the authorities to order the confiscation of property of foreign origin by adjudication of an offence of money-laundering or other offences in order to provide mutual legal assistance (sects. 20 and 23 of the Money-Laundering (Prevention) Act). Section 23 (2) of the Money-Laundering (Prevention) Act allows the court or supervisory authority, in consultation with the central authority, to receive requests from another State to forfeit property, proceeds or instrumentalities connected to money-laundering offences. In addition, at the domestic level, measures are in place to allow for confiscation of property where a person has been convicted of a corruption offence (sects. 5, 10, 11 and 67A of the Proceeds of Crime Act). These measures can be taken in order to provide mutual legal assistance at the request of a Commonwealth member country or another foreign State upon the issuance of a relevant regulation (sect. 27 of the Mutual Assistance in Criminal Matters Act).

Authorities in Antigua and Barbuda can pursue both criminal and civil proceedings in order to confiscate proceeds and instrumentalities related to criminality. The two main mechanisms available for non-conviction-based forfeiture are civil recovery, under part IIIA of the Proceeds of Crime Act, and civil forfeiture, under section 28B of the Money-Laundering (Prevention) Act.

In addition, under limited circumstances, the criminal forfeiture provisions of the Proceeds of Crime Act can be applied in the absence of a conviction, namely, in cases where, before a court has passed sentence, a person absconds in connection with an offence specified in the schedule to the Act. In such cases, the Office of the Director of Public Prosecutions may apply to the Court for a forfeiture order under section 17 of the Proceeds of Crime Act in respect of any tainted property (sect. 9 (1) of the Proceeds of Crime Act).

In respect of money-laundering offences, section 20A of the Money-Laundering (Prevention) Act allows the supervisory authority to apply to the High Court for a civil forfeiture order if a freezing order is in force under part IV of the same Act, even if the defendant's conviction for a money-laundering offence has been quashed or set aside.

Registration of foreign freezing and restraining orders is applied for under sections 67A and 67B of the Proceeds of Crime Act. Part III of the Act sets out provisions on facilitating police investigations and preserving property liable to forfeiture and

confiscation, including powers of search and seizure, as well as restraining orders (sect. 31) and production, inspection and monitoring orders. By implication, these measures can be taken in order to provide mutual legal assistance at the request of a Commonwealth member country or another foreign State for the registration of pecuniary penalty or restraining orders, upon the issuance of a relevant regulation, through application of the Mutual Assistance in Criminal Matters Act (sect. 27).

Where a request under a mutual legal assistance treaty is received and accepted by the central authority (sects. 22, 26 and 28 of the Mutual Assistance in Criminal Matters Act), the Office of the Director of Public Prosecutions can apply under section 32 of the Proceeds of Crime Act for a restraining order against tainted property where a forfeiture or confiscation order is likely to be made. Section 67F of the Proceeds of Crime Act can also be used to apply for restraining orders in relation to foreign requests.

With regard to the preservation of property for the purposes of mutual legal assistance, in the case of money-laundering offences, provisions of the Money-Laundering (Prevention) Act authorize the Office of National Drug and Money-Laundering Control Policy to maintain properties that are subject to a freezing order, pending the conclusion of a trial for criminal offences or determination of an asset recovery application such as forfeiture or civil recovery. In cases of civil recovery, part IIIA of the Proceeds of Crime Act sets out additional measures, such as provisions on appointing receivers in connection with property freezing orders and a forfeiture fund. There are no specific provisions for additional preservation measures in the context of foreign property subject to confiscation.

Section 18 (1) and the schedule of the Mutual Assistance in Criminal Matters Act list the required content of requests for assistance from Commonwealth member countries and other foreign States pursuant to the issuance of a relevant regulation.

Although a treaty basis is generally required, Antigua and Barbuda may provide assistance to a requesting country in the absence of a treaty on condition of reciprocity, at the discretion of the central authority. Antigua and Barbuda considers the Convention a legal basis for mutual legal assistance.

The Office of the Attorney General is the central authority for mutual legal assistance. After the Office receives a request, it may require the central authority of the requesting State to furnish information relating to the request. If that information is not furnished within a reasonable period, the Office may consider the request to have been withdrawn (sect. 19 (8) of the Mutual Assistance in Criminal Matters Act). Requests, however, are not accepted if the value of the property involved is less than US\$25,000 (sect. 16 (3) of and the definition of “serious offence” in the Act).

Authorities consult with the requesting State as a matter of course before lifting provisional measures, provided that the conditions for taking such measures were met in the first place.

The rights of bona fide third parties are protected under the Proceeds of Crime Act (including under sects. 6, 10 (4), 13, 14 60G and 60N). In relation to money-laundering offences, part IVE of the Money Laundering (Prevention) Act provides that any person who had an interest in property immediately before it was forfeited may apply to the High Court for an order excluding such interest pursuant to section 22 of the same Act.

Return and disposal of assets (art. 57)

Apart from bilateral treaties, there are no mechanisms to provide for the disposal of confiscated property, including by return to its prior legitimate owners, in accordance with article 57, paragraph 3, of the Convention, or to provide for the return of confiscated property at the request of another State. No provisions on asset disposal or return are included in the Proceeds of Crime Act or the Mutual Assistance in Criminal Matters Act.

National law does not provide for the deduction of reasonable expenses incurred in relation to asset recovery; however, in practice, an administrative fee is deducted. In the case of extraordinary expenses involving requests from Commonwealth member countries or other foreign States pursuant to the issuance of a relevant regulation, consultations are to be held and assistance may be refused (sect. 19 (4) of the Mutual Assistance in Criminal Matters Act).

Antigua and Barbuda may enter into agreements on asset disposal and return, and has done so in specific cases.

3.3. Challenges in implementation

It is recommended that Antigua and Barbuda:

- Consider expanding the scope of countries to which assistance may be granted under the Mutual Assistance in Criminal Matters Act beyond Commonwealth member countries and designated countries, in order to provide a wider measure of cooperation in the area of asset recovery (arts. 51, 54 and 55).
- Continue to strengthen the enforcement of legal requirements concerning the identification of beneficial owners and persons who are or have been entrusted with prominent public functions, their family members and close associates, including through adequate supervision and the issuance of guidance in respect of foreign politically exposed persons (art. 52, para. 1).
- Consider enhancing the asset declaration system by strengthening applicable sanctions and ensuring effective verification and enforcement, including the possibility of dismissal and disqualification from holding public office, and requiring all public authorities to identify the persons who are required to file declarations; furthermore, provide sufficient resources and capacity for the dedicated authorities in charge of monitoring, verification and sanctioning; also consider enhancing transparency or access to reported information (art. 52, para. 5).
- Consider extending disclosure requirements to any signature or other authority over a foreign financial account (art. 52, para. 6).
- Adopt measures providing for the direct recovery of property (art. 53 (a)–(c)).
- Consider taking additional measures to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge (art. 54, para. 2 (c)).
- Consider eliminating the monetary threshold below which mutual legal assistance requests are refused under the Mutual Assistance in Criminal Matters Act in order to provide a wider measure of cooperation in the area of asset recovery (art. 55, para. 7).
- Adopt measures to provide for the disposal of confiscated property, including by return to its prior legitimate owners, in accordance with article 57, paragraph 3, of the Convention, and for the return of confiscated property at the request of another State, and ensure the application of such measures in practice (art. 57, paras. 1–3).

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

- Capacity-building and legislative support (art. 52, paras. 5 and 6).