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Note by the Secretariat

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II. Executive summary

Venezuela (Bolivarian Republic of)

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

The implementation by the Bolivarian Republic of Venezuela of chapters III and IV of the Convention was reviewed in the third year of the first review cycle and the executive summary of that review was published on 25 July 2016 (CAC/COSP/IRG/II/3/1/Add.26).

The Venezuelan legal system is based on the continental legal tradition. The country uses a monist system for the application of international treaties (art. 153 of the Constitution). The Convention is therefore considered an integral part of the legal system.

The legislation implementing chapters II and V of the Convention includes the Decree-Law on Corruption, the Organic Act on Organized Crime and Terrorist Financing, the Organic Code of Criminal Procedure, the Public Procurement Act, the Civil Service Act, the Organic Act on the Office of the Comptroller General and the National Fiscal Control System, the Decree-Law on Banking Sector Institutions and the administrative decisions of the National Financial Intelligence Unit.

The Constitution recognizes five branches of public authority (legislative, executive, judicial, electoral and citizens' power). The main institutions involved in preventing and combating corruption are the National Financial Intelligence Unit, the Comptroller General's Office, the Public Prosecution Service, the Ombudsman's Office and the Republican Moral Council.

Owing to the lack of examples, case studies and comprehensive statistics, the review was limited in many cases to an analysis of compliance with existing legislation.

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 Bolivarian Republic of Venezuela has established the Third Socialist Plan for the Economic and Social Development of the Nation (2019–2025), the second historical objective of which includes efforts to combat corruption and strengthen State institutions and provides for the participation of representatives of the public and private sectors and civil society. The Strategic Plan of the National Fiscal Control System (2016–2021), implemented by the Comptroller General's Office, contains five strategic objectives for the coordination of control processes. The National Anti-Corruption Plan focuses on four priority areas, the first of which is prevention.

The country has also put in place preventive programmes such as *Abuelas y Abuelos Contralores* ("Senior Citizens as Social Auditors") and *La Contraloría Va a la Escuela* ("Comptroller's Office School Outreach Programme").

State institutions have a system of management indicators, known as State audits, the control processes of which are aligned with national anti-corruption policies. Additional information is required to carry out regular assessments of the relevant legal instruments and administrative measures.

The National Anti-Corruption Agency, which is part of the executive branch, is composed of the National Office of the Superintendent, the National Office of the Intendent and the National Anti-Corruption Police, and it is the supervisory body responsible for planning and implementing the State's anti-corruption policies and strategies. The National Office of the Intendent is responsible for developing and

coordinating policies related to the National Anti-Corruption Plan and carries out preventive and training activities. There are also a number of high-level oversight bodies, including the Comptroller General's Office, the Public Prosecution Service, the Supreme Court, the National Office of the Superintendent for Internal Oversight, the Ombudsman's Office and the National Assembly. All of those bodies have operational, financial and administrative independence and are responsible for disseminating knowledge about how to prevent corruption.

The Bolivarian Republic of Venezuela takes part in various regional initiatives and is a member of various regional organizations that assist in preventing corruption. The country has informed the Secretary-General of the United Nations that the Comptroller General's Office is the competent authority that can assist other States parties in developing and implementing specific measures for the prevention of corruption.

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

Under the Civil Service Act, selection and hiring procedures in the public sector are competitive and must be based on merit (arts. 40–45). The Act provides that other staff regulations may be established by law and specifies which officials are excluded from its scope of application (art. 1). Pay scales and starting grades are based on education level (Organic Act on Emoluments for Senior Officials) and on article 55 of the Civil Service Act. Promotions are made on the basis of merit, taking into account the person's performance history and expertise.

There are some specific procedures for the selection, rotation and training of persons in positions considered especially vulnerable to corruption. "Positions of trust" are defined as positions that are held in the offices of the highest public sector authorities and whose functions, including audit and inspection activities, require a high degree of confidentiality (arts. 20 and 21 of the Civil Service Act). Contractual hiring may only be used in cases where highly qualified personnel are required to perform specific duties for a certain period of time. Under no circumstances may a contract be used as a means of entry into the country's public administration (arts. 37–39 of the Act).

There are a number of training programmes for public employees, such as those offered by the Institute for Advanced Studies in Fiscal Control and State Auditing, a public entity created and managed by the Comptroller General's Office. The Constitution establishes criteria for the qualification and disqualification of candidates for public office (arts. 39, 40, 64 and 65), as do the Organic Act on the Office of the Comptroller General and the National Fiscal Control System (arts. 104 and 105) and the Decree-Law on Corruption (art. 65).

The Organic Act on Electoral Processes sets out citizens' rights of political participation in electoral processes. The Organic Act on the Electoral Power established the National Electoral Council and its subordinate bodies, namely, the National Electoral Board (art. 46), the Civil and Electoral Register Commission and the Political Participation and Financing Commission (art. 44). The objective of the latter is to promote participation by citizens in public affairs and to investigate the funds of political groups and the financing of electoral campaigns (art. 64). The Comptroller General's Office has a list of disqualified officials on its website.

With regard to the financing of candidates for elective public office and of political parties, the Organic Act on the Electoral Authority (arts. 33 and 64), the Regulations on the Control of Ordinary Financing (art. 1) and the Act on Political Parties, Public Meetings and Demonstrations (art. 25) apply. There are no limits on the amount of donations a political party or candidate can receive. Donations from State entities are prohibited (art. 25 of the Act on Political Parties, Public Meetings and Demonstrations). By constitutional mandate (art. 67 of the Constitution), donations of public funds or funds of foreign origin to finance associations with political objectives are prohibited.

The Audit and Investigation Directorates of the National Financing Office examine the financial information provided in relation to the financing of political activities and electoral campaigns by way of the Automated Accountability System (arts. 253 and 258–276 of the General Regulations implementing the Organic Act on Electoral Processes, adopted on 18 January 2013).

The Civil Service Act contains some legislative measures on incompatibilities (arts. 35 and 36).

The Code of Ethics for Civil Servants, which applies to all public officials serving in national, state, district and municipal government bodies and in their decentralized entities, contains a provision on the acceptance by public officials of undue benefits (art. 5, para. 7) and provides for disciplinary measures, including reprimand and censure, in case of dereliction of duty (art. 9).

Resolution No. 01–00–055, establishing the Instructions on Reporting, and article 7 of the Code of Ethics for Civil Servants lay down the duty to report acts that threaten public and administrative ethics, but there are no incentives to encourage the reporting of acts of corruption. Citizens information bureaux are open to anyone who wishes to file a report (arts. 12 and 13 of the Regulations to Encourage Citizen Participation). All officials who take up or leave a position in a public institution and officials who are identified as senior officials in positions of trust are required to submit a sworn declaration of assets (art. 78 of the Organic Act on the Office of the Comptroller General and the National Fiscal Control System; arts. 3 and 23 of the Decree-Law on Corruption). However, Resolution No. 01–00–000160 of 2016 of the Comptroller General’s Office limits the categories of positions subject to that requirement. Not all declarations are examined. The percentage that is audited is reviewed at the request of the Public Prosecution Service, subject to approval by the Comptroller General’s Office. Failure to comply with the duty to submit a declaration may give rise to sanctions (arts. 33, 34, 38 and 39 of the Decree-Law on Corruption). Actions giving rise to administrative liability are set out in articles 91 and 92 of the Organic Act on the Office of the Comptroller General and the National Fiscal Control System and in article 6, paragraph 11, of the Code of Ethics for Civil Servants.

Once a final decision has been made on suspending a person from his or her position, the Comptroller General’s Office is responsible for suspending the person found responsible without pay or removing the person from his or her position and disqualifying him or her from performing public functions for up to 15 years (art. 105 of the Organic Act on the Office of the Comptroller General and the National Fiscal Control System).

Pursuant to article 254 of the Constitution, the judiciary is independent. Members of the judiciary are subject to the Code of Ethics for Judges. In addition, the Organic and Functional Regulations of the Judicial Disciplinary Tribunal establish ethical principles for members of the judiciary. In the case of disciplinary infractions committed by officials in the judicial service other than judges, proceedings are conducted before the relevant administrative bodies and any appeals are heard by the administrative law courts. Judges may be reprimanded, suspended or removed from office for disciplinary infractions committed in the exercise of their duties, with the relevant proceedings conducted before the Judicial Disciplinary Tribunal at first instance (art. 25 of the Code of Ethics for Judges).

Prosecutors are subject to the Organic Act on the Public Prosecution Service and the Code of Ethics for Civil Servants. The Attorney General oversees matters relating to appointment, training, discipline and the exercise of prosecutorial discretion.

The National School of the Judiciary coordinates and carries out the training of judiciary employees, but it lacks the necessary resources.

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

The Public Procurement Act and its implementing regulations establish procurement methods, with certain exceptions (arts. 4 and 5 of the Act). Those methods include

open tendering, internationally advertised open tendering, closed tendering, price quotations and direct procurement, which is used on an exceptional basis for specific cases (arts. 77, 82, 85, 96 and 101 of the Act). The choice of procurement method is based primarily on the value of the award.

Each agency is responsible for its own procurement procedures, which are overseen by the National Procurement Service (art. 37 of the Public Procurement Act). Procurement commissions are responsible for receiving and analysing documents submitted by bidders, identifying the most favourable bid and ensuring compliance with the applicable legislation (art. 15, paras. 4 and 7, of the Act).

Calls to participate in open tenders and internationally advertised open tenders are published on the websites of each institution and on the website of the National Procurement Service (art. 53, para. 4; art. 79; and art. 82 of the Public Procurement Act). The Service has also created an online national registry of contractors, in which companies wishing to bid in a public procurement procedure must register. The Bolivarian Republic of Venezuela reported that it was in the process of creating a consolidated e-procurement system for all public bodies.

The deadlines established for the submission of bids depend on the type of procurement (art. 67 of the Public Procurement Act). The contractor may modify the terms and conditions of a procurement process up to two days before the expiry of those deadlines, which may be extended (art. 68 of the Act).

The rules, conditions and criteria applicable to public procurement must be objective and open to verification and review (art. 65 of the Public Procurement Act). The bidding specifications must set out the eligibility criteria, their weighting and the way in which they are quantified, as well as an evaluation matrix to assess the bid (art. 66, paras. 12 and 13, of the Act).

Public procurement decisions may be challenged through administrative appeals (art. 9 of the Public Procurement Act; title IV of the Organic Act on Administrative Proceedings) and judicial appeals (art. 7, para. 10, of Decree No. 1.424). In general, administrative appeals do not have suspensive effect (art. 87 of the Organic Act). An appeal for reconsideration can be filed against any administrative decision and is to be lodged before the official who issued the decision (art. 94 of the Organic Act). If the appeal is unsuccessful, another appeal may be filed with a higher authority (the Minister) (arts. 95 and 96 of the Organic Act). An application for judicial review may be filed against final decisions in certain cases (arts. 97–99 of the Organic Act). The National Procurement Service also serves as a mediating body (art. 37, para. 25, of the Public Procurement Act).

The Service has a Public Procurement Training Directorate and is authorized to design and coordinate training programmes related to public procurement (art. 37, para. 5, of the Public Procurement Act). However, public procurement officials are under no legal obligation to be certified or to hold a special qualification.

Members of the procurement commissions are required to abstain from hearing cases that might involve conflicts of interest (art. 18 of the implementing regulations for the Public Procurement Act).

The economic and financial administration of the State is governed by the budget, which is approved each year by the National Assembly. The draft budget is submitted by the National Executive (art. 40 of the Organic Act on the Financial Administration of the Public Sector). The executive branch submits the accounts and the statement of budgetary implementation to the National Assembly (art. 315 of the Constitution).

The National Executive, through the National Budget Office, is responsible for formulating guidelines prior to the preparation of the budget (art. 37 of the Organic Act on the Financial Administration of the Public Sector). The Ministry of People's Power with responsibility for financial affairs is the supervisory body for financial administration (art. 4 of the Act).

Each body is required to establish and maintain an internal control system that makes it possible to evaluate and verify its administrative and financial activity (arts. 137, 140 and 142 of the Organic Act on the Financial Administration of the Public Sector). The National Office of the Superintendent for Internal Oversight is the supervisory body for internal control (art. 144 of the Act).

Articles 82, 83 and 91 of the Organic Act on the Office of the Comptroller General and the National Fiscal Control System set out corrective measures in the event of non-compliance with the rules on the management of public finances. Changes to expenditure ceilings must be submitted to the National Assembly for review, except during a state of exception (art. 32 of the Organic Act on the Financial Administration of the Public Sector).

The National Public Accounting Office has approved the Instructions for Using, Keeping and Preserving Supporting Documents for the Public Accounting System, which are intended to ensure the clarity, verifiability and reliability of public accounting information. Non-compliance may result in administrative and criminal liability (art. 91, para. 6, of the Organic Act on the Office of the Comptroller General and the National Fiscal Control System; art. 316 of the Criminal Code).

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

Access to public information is governed by the Constitution (arts. 28, 51 and 143), the Decree-Law on Corruption (art. 10) and the Regulations to Encourage Citizen Participation (art. 8).

As a general rule, citizens may request access to all administrative files and records, subject to certain exceptions (art. 143 of the Constitution; art. 159 of the Organic Act on the Public Administration). However, there is no legislative instrument that governs that right to such access and exceptions thereto. The citizens information bureaux facilitate access to requested information and are able to receive reports (art. 15 of the Regulations to Encourage Citizen Participation). Anonymous reports are not admissible (art. 23 of the Regulations). The Public Prosecution Service has a web page that provides information on how and where to make reports and a telephone line for that purpose.

If a person who has requested information does not receive it or the request is denied, he or she may resort to administrative litigation and, as a last resort, exercise the constitutional remedy of *amparo* (art. 2 of the Organic Act on the Protection of Constitutional Rights and Guarantees).

Government agencies and bodies must provide citizens with broad, timely and accurate information on their activities, including organization charts and information sheets on administrative procedures, services and benefits (arts. 6, 142 and 143 of the Organic Act on the Public Administration). Although there is no legal obligation to do so, the Bolivarian Republic of Venezuela reported that it publishes information on corruption risks.

The country has an Act on the Simplification of Administrative Procedures, which is aimed at streamlining government procedures for the public (art. 4) and which creates one-stop shops (art. 48).

The Constitution (arts. 62 and 211) and the Organic Act on the Public Administration (art. 139) establish the right of citizens to participate in public affairs and law-making. The Organic Act on People's Power governs the means of citizen participation (art. 1), including social oversight, through which the use of public resources is monitored (art. 19 of the Act; art. 2 of the Organic Act on Social Oversight).

The National Office of the Intendent for Corruption carries out public information and awareness-raising activities on the prevention of corruption. In addition, programmes such as the "Comptroller's Office School Outreach Programme" have been implemented to increase citizen participation in public-sector management and control.

Private sector (art. 12)

The Bolivarian Republic of Venezuela has a commercial registry which is responsible for, inter alia, registering sole proprietorships and businesses and filing and publishing the financial statements and periodic reports of commercial firms (art. 49 of the Public Registries Act; arts. 212–215 of the Commercial Code). Private entities are not required to adopt codes of conduct.

There is no provision for restrictions on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement.

The Commercial Code requires businesses to keep accounting and other records and contains provisions on the maintenance of such records (arts. 32–36 and 44).

Accounting records are audited by certified public accountants (art. 7 (a) of the Public Accounting Act), using Statement of Accounting Principles No. 0 of 1997, which is based on International Accounting Standards (arts. 3 and 14).

According to government authorities, the tax deductibility of expenses that constitute bribes is not possible because that is not provided for in the Income Tax Act. However, there are no specific provisions preventing the deduction of such expenses.

Measures to prevent money-laundering (art. 14)

Regulated entities include any natural or legal persons whose activity is regulated by the laws governing the banking, insurance and securities sectors, the gambling industry and other professions, such as lawyers and notaries when they carry out transactions on a client's behalf in relation to certain activities (art. 9 of the Organic Act on Organized Crime and Terrorist Financing; art. 5 (ii) of Resolution No. 083-18; art. 8 of Decree No. 3.656).

Regulated entities must, inter alia: (a) establish through all possible means the true identity of involved third parties and beneficial owners (art. 16 of the Organic Act on Organized Crime and Terrorist Financing) and, in the banking sector, verify the identity of their customers, including the beneficial owners of legal persons (arts. 49 and 55 of Resolution No. 083-18); (b) report suspicious transactions (art. 13 of the Organic Act; arts. 113 and 117 of Resolution No. 083-18); and (c) keep records (art. 10 of the Organic Act) and, in the case of regulated entities in the banking sector, establish individual files for each of their customers (art. 47 of Resolution No. 083-18).

The Bolivarian Republic of Venezuela requires regulated entities in the banking sector to apply a “know your customer” approach in accordance with their risk assessment procedures (art. 46 of Resolution No. 083-18).

The bodies responsible for prevention, control, supervision and audit are set out in article 7 of the Organic Act on Organized Crime and Terrorist Financing and include the National Office of the Superintendent for Banking Sector Institutions, the National Office of the Superintendent for Insurance, the Central Bank, the National Office of the Superintendent for Securities and the Autonomous Registry and Notarial Service.

The National Financial Intelligence Unit (see *Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*) is the entity responsible for compiling, processing and analysing suspicious activity reports (arts. 13 and 25 of the Organic Act on Organized Crime and Terrorist Financing) and for exchanging information with counterpart entities in other countries and with the agencies and bodies responsible for prevention, control, supervision and audit established in article 7 of the Act, which must cooperate and collaborate with the Unit (arts. 2 and 3 of Decree No. 3.656).

The Bolivarian Republic of Venezuela has adopted measures to detect and monitor the cross-border movement of cash. Upon entering or leaving the country, individuals must declare money or bearer securities whose value exceeds \$10,000 or its

equivalent in another currency (art. 22 of the Organic Act on Organized Crime and Terrorist Financing).

Resolution No. 083-18 stipulates that the rules and procedures for the prevention, control and mitigation of risks related to the business relations and transactions of their customers with natural and legal persons located abroad must, as a minimum, contain and retain throughout the payment chain information on customers that request services for the remittance of money or goods to those areas or regions, and the name, identification number and address of the beneficiary of the transaction, as well as their account number and the reason for the transaction (art. 87). Banking institutions must keep records on electronic transfers both sent and received, the content of which is set out in Circular SIB-DSB-UNIF-19610. The circular letter also stipulates that if a banking institution acts as an intermediary in a cross-border electronic transfer, it must ensure that the required information is retained throughout the payment chain. No similar rules have been laid down for domestic electronic transactions and no obligation has been established to scrutinize fund transfers that do not contain such information more closely.

The Bolivarian Republic of Venezuela is a member of the Caribbean Financial Action Task Force.

2.2. Successes and good practices

- Citizen participation in the Strategic Plan of the National Fiscal Control System (art. 5)
- Preventive programmes such as “Senior Citizens as Social Auditors” and “Comptroller’s Office School Outreach Programme” (art. 5)
- The Comptroller General’s Office maintains a list of disqualified parties on its website

2.3. Challenges in implementation

It is recommended that the Bolivarian Republic of Venezuela:

- Regularly assess the National Anti-Corruption Plan and continue its efforts to gather corruption-related data and statistics; continue to encourage non-public entities to contribute actively to the formulation of preventive policy; and allocate sufficient resources to ensure the effective implementation of that policy (art. 5)
- Strengthen coordination among all relevant authorities to foster the development, implementation and monitoring of corruption prevention programmes (art. 6, para. 1)
- Continue ensuring the independence of preventive anti-corruption bodies to enable them to carry out their functions effectively, and consider taking measures to clarify the mandates of and allocate adequate resources to those bodies (art. 6, paras. 1 and 2)
- Consider adopting additional measures for the selection and training of individuals for public sector positions considered especially vulnerable to corruption and the rotation of those individuals, where appropriate (art. 7, para. 1)
- Take steps to ensure the effective implementation of article 8 in order to facilitate the reporting by public officials of acts of corruption to appropriate authorities and to protect reporting persons (art. 8, para. 4)
- Continue efforts to ensure the expansion and full implementation of rules on conflicts of interest, and consider strengthening monitoring of the implementation of those rules (art. 7, para. 4, and art. 8, para. 5)

- Consider adopting an integrated management and oversight system for public reporting in all bodies (art. 8, para. 4)
- Verify sworn declarations of assets without the need for such verification to be requested by the Public Prosecution Service after prior approval of the Comptroller General's Office (art. 8, para. 4)
- Ensure that potential bidders have sufficient time to prepare and submit their bids following a change in the terms and conditions of procurement, and take measures regarding declarations of interest, preselection processes and mandatory training of procurement officials (art. 9, para. 1)
- Develop specialized legislation to govern the right of access to public information by citizens, and exceptions to that right (art. 10 (a))¹
- Continue to strengthen the implementation of integrity measures in justice institutions, such as the courts and prosecutors' offices (art. 11)
- Consider strengthening measures to safeguard the integrity of private entities by, inter alia, promoting cooperation between law enforcement agencies and relevant private entities, establishing restrictions on the professional activities of former public officials after their resignation or retirement, and developing codes of conduct in the private sector (art. 12, paras. 1 and 2)
- Take such measures as may be necessary to prohibit the acts referred to in article 12, paragraph 3, of the Convention that are carried out for the purpose of committing any of the offences established in accordance with the Convention
- Adopt a legal provision that explicitly prohibits the tax deductibility of expenses that constitute bribes (art. 12, para. 4)
- Expand the list of regulated entities to cover other sectors particularly vulnerable to money-laundering (art. 14, para. 1)
- Consider implementing viable measures to detect and monitor the cross-border movement of appropriate negotiable instruments that are not issued in bearer form (art. 14, para. 2)
- Consider requiring accurate and meaningful information on the originator to be included on forms for the electronic transfer of funds and related messages, such information to be maintained throughout the payment chain for all electronic transfers of funds, and enhanced scrutiny to be applied to transfers of funds that do not contain complete information on the originator (art. 14, para. 3)

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

The Bolivarian Republic of Venezuela has expressed technical assistance needs with regard to summaries of good practices and model legislation for the implementation of articles 5 to 13.

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)

All cooperation is based on the general rules on mutual legal assistance contained in the bilateral treaties and international conventions to which the Bolivarian Republic of Venezuela is a party, and on reciprocity.

¹ Development after the country visit: the Venezuelan authorities reported that, on 20 September 2021, the Act on Transparency and Access to Information of Public Importance was published in the Official Gazette of the Bolivarian Republic of Venezuela, No. 6.649.

Nor is there a specific prohibition on the transmission of information without prior request, and the National Financial Intelligence Unit can exchange information without prior request with its foreign counterparts through the secure network of the Egmont Group of Financial Intelligence Units. However, the Venezuelan authorities reported that, owing to the confidential nature of investigations, other institutions do not exchange information without prior request.

Although the country has not signed specific bilateral or multilateral agreements with a view to enhancing the effectiveness of international cooperation provided in accordance with chapter V of the Convention, some of its bilateral treaties on mutual legal assistance contain provisions on asset recovery.

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

The Bolivarian Republic of Venezuela has established the requirement for regulated entities in the banking sector and banking institutions to identify and verify the identity of customers (arts. 49 and 55 of Resolution No. 083-18).

There is no definition of high-value accounts. Regulated entities must establish by all means possible the true identity of all involved third parties and beneficial owners (art. 16 of the Organic Act on Organized Crime and Terrorist Financing), regardless of the value of the account, and regulated entities in the banking sector must identify and verify information concerning the beneficial owner of legal persons, including the natural persons who exercise control over those legal persons (art. 49 of Resolution No. 083-18).

Politically exposed persons (art. 4, para. 19, of the Organic Act on Organized Crime and Terrorist Financing; art. 5 (v) of Resolution No. 083-18) are to be subject to enhanced due diligence, as should their family members and any legal persons created by the politically exposed person for his or her benefit (art. 18 of the Act; art. 43, para. 1 (n), of the Resolution). That requirement does not apply to legal persons not created by politically exposed persons who are their close associates.

Resolution No. 083-18 provides regulated entities in the banking sector with information on the types of customers, economic activities, products and services and distribution channels that should be considered high risk (art. 43) and, therefore, subject to enhanced due diligence (art. 46).

There is no mechanism for the authorities to notify financial institutions of the identity of specific persons whose accounts should be subject to enhanced scrutiny.

Regulated entities must keep all relevant documents or records evidencing transactions and the business relationships of customers or users with those entities, as well as the documents required for their identification at the time of establishing business relations with those entities, for a period of not less than 5 years (art. 10 of the Organic Act on Organized Crime and Terrorist Financing), or 10 years for regulated entities operating in the banking sector (arts. 47, 51 and 69 of Resolution No. 083-18).

The formation of financial groups is prohibited (art. 37 of the Decree-Law on Banking Sector Institutions). Any private banking institution or any person engaging in intermediary activities or providing auxiliary financial services requires prior authorization from the National Office of the Superintendent for Banking Sector Institutions (arts. 3, 7 and 9 of the Decree-Law).

Circular SIB-DSB-UNIF-12800 establishes a prohibition on entering into correspondent banking relationships with unlicensed or unregulated financial institutions or with banks that have no physical presence in the country in which they were incorporated and that are not affiliated with a regulated financial group that is subject to effective consolidated supervision (arts. 8 and 9). There is no prohibition on continuing such correspondent relationships or requirement to refrain from establishing relationships with foreign financial institutions that allow banks that do

not have a physical presence and that are not affiliated with a regulated financial group to use their accounts.

Sworn declarations of assets are confidential. The authorities reported that the information contained in declarations could be shared with foreign States only if it were requested through a request for mutual legal assistance.

There is no obligation to report an interest in or signature or other authority over a financial account in a foreign country.

The Bolivarian Republic of Venezuela has a National Financial Intelligence Unit (art. 24 of the Organic Act on Organized Crime and Terrorist Financing; art. 1 of Decree No. 3.656 of 12 November 2018), which is part of the Egmont Group. The Unit is a decentralized body that has budgetary, administrative and financial management capacity and that reports to the Ministry of People's Power for Economic Affairs and Finance (art. 24 of the Organic Act; art. 1 of the Decree).

Regulated entities may restrict the movement of accounts and financial instruments for 72 hours when there is a reasonable suspicion that the holders of such accounts or instruments are linked to acts related to, inter alia, money-laundering. The National Office of the Superintendent for Banking Sector Institutions may, through the National Financial Intelligence Unit, also request such a restriction when there are sufficient elements of risk (arts. 127 and 128 of Resolution No. 083-18).

At the time of the country visit, the National Financial Intelligence Unit had signed 14 inter-agency agreements with various entities such as the Public Prosecution Service, the Central Bank and the National Service for the Administration of Asset Disposal, and 38 memorandums for the exchange of information with its international counterparts.

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

Other States cannot initiate civil action in the Bolivarian Republic of Venezuela to determine title to or ownership of property acquired through the commission of an offence.

The Venezuelan authorities confirmed that the country's courts may order those who have committed offences to pay compensation or damages to another State party that has been harmed by such offences, and that the courts may, when deciding on confiscation, recognize another State's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention. However, information on the legal basis for these measures was not shared.

The authorities cannot give effect to a foreign order of confiscation.

The authorities may order the confiscation of property of foreign origin by adjudication of an offence of money-laundering or any other offence, in accordance with the general rules applicable to confiscation (art. 116 of the Constitution; art. 33 of the Criminal Code).

Although the death of an offender does not prevent the objects or instrumentalities used to commit an offence from being confiscated (art. 103 of the Criminal Code), there are no similar provisions in relation to the proceeds of crime or to property, equipment or other instrumentalities destined for use in offences, or in relation to the flight or absence of an offender.

Article 87 of the Organic Act on Organized Crime and Terrorist Financing requires the State to take the necessary measures required to enable its courts to freeze or seize the proceeds of crime and instrumentalities subject to seizure or confiscation as part of mutual legal assistance, but no such measures had been adopted at the time of the country visit.

In the case of a foreign arrest or criminal charge, the courts could take measures to preserve property for confiscation as part of a Venezuelan investigation (art. 204 of the Organic Code of Criminal Procedure; arts. 55 and 56 of the Organic Act on Organized Crime and Terrorist Financing).

Since the country has not received any requests from other States related to the confiscation of property, it was not possible to assess the implementation of article 55, paragraphs 1 and 2, of the Convention. In theory, upon receiving a request from another State for the confiscation of proceeds of crime, property or instrumentalities in relation to an offence established under the Organic Act on Organized Crime and Terrorist Financing, the Venezuelan State will submit the request to its competent authorities so that they may take a decision on the appropriateness of the measure requested (art. 88 of the Act).

Besides what has been established with regard to the content of general requests for assistance, there are no additional requirements for requests related to confiscation, except in the bilateral treaty with Colombia (art. 18), which requires any such request to be accompanied by certain documents and information.

During the review, the Bolivarian Republic of Venezuela furnished copies of its laws and regulations that give effect to article 55 of the Convention. The country does not make the taking of the measures referred to in paragraphs 1 and 2 of article 55 of the Convention conditional on the existence of a relevant treaty. The Bolivarian Republic of Venezuela may request additional information in order to execute a request (art. 80 of the Organic Act on Organized Crime and Terrorist Financing). The grounds for refusing a request for assistance (art. 81 of the Act) do not include the property being of a *de minimis* value.

Before lifting a provisional measure, there is no obligation to give the requesting State an opportunity to present its reasons in favour of continuing the measure.

Provisions to protect the rights of bona fide third parties in relation to international cooperation for the purposes of confiscation apply only in cases involving the advance disposal of perishable goods and other specific items within the scope of the Organic Act on Organized Crime and Terrorist Financing (art. 55 of the Organic Act).

Return and disposal of assets (art. 57)

The scope of application of the Organic Act on Organized Crime and Terrorist Financing covers the disposal of property under domestic law, including, for example, the allocation of resources to intergovernmental agencies that specialize in combating trafficking in and abuse of narcotic drugs and psychotropic substances or other offences related to organized crime and terrorist financing, or the sharing of proceeds with other parties (art. 89 of the Act). There are no specific provisions establishing the obligation to return property in the cases covered by the Convention.

The legislation establishes that ordinary expenses incurred in the conduct of investigations or judicial proceedings leading to the return or disposal of confiscated property are to be covered by the requesting State (art. 84 of the Organic Act on Organized Crime and Terrorist Financing) or by the requested State, if so provided for in special legislation (such as art. 11 of the bilateral agreement with Colombia on cooperation and legal assistance in criminal matters). In direct application of the Convention, the Bolivarian Republic of Venezuela may deduct reasonable expenses incurred in investigations or judicial proceedings leading to the return or disposal of property.

Although the country may conclude specific agreements for the final disposal of confiscated property pursuant to article 89 of the Organic Act on Organized Crime and Terrorist Financing, it has not yet done so. Some bilateral treaties contain provisions on mutual legal assistance with regard to provisional measures or confiscation of the proceeds or instrumentalities of crime. The bilateral agreement with Colombia provides that the State party having custody of the property must

dispose of that property in accordance with its domestic law, and that the property or the proceeds of its sale may be shared with the other State party (art. 20).

3.2. Successes and good practices

- The high number of requests for mutual legal assistance from other States parties that the Bolivarian Republic of Venezuela has handled. The authorities reported that none of those requests had been rejected or refused.

3.3. Challenges in implementation

It is recommended that the Bolivarian Republic of Venezuela:

- Take measures to require financial institutions to conduct enhanced scrutiny of accounts maintained by or on behalf of legal persons that are close associates of a politically exposed person, including those not established by the politically exposed person (art. 52 (1))
- Notify financial institutions of the identity of particular persons, natural or legal, whose accounts should be subject to enhanced scrutiny (art. 52, para. 2 (b))
- Ensure that the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group is not permitted (should the courts interpret the law differently, a legislative amendment will be necessary); and consider requiring its financial institutions to refuse to continue a correspondent banking relationship with banks that have no physical presence and that are not affiliated with regulated financial groups, and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group (art. 52, para. 4)
- Consider taking measures to require appropriate public officials having an interest in or signature or other authority over a foreign financial account to report that relationship and to maintain appropriate records related to such accounts, and consider establishing appropriate sanctions for non-compliance (art. 52, para. 6)
- Take measures to permit another State party to initiate civil action in its courts to establish title to or ownership of property; and ensure that its courts can order those who have committed offences to pay compensation or damages to another State party that has been harmed by such offences, and that, when deciding on confiscation, its courts or competent authorities can recognize another State party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention (art. 53 (a), (b) and (c))
- Take measures to permit its competent authorities to give effect to a foreign order of confiscation, also in accordance with article 87 of the Organic Act on Organized Crime and Terrorist Financing (art. 54, para. 1 (a))
- Consider taking measures to allow confiscation of property without a criminal conviction in all the cases set out in article 54, paragraph 1 (c)
- In order to provide mutual legal assistance, take appropriate measures to permit its competent authorities to freeze or seize property upon request, with or without a foreign order, for all offences established in accordance with the Convention (art. 54, paras. 2 (a) and (b))
- Before lifting a provisional measure, give the requesting State an opportunity to present its reasons in favour of continuing the measure. If this does not happen in practice, legislative reform will be necessary (art. 55, para. 8)
- Ensure the existence of an effective system for protecting the rights of bona fide third parties in the event of the freezing, seizure or confiscation of property related to all offences established in accordance with the Convention, including

where mutual legal assistance is afforded for the purpose of taking such measures (art. 55, para. 9)

- Endeavour to take measures to enable institutions other than the National Financial Intelligence Unit to forward information to another State party without prior request (art. 56)
- Adopt measures for the return and disposal of confiscated property in accordance with article 57, paragraphs 1 to 3, of the Convention, taking into account the rights of bona fide third parties (art. 57, paras. 1–3), and ensure that confiscated property is returned to the requesting State party in accordance with article 57, paragraph 3, of the Convention, including in cases where bilateral or multilateral treaties provide alternative options (art. 57, paras. 3 and 5)
- Consider concluding specific agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to chapter V of the Convention (art. 59)

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

The Bolivarian Republic of Venezuela requires legislative assistance, training and the creation or strengthening of institutions to improve implementation of the Convention (arts. 51, 54 and 56).
