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Marshall Islands

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

The Marshall Islands acceded to the United Nations Convention against Corruption on 17 November 2011. The implementation by the Marshall Islands of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was published on 26 March 2015 (CAC/COSP/IRG/I/4/1/Add.8).

The Marshall Islands was placed under the administration of the United States of America as one of the United Nations Trust Territories after the Second World War but gained independence in 1983 and achieved full sovereignty in 1986 under the Compact of Free Association with the United States. Its governing system is therefore much influenced by and modelled after the United States and its legal system. Treaties are not self-executing and do not, by themselves, have the force of law in the Republic.

The Constitution, adopted in 1979, is the supreme law of the Marshall Islands, and any inconsistent law will, to the extent of the inconsistency, be void. The Government of the Marshall Islands operates under a mixed parliamentary-presidential system. Elections are held every four years by universal suffrage, with each of the 44 constituencies electing representatives to the lower house of the bicameral legislature of the Marshall Islands, the Nitijela (or Parliament). The legislative authority is vested in the Nitijela pursuant to article VI of the Constitution. The upper house, the Council of Iroij, is an advisory body comprising 12 tribal chiefs. The executive branch consists of the President, elected by the Nitijela, and his or her Presidential Cabinet of 10 ministers.

The judicial power of the Marshall Islands is vested in the Supreme Court, the High Court, the Traditional Rights Court and such district, community or other courts as established by law. These courts are independent of the legislative and executive powers (art. VI of the Constitution; sect. 203 of the Judiciary Act 1983).

Key authorities in regard to the fight against corruption are the Office of the Attorney General, the National Police, the Office of the Auditor General, the Public Service Commission (PSC), the Government Ethics Board and the Domestic Financial Intelligence Unit (DFIU).

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 Marshall Islands does not have an overarching anti-corruption policy or strategy. The Marshall Islands National Strategic Plan 2015–2017 was a framework to coordinate medium-term development goals and objectives of the Government at the national level. One of the 10 national development themes was identified as “Ensuring and applying the practice of good governance principles to achieve effective governance through community planning and developing effective linkages between local and national governments”.

The National Strategic Plan was developed in coordination with current and ongoing ministry and agency plans, as well as through a series of stakeholder consultations. The Plan also outlined a monitoring and evaluation framework. There is currently no follow-up plan to the National Strategic Plan.

The Marshall Islands does not have in place a process to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy for preventing and fighting corruption.

The Marshall Islands is a member of the Pacific Islands Legal Officers' Network, the Pacific Islands Forum Secretariat, the Pacific Prosecutors' Association, the Pacific Islands News Association, the Oceania Customs Organisation, the Pacific Immigration Development Community, the Pacific Maritime Security Program, the Secretariat of the Pacific Community and the Pacific Association of Supreme Audit Institutions and takes part in the United Nations Pacific Regional Anti-Corruption Project and activities of various other international law enforcement agencies and the private sector.

There is no single anti-corruption agency. A number of bodies have functions related to the prevention of corruption, including the Government Ethics Board, the Ethics Commission, the Office of the Attorney General, the Office of the Auditor General, the Banking Commission, DFIU, PSC, the Department of Public Safety and the Transnational Crime Unit. Each of these bodies has jurisdiction and operational independence to carry out its mandates and has adequate resources and training.

On 12 June 2014, the Ministry of Foreign Affairs officially informed the Secretary-General of the name and address of its authorities that may assist other States parties in developing and implementing specific measures for the prevention of corruption.

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

Pursuant to article II, section 10, of the Constitution, PSC operates independently in all matters relating to decisions about individual employees, including in relation to the appointment, promotion, demotion, transfer, disciplining or cessation of employment of any employee, or any other matter, and in accordance with criteria relating only to the individual's ability to perform required duties. Remuneration is set by law for high-level officials, and by PSC through regulation for other public servants.

PSC has reported that reform of the civil service is critically needed, as an audit conducted in 2013 uncovered many positions with no descriptions, titles that did not match the work performed, and other problems. There are also plans to conduct both internal and external studies to assess the adequacy of remuneration for public officials. There are no measures to identify positions at high risk of corruption.

The Constitution and the Elections and Referenda Act 1980 outline the qualifications for candidature to the Nitijela. Section 109A of the Elections and Referenda Act provides that any person who has been convicted of a felony, whether in the Republic or in any other country, shall not be eligible to stand as a candidate for elections. There are no requirements for candidates to demonstrate the absence of a conflict of interest or disclose information about relevant interests as conditions of their candidacy.

The Marshall Islands does not have any legislation concerning the funding of candidatures for elected public office or political parties.

Article II, section 16, of the Constitution requires the establishment of a comprehensive code of ethics for all public officials. The Ethics in Government Act of 1993 provides for this code of ethics. Under this Act, the Government Ethics Board may impose any one or more of the following, where a breach of the code is found: oral or written warnings or reprimands; suspension with or without pay for specific periods of time; termination of employment; and civil penalties in any amount, not to exceed $5,000 for each breach or violation, which shall be enforceable in a court of law. Public officials partake in a week-long orientation with PSC before reporting to their duty station.

Part II of the Act provides that public officials and government employees must give due disclosure of any conflict of interest. The State-Owned Enterprises Act, 2015, provides that each director of a State-owned enterprise or a subsidiary of a State-owned enterprise must disclose in writing to each other director of the State-owned enterprise or subsidiary all interests that that director has that could conflict with the proper performance of the functions of his or her office. The Act also makes provision for the establishment of a code of conduct, although there are no penalties for non-compliance. Section 190 of the Procurement Code Act 1988 also provides for disclosure of conflicts of interest. Measures have not been taken to facilitate the reporting of acts of corruption by public officials.

There is no asset declaration system in place, although there are plans to implement legislation to that effect. There is, however, a requirement that public officials report any gift received in their official capacity to the Cabinet within 30 days of its receipt.

The judiciary is established under the Constitution. Article VI, section 1, of the Constitution establishes the independence of the judiciary by providing that "the judicial power of the Republic of the Marshall Islands shall be independent of the legislative and executive powers". The Judiciary Act reaffirms this principle of independence. Article VI, section 1, of the Constitution contains a number of anti-corruption concepts, including by providing that "no judge shall take part in the decision of any case in which that judge has previously played a role or with respect to which he is otherwise disabled by any conflict of interest".

The Judicial Service Commission recommends to the Cabinet the appointment of chief justices of the Supreme Court and the High Court and the chief judge of the Traditional Rights Court. Under the Constitution, justices of the Supreme Court and the High Court who are citizens serve until the age of 72. Non-citizen justices of the Supreme Court and the High Court serve for a term of one or more years. By statute, judges of the Traditional Rights Court are appointed for terms of 4 to 10 years; judges of the District Court are appointed for terms of 10 years; and judges of community courts are appointed for terms of 4 years. Under article VIII, section 11 (2), of the Constitution, the compensation of the justices of the Supreme Court and the High Court cannot be reduced without proportionally reducing the compensation of others whose salaries must be established by act (e.g. members of the Cabinet and the Nitijela). The Rules of Civil Procedure provide that a judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.

Under article VI, section 1 (8), "a judge of the Supreme Court or of the High Court may be removed from office only by a resolution of the Nitijela adopted by at least two thirds of its total membership and only on the ground of clear failure or inability faithfully to discharge the duties of such office or for the commission of treason, bribery, or other high crimes or abuses inconsistent with the authority of his office". Judges of other courts can be removed on similar grounds.

The Judicial Service Commission is also established under the Constitution. Article VI, section 5, provides for its independence by providing that "the Judicial Service Commission shall not receive any direction from the Cabinet or from any other authority or person, but shall act independently". Anyone may complain to the Judicial Service Commission about the conduct of a judge, including a violation of the Code of Judicial Conduct; provided, however, the Commission also may commence proceedings on any information that is made known to it without formal complaint (art. 7, sect. 7.2, of the Code of Judicial Conduct). The judiciary publishes the results of the Judicial Service Commission's review of complaints in its annual reports. In 2008, the judiciary adopted its Code of Judicial Conduct, based on the Bangalore Principles of Judicial Conduct and the American Bar Association Model Code of Judicial Conduct. In 2012, the judiciary amended its Code of Judicial Conduct after reviewing the code of Palau, which had been patterned after the Code of Judicial Conduct of 2008 of the Marshall Islands. Copies of the Code of Judicial

Conduct have been provided to judges. Article 11 of the Courts Personnel Guide of the Office of the Marshall Islands Clerk of Courts contains a code of conduct for court staff. The judiciary does not have an ethics committee per se. Justices and judges usually discuss their ethics concerns with each other. The judiciary is able to refer questions to the Chair of the Ethics Committee of the Judicial Council of the United States Courts for the Ninth Circuit. A violation of the Code of Judicial Conduct may give rise to disciplinary sanctions (sect. 7.2 of the Code). The possible outcomes of a disciplinary investigation include dismissal of the complaint, referral to the head of court for appropriate action (such as cautioning, training or the suggestion of apology) or removal or recommendation for removal. Judges are not required or requested to make a declaration of their assets and liabilities.

The Attorney General is established under the Constitution. The Office of the Attorney General Act of 2002 elaborates on the constitution of the Office of the Attorney General and its functions. Article VII, section 3, paragraph 4, of the Constitution provides for the independence of the Attorney General.

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

Procurement in the Marshall Islands is governed by the Procurement Code Act 1988, which ensures the fair and equitable treatment of all persons who deal with the procurement system of the Government. Section 105 of the Act requires all parties involved in the negotiation, performance or administration of government contracts to act in good faith. The Act establishes the Government Procurement Policy Office and the position of Chief Procurement Officer. Section 117 of the Act vests all rights, powers, duties and authority relating to the procurement of supplies, services and construction, and the management, control, warehousing, sale and disposal of supplies, services and construction in the Policy Office and the Chief Procurement Officer. Part XIII sets out standards of ethical conduct, including prevention of conflicts of interest. There are plans in place to further strengthen the Act through amendments to its provisions and regulations.

In accordance with the Act, an invitation for bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement. Bids are sealed and shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection. Bids shall be evaluated on the basis of the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life-cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. Challenges to the procurement process can be brought first to the attention of the Chief Procurement Officer and, if unresolved, through a civil action in court. Procurement records are retained by the Government Procurement Policy Office for a minimum period of five years.

Article VIII of the Constitution governs public finances. Pursuant to article VIII, section 2, of the Constitution, it is the responsibility of the Cabinet to make proposals to the Nitijela on all matters pertaining to the budget. Part III of the Financial Management Act 1990 details the procedure for adoption of the budget and outlines the responsibilities of the Cabinet, the Legislature, the Department of Finance and agencies. The Act requires the regular appraisal of and reporting on the management and distribution of public finances by the Secretary of Finance, overseen by the Nitijela. The Act also requires that the accounting of the Marshall Islands provide full

disclosure of the results of financial operations and adequate financial information needed in the management of operations and ensure effective control over revenues and multilateral and bilateral grants-in-aid, in accordance with standards promulgated by the Governmental Accounting Standards Board.

The Secretary of Finance is the general accountant and comptroller of all public funds, including the General Fund of the Marshall Islands. The Office of the Auditor General is an independent office that audits the public funds and accounts of the Marshall Islands, including those of all departments and offices of the legislative, executive and judicial branches of government and of any other public corporation or other statutory authority constituted under the law of the Republic. The State-Owned Enterprises Act, 2015, governs record-keeping and audit requirements for all State-owned enterprises. The Financial Management Act 1990 requires all invoices, purchase orders, documents and other records or papers on file with the Secretary of Finance or kept in his or her department to be retained for a period of six years, after which they may be destroyed. No records may be destroyed if exceptions remain uncleared and unresolved with the Office of the Auditor General or if the documents are the subject of an audit already undertaken but not yet completed.

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

The Marshall Islands does not have freedom of information laws. Section 103 of the Marshall Islands Administrative Procedure Act 1979 requires each agency to, inter alia, adopt a rule describing its organization, stating the general course and method of its operations and setting out the procedures whereby the public may obtain information from the agency or make submissions or requests to it. Each agency must also make available for public inspection all rules and other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions, and all final orders, decisions and opinions of general applicability or effect upon the public. Government agencies adhere to the Act, and such information is made available to the public through a variety of means. Members of the public may also contact the relevant agency directly to access the information sought.

Public reports and legislation are also available online.

The website of the Nitijela provides the possibility for a bill to go through a public consultation phase. There is space on the website for the publication of bills, although none are available on the website at present. Before a bill becomes a law, it must go through the different stages of the enactment process in the Nitijela. The first stage is the introduction of the proposed legislation. The second stage is the public consultation. Once a bill is assigned to a committee, the committee may conduct public consultations, such as public hearings or meetings. Once the committee has conducted a public consultation on the bill, it reports its recommendations back to the Nitijela on whether to adopt the bill or not. If adoption of the bill is recommended and the Nitijela accepts the recommendation, the bill proceeds to second and third readings before final passage and adoption.

Section 914 of the Auditor General (Definition of Duties, Functions and Powers) Act 1986 provides that the Auditor General may receive and investigate complaints or information from any person concerning the possible existence of any activity constituting fraud, waste or abuse in the collection and expenditure of public funds. The identity of the complainant must not be disclosed unless consent is provided or the Auditor General determines that the disclosure is necessary and unavoidable during the course of the investigation, in which case, the person must be notified in writing prior to disclosure. The Banking Act 1987 also provides immunity for the reporting of a suspicious transaction.

Private sector (art. 12)

Regulations for legal persons are provided under the Business Corporations Act 1990, the Marshall Islands Revised Partnership Act, the Marshall Islands Limited

Partnership Act, and the Limited Liability Company Act of 1996. These statutes, collectively known as the Associations Law, provide the legal framework for the establishment and operation of resident and non-resident domestic corporations, partnerships, limited partnerships, limited liability companies, foreign maritime entities and foreign corporations authorized to do business in the Marshall Islands. There are two registrars: the Attorney General, for resident entities, and the Trust Company of the Marshall Islands, for non-resident entities. There is an additional requirement if a foreign entity or natural or legal person wants to register as a resident entity in the Marshall Islands. The entity or person must meet the requirements of the Foreign Investment Business License Act 1990 and be registered in the designated Register of Foreign Investments at the Secretary of Finance. There is a requirement in the Foreign Investment Business License Regulations 2000 to declare beneficial share ownership and the natural person owners, but the former is not defined and there is no monetary or criminal sanction for false declaration.

All legal persons are required to keep correct and complete books and records of accounts and up-to-date basic and beneficial ownership records, as well as minutes of meetings and records of actions taken upon consent. Records must be provided for inspection upon request and are required to be retained for a minimum period of five years. Any person who knowingly or recklessly fails to keep and maintain accounts, documents or records as required by law shall be liable to a fine not exceeding $50,000, or cancellation of the operational certificate of the legal person. Non-profit organizations are governed primarily by the Non-Profit Corporation Act, the Cooperatives Act of 1993 and the Counter-Terrorism Act, 2002. Relevant provisions of the Associations Law also apply. The Registrar of Corporations is responsible for the registration of non-profit organizations in the Marshall Islands and is the designated contact point for any request for information on non-profit organizations.

Although there are provisions in the Banking Act 1987 requiring officials to declare interests in the context of business transactions, there are no other provisions to prevent conflicts of interest in the private sector. Section 159 of the Act establishes an offence liable to a fine not exceeding $10,000 or to a term of imprisonment not exceeding one year, or both, for any director, manager, trustee, auditor, employee or agent of any licensed bank who wilfully makes a false entry, wilfully omits to make an entry or wilfully alters, abstracts, conceals or destroys an entry in any book or record or in any report, slip, document, or statement regarding the business, affairs, transactions, conditions, assets or liabilities, or accounts of such bank. A similar provision exists in the Trust Companies Act 1994. The Criminal Code, 2011, also contains provisions on forgery and similar offences.

The Marshall Islands does not expressly disallow the tax deductibility of expenses that constitute bribes, although bribery in the private sector is prohibited in some respects by the Criminal Code (sect. 224.9).

Measures to prevent money-laundering (art. 14)

The Marshall Islands anti-money-laundering legal regime consists primarily of the Banking Act 1987 and the Anti-Money Laundering Regulations 2002. Customer due diligence standards are addressed by the Banking Act 1987 (sects. 168–170), the Anti-Money Laundering Regulations 2002 (sects. 3A–C, 3E and 3G–K) and advisory notices issued by the Banking Commissioner. Section 3A.2 of the Anti-Money Laundering Regulations requires customer due diligence to be applied on a risk basis, which must include enhanced customer due diligence for higher risk customers and politically exposed persons and may include simplified customer due diligence for lower risk customers.

Section 3C of the Anti-Money Laundering Regulations requires financial institutions and cash dealers to take measures for beneficial ownership identification. In keeping with the Financial Action Task Force's definition, the concept of "beneficial owner" is defined in section 1 (b) (6) of the Anti-Money Laundering Regulations as the natural person (or persons) who ultimately owns or controls and/or the natural person on

whose behalf a transaction is being conducted and also includes those persons who exercise ultimate effective control over a legal person or arrangement. References to "ultimate ownership or control" and "ultimate effective control" refer to situations in which ownership and/or control is exercised through a chain of ownership or by means of control other than direct control.

Record-keeping requirements and the reporting of suspicious transactions and transactions in currency are addressed in the Anti-Money Laundering Regulations. As set out in section 5 (a) (2) (c) of the Regulations, suspicious transactions requiring reporting include: (a) transactions which the financial institution or cash dealer knows, suspects or has reason to suspect involve funds or other assets derived from illegal activity; and (b) transactions conducted or attempted to be conducted in order to hide or disguise funds or assets derived from illegal activities, or as part of a plan to violate or evade any Marshall Islands law or regulation or to avoid any transaction reporting requirement under Marshall Islands laws or regulations. Suspicious transactions are reported on a form issued by the Banking Commission, which has issued guidelines for the preparation of the reports.

The formation of offshore companies and trust structures is one of the areas most susceptible to money-laundering risks. Designated non-financial businesses and professions in the Marshall Islands, including trust and company service providers, are now subject to the customer due diligence requirements of the Banking Act 1987, pursuant to amendments made in 2019. Furthermore, measures have been implemented to mitigate the risks posed by non-resident domestic entities, including the supervision and enforcement of record-keeping and reporting requirements; tax transparency and economic substance measures and measures to counter base erosion and profit shifting; and systems for international cooperation. With regard to trusts, the Marshall Islands trust programme has been inactive since its inception, by deliberate policy choice; registration is required under the Trust Act of 1994, and no trust has ever been registered under the Act.

The Foreign Investment Business License Act of 1990 does not contain monetary or criminal sanctions for the false declaration of beneficial owners of foreign companies who register to do business in the Marshall Islands, but it does provide for suspension or revocation of the license.

The Banking Commissioner is the regulator of the financial industry. The Commissioner has powers under the Banking Act 1987 to issue compliance orders to regulated entities and to refer violations of the Act to the Attorney General for assessment of fines or other penalties. DFIU, an administrative type of financial intelligence unit, is a part of the Banking Commission. DFIU can exchange information with domestic law enforcement agencies and foreign counterparts, including through the Egmont Group of Financial Intelligence Units. There are a growing number of mechanisms for formal coordination with domestic law enforcement authorities. DFIU has experienced problems with staffing and budgeting, but it is actively resolving those issues.

The border currency and negotiable instruments declaration system is based on the Currency Declaration Act 2009. Under section 203 of the Act, a person who enters or leaves the Marshall Islands with currency in an amount equivalent to $10,000 or more must make a declaration to an authorized officer. As amended in 2019, the declaration requirement now extends to currency in an amount equivalent to $10,000 or more transmitted by any means, including, but not limited to, postal or courier services, or trans-shipment by any craft. The current customs declaration form does not contain a definition of currency and a description of applicable penalties for violations. A memorandum of understanding on inter-agency collaboration and information-sharing on matters related to the Marshall Islands arrival and departure declaration forms was recently finalized and entered into effect.

The requirements under article 14, paragraph 3, of the Convention are generally implemented in section 3M of the Anti-Money Laundering Regulations. Notably, section 3M.9 of the Regulations allows financial service providers to apply to the

Banking Commission for exemption from the provision of originator information in transfers below $1,000.

The Marshall Islands underwent a mutual evaluation as a member of the Asia/Pacific Group on Money Laundering in 2011 and received a recommendation for regular follow-up, the highest rating achievable. The Marshall Islands began its third-round assessment in 2020. The Marshall Islands also received a rating of "largely compliant" following the 2019 report on its second-round peer review in the framework of the Global Forum on Transparency and Exchange of Information for Tax Purposes. In addition, the Marshall Islands conducted a national money-laundering risk assessment between September 2017 and April 2020. The assessment has been finalized, and a sanitized version has been made available to the public on the website of the Banking Commission.

DFIU is a member of the Egmont Group, the Asia/Pacific Group on Money Laundering and the Association of Financial Supervisors of Pacific Countries. The Marshall Islands Police is a member of a few law enforcement networks and the International Criminal Police Organization (INTERPOL).

2.2. Successes and good practices

- Comprehensive implementation of article 11 of the Convention, with respect to judicial integrity, transparency and accountability, including the conducting of regular self-evaluation and improvement programmes, as well as the adoption of a code of conduct for court staff, to complement the code of conduct for the judiciary (art. 11).
- Participation of DFIU in the Egmont Group can be considered as a good practice conducive to effective information exchange with foreign authorities (art. 14).

2.3. Challenges in implementation

It is recommended that the Marshall Islands:

- Develop and implement anti-corruption policies and/or a national anti-corruption strategy (art. 5).
- Consider measures to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption (art. 5).
- Continue to consider the establishment of an Office of the Ombudsman, pursuant to Proposal No. SC18 of the Constitutional Convention Act, 2015 (art. 6).
- Continue to develop and implement measures for public service reform, including criteria for recruitment and selection, training, job descriptions, discipline and regular rotation, particularly for positions at high risk of corruption (art. 7).
- Consider taking appropriate legislative and/or administrative measures to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties (art. 7).
- Consider establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions, and continue to consider measures to provide protection to such reporting persons against any unjustified treatment, in accordance with article 33 of the Convention (art. 8).
- Consider legislation or other measures to require designated public officials to make declarations of their assets, liabilities, interests and other elements that may give rise to a conflict of interest (art. 8).

- Continue to take measures to revise the Procurement Code Act 1988 to further promote transparency, competition and objective criteria in decision-making, as well as selection and screening procedures and training requirements for procurement officers (art. 9).
- Consider legislation or other measures to facilitate transparency in public administration and access to information (art. 10).
- Consider measures to facilitate the development and publication of periodic reports on the risks of corruption in public administration (art. 10).
- Consider additional measures to ensure that the operational budget of the judiciary is sufficient to enable each court to function without an excessive workload and includes the financial and other resources necessary to support staff and equipment, in particular office automation and case management facilities (art. 11).
- Consider the development and adoption of procedures and rules to strengthen integrity and prevent opportunities for corruption in the prosecution service, including recruitment, selection, training and internal operating procedures and standards of conduct (art. 11).
- Consider measures to promote cooperation between law enforcement agencies and relevant private entities (art. 12).
- Consider additional measures to promote the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct and measures for the prevention of conflicts of interest and the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State (art. 12).
- Consider measures to prevent conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure (art. 12).
- Consider additional measures to strengthen the prevention of corruption in the private sector, including sanctions for making false statements in the registration of foreign legal persons (art. 12).
- Consider additional measures for the private sector regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, including to prohibit the establishment of off-the-books accounts and the making of off-the-books transactions, as well as the intentional early destruction of bookkeeping documents and records (art. 12).
- Ensure the disallowance of the tax deductibility of expenses that constitute bribes (art. 12).
- Consider taking additional measures to enhance the transparency of, and promote the contribution of the public to, decision-making processes, including in the establishment of procedures and mechanisms to facilitate the contribution of the public to legislative and policy decision-making processes (art. 13).
- Consider taking additional measures to promote public awareness of corruption, including educational programmes and curricula (art. 13).
- Take additional measures to ensure that relevant anti-corruption bodies are known to the public and provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence under the Convention (art. 13).

- Ensure that applicable measures to deter and detect all forms of money-laundering by applying a risk-based approach to customer requirements are consistently applied in practice (art. 14, para. 1 (a)).
- Continue actively enforcing the domestic regulatory and supervisory regime to prevent money-laundering in offshore company formation services, emphasizing beneficial ownership identification requirements (art. 14, para. 1 (a)).
- Continue enhancing the capacity and powers of the Banking Commissioner by, inter alia, ensuring that DFIU receives sufficient resources to conduct its functions effectively (art. 14, para. 1 (b)).
- Strengthen cooperation and the exchange of information between authorities dedicated to combating money-laundering by, inter alia, introducing additional formal arrangements requiring them to cooperate and exchange information at the national and international levels (art. 14, para. 1 (b)).
- Ensure that the customs declaration form contains comprehensive information on items subject to declaration and relevant sanctions for violations (art. 14, para. 2).

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

- Capacity-building for investigators and prosecutors in the prevention, detection and investigation of corruption cases, including in relation to money-laundering and asset recovery (art. 6).
- Legislative drafting and good practices with regard to the protection of whistleblowers and reporting persons (art. 8).
- Legislative drafting and good practices with regard to the development and implementation of legislation to facilitate access to public information (art. 10).

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)

There are no provisions in the domestic law of the Marshall Islands referring to the concepts of asset recovery or asset return. Section 417 of the Mutual Assistance in Criminal Matters Act, 2002, provides for a possibility of “reciprocal sharing” with foreign countries, entirely depending on the discretion of the Attorney General.

The Marshall Islands Police can share information on general criminal matters with foreign counterparts. No specific information-sharing was reported in the context of asset recovery cases.

The Marshall Islands has a mutual legal assistance treaty with the United States and a multilateral agreement in the context of the Pacific Islands Forum. No specific agreements were reported in the area of asset recovery. The Convention is not considered as a legal basis for mutual legal assistance and asset recovery.

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

Financial institutions in the Marshall Islands are subject to “know-your-customer” and customer due diligence requirements, as well as beneficial ownership identification requirements, in accordance with section 168 of the Banking Act 1987 and section 3 of the Anti-Money Laundering Regulations. The enhanced scrutiny of accounts belonging to foreign, but not domestic, individuals entrusted with prominent

public functions and their associates is applied in accordance with sections 1 (b) (16) and 3K of the Anti-Money Laundering Regulations.

Some guidelines with regard to the issues addressed by article 52, paragraph 2, of the Convention are addressed in part B1 of annex 1 to the Anti-Money Laundering Regulations. However, no additional advisories were issued to that effect.

Relevant records are required to be maintained, in accordance with section 169 of the Banking Act 1987 and section 4 of the Anti-Money Laundering Regulations, for a period of at least six years.

Shell banks are not permitted in the Marshall Islands and banks should not have any dealings with them or with banks dealing with shell banks, in accordance with the requirements of subsections 3N.2 and 3N.9–11 of the Anti-Money Laundering Regulations.

The Marshall Islands has not considered establishing effective financial disclosure systems for appropriate public officials or taking measures to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report on such matters to authorities.

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 are no specific provisions in the legislation of the Marshall Islands regarding the legal status of States as parties to civil action able to claim ownership of property.

Section 6.02 of the Criminal Code allows courts to sentence a person who has been convicted of a crime to pay restitution or compensation to the victim of the crime, although it does not specifically refer to States.

Sections 222 (4) (a) and 225 of the Proceeds of Crime Act, 2002, provide for the protection of the interests of persons who are bona fide third parties in the property in confiscation proceedings. However, under section 205 (1) (i) of the Act, “person” means any natural or legal person, but not a State. Section 174 (4) (c) of the Banking Act 1987 requires the court to take into account, when deciding on confiscation, possible hardships that could be caused to any victim of the offence; however, it is not clear whether a State could also be regarded as a victim.

Under, section 415 of the Mutual Assistance in Criminal Matters Act, 2002, the Attorney General of the Marshall Islands may apply to the High Court of the country for registration and enforcement of a foreign confiscation order. There is no option for the court to decide on the transfer of the confiscated funds to the requesting State. Many provisions in the Proceeds of Crime Act, 2002, and the Banking Act 1987 regarding confiscation proceedings duplicate each other.

The Marshall Islands can domestically confiscate the proceeds of crime of foreign origin on the basis of divisions 1 and 2 of the Proceeds of Crime Act, 2002, and sections 172–176 of the Banking Act 1987. There are no specific provisions in the Mutual Assistance in Criminal Matters Act, 2002, specifying the procedures for conducting domestic confiscation at the request of another State.

Domestic criminal confiscation in cases outlined under article 54, paragraph 1 (c), of the Convention is possible under sections 220 and 221 of the Proceeds of Crime Act, 2002, and section 174 (1) of the Banking Act 1987. Enforcement of foreign criminal non-conviction-based orders is possible under section 415 (3) (b) of the Mutual Assistance in Criminal Matters Act, 2002.

The Marshall Islands can enforce a foreign restraining order under section 415 (1) (a) of the Mutual Assistance in Criminal Matters Act, 2002. This mechanism is, however, limited to restraining orders issued by foreign courts, as defined in section 404 (f) of the Act. Under sections 251, 254 and 262 of the Proceeds of Crime Act, 2002, tainted property can be identified, restrained and seized on behalf of a requesting State

through the search and seizure powers of police officers. In accordance with section 205 (o) and (p) of the Proceeds of Crime Act, 2002, the powers under the Act can be used for tainted property where the relevant serious offence is a violation of a law of a foreign country, in relation to acts or omissions that, had they occurred in the Marshall Islands, would have constituted a serious offence. The location or seizure of property or documents in relation to foreign offences may also be carried out at the request of a foreign country upon approval by the Attorney General, in accordance with sections 257, 261 and 264 of the Proceeds of Crime Act, 2002.

The Marshall Islands can issue, at the request of a foreign country, its own restraining order against corruption proceeds, in accordance with section 414 of the Mutual Assistance in Criminal Matters Act, 2002.

Rule 32.2 of the Rules of Criminal Procedure provides for the management and, when necessary, the disposal of seized property.

There are no provisions in the Mutual Assistance in Criminal Matters Act, 2002, specifying the procedures for conducting domestic confiscation at the request of another State.

The Attorney General has the discretionary power but no obligation to apply to the High Court for the entry and enforcement of a foreign confiscation order, under section 415 (1) (b) of the Mutual Assistance in Criminal Matters Act, 2002, and to take measures with regard to identifying, tracing and seizing property, under sections 414 (1), 415 (1) (b) and 416 of the Mutual Assistance in Criminal Matters Act, 2002.

Section 408 of the Mutual Assistance in Criminal Matters Act, 2002, contains some requirements in line article 55, paragraph 3, of the Convention. There are no requirements for an incoming request to include the estimated value of the property and information on adequate notification to bona fide third parties and on ensuring due process.

There are no domestic provisions in line with article 55, paragraph 8, of the Convention.

No bilateral treaties are required by the Marshall Islands, and mutual legal assistance can be provided on the basis of reciprocity.

Return and disposal of assets (art. 57)

Section 223 (1) of the Proceeds of Crime Act, 2002, specifically highlights that property confiscated domestically vests absolutely in the Marshall Islands.

Section 232 (3) (b) of the Proceeds of Crime Act, 2002, stipulates that the confiscated property may be disposed or otherwise dealt with in accordance with the direction of the Attorney General. However, no guideline exists on the possible course of action for the Attorney General in cases covered by article 57 of the Convention. The matter appears to be purely at his or her discretion. Similar provisions are contained in sections 175 (1) and 175 (3) (a) of the Banking Act 1987.

There are no domestic provisions in the Marshall Islands in line with the requirements of article 57, paragraphs 3 and 4, of the Convention.

Since the Marshall Islands is a dualist jurisdiction, the provisions of the Convention cannot be applied directly and would have to be adequately reflected in the domestic legislation to be implemented. The reviewing experts highlighted that, as a first step to address the existing gaps, the Minister of Justice could consider preparing a detailed guideline on handling incoming asset recovery-related assistance requests, on the basis of section 421 of the Mutual Assistance in Criminal Matters Act, 2002.

The Marshall Islands has never concluded any agreements or arrangements on the final disposition of confiscated property.

3.2. Successes and good practices

- The requirements of subsection 3N.10 of the Anti-Money Laundering Regulations prohibiting financial institutions and cash dealers from entering into correspondent banking relationships with shell banks can be considered as a good practice conducive to the implementation of article 52 of the Convention.

3.3. Challenges in implementation

It is recommended that the Marshall Islands:

- Ensure that it can afford the widest measure of cooperation and assistance for the purposes of the return of assets to other States parties, in line with article 51 of the Convention.
- Amend the definition of politically exposed person under section 1 (b) (16) of the Anti-Money Laundering Regulations to ensure that it also covers domestic politically exposed persons and ensure that corresponding requirements are effectively implemented in practice (art. 52, para. 1).
- Take further measures to fully implement the requirements of article 52, paragraph 2, of the Convention.
- Consider establishing effective financial disclosure systems for appropriate public officials (art. 52, para. 5).
- Consider taking measures to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report on such matters, in accordance with article 52, paragraph 6, of the Convention.
- Ensure that other States parties can initiate civil action to establish title to or ownership of property in the courts of the Marshall Islands (art. 53 (a)).
- Ensure that, in practice, the courts of the Marshall Islands do not have legal obstacles when awarding compensation or damages to another State party in accordance with article 53 (b) of the Convention.
- Adopt measures permitting its courts or competent authorities, when having to decide on confiscation, to recognize another State party’s claim as a legitimate owner of property acquired through the commission of corruption offences, including by introducing corresponding changes to the Proceeds of Crime Act, 2002, and other relevant legislation (art. 53 (c)).
- Adopt clear legislative provisions on the effect of the enforcement of foreign confiscation orders, in line with the requirements of the Convention, and streamline the confiscation provisions in domestic legislation to ensure their effective implementation in practice (art. 54, para. 1 (a), and art. 55, para. 1 (b)).
- Specify the confiscation of proceeds of corruption at the request of another State as a type of mutual legal assistance in the Mutual Assistance in Criminal Matters Act, 2002 (art. 54, para. 1 (b), and art. 55, para. 1 (a)).
- Ensure that the Attorney General exercises his or her discretion under sections 414 (1), 415 (1) (b) and 416 of the Mutual Assistance in Criminal Matters Act, 2002, in a way that observes the binding obligations set out under article 55, paragraphs 1 and 2, of the Convention.
- Amend the Mutual Assistance in Criminal Matters Act, 2002, to include an indication of the estimated value of the property and a statement specifying the measures taken by the requesting State to provide adequate notification to bona fide third parties and to ensure due process as required content of the incoming requests, pursuant to article 55 of the Convention (art. 55, paras. 3 (a) and (b) and 9).

- Ensure that, before lifting any provisional measure, it gives the requesting State an opportunity to present its reasons in favour of continuing the measure (art. 55, para. 8).
- Endeavour to take measures to forward information on proceeds of corruption offences without prior request, in line with article 56 of the Convention, including by considering the adoption of relevant legislation and/or guidelines to facilitate this process.
- Adopt legislative and other measures to ensure the full implementation of article 57, paragraph 3, of the Convention, and enable its competent authorities to return confiscated property when acting on the request made in accordance with the Convention, taking into account the rights of bona fide third parties (art. 57, paras. 1–3).
- Adopt domestic regulations on the deduction of reasonable expenses incurred in asset recovery proceedings (art. 57, para. 4).
- Consider concluding agreements or arrangements to enhance the effectiveness of international cooperation in asset recovery matters and designating the Convention as a legal basis for mutual legal assistance and asset recovery (art. 59).

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

- Technical assistance in addressing challenges identified during the review process.