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to the United Nations
Convention against Corruption**

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Note by the Secretariat

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II. Executive summary

Cook Islands

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

The Cook Islands deposited its instrument of accession to the Convention on 17 October 2011. The legal system of the Cook Islands incorporates English common law, certain British and New Zealand statutes, statutes passed by the Legislature and customary laws. The Constitution is the supreme law.

The implementation by the Cook 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 (CAC/COSP/IRG/I/4/1/Add.15) was issued on 2 June 2015.

Although the Cook Islands does not directly implement the provisions of the Convention, it does consider the Convention to be a basis for international cooperation, including for asset recovery.

The national legal framework against corruption comprises provisions from several laws, notably, the Crimes Act, the Proceeds of Crime Act, the Public Service Act, the Mutual Assistance in Criminal Matters Act, the Financial Intelligence Unit Act and the Financial Transactions Reporting Act. The Cook Islands is a party to several international agreements on international cooperation and crime prevention.

The Cook Islands has several bodies and agencies concerned with preventing and combating corruption, including the Crown Law Office, the Tender Committee, the Office of the Public Service Commissioner, the Transnational Crime Unit, the Financial Supervisory Commission and the Financial Intelligence Unit. It also established, in 2011, the Anti-Corruption Committee as a policymaking and information-sharing group for government agencies.

The country's authorities cooperate at the international level through various networks, including the Asia/Pacific Group on Money Laundering, the Egmont Group of Financial Intelligence Units and the International Criminal Police Organization (INTERPOL).

The Crown Law Office plays a key role in the area of international cooperation.

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 National Anti-Corruption Strategy is currently being developed by the Anti-Corruption Committee. Principles of good governance and anti-corruption are enshrined in the National Sustainable Development Plan 2016–2020, notably Goal 16, as well as in government policies including the Public Service Manual, the Heads of Ministries Manual and the Cook Islands Government Financial Policies and Procedures Manual, and in the policies of specific sectors, such as the Seabed Minerals Policy.

Pursuant to the Law Commission Act 2007, the Law Commission was tasked with a central law reform function. However, in practice, each ministry initiates its own review under its purview, often with the assistance of the Crown Law Office. The Office of the Ombudsman has the authority to review the adequacy of administrative procedures and mechanisms. The Crimes Bill, containing proposed amendments to the anti-corruption legislation, is currently before the Select Committee of Parliament for consideration.

The role of the Anti-Corruption Committee is to promote and strengthen measures to prevent and combat corruption by, inter alia, proposing anti-corruption policies and following up on matters referred to it by the Cabinet. The Committee is chaired by the Solicitor General and consists of public sector representatives.

Several bodies in the Cook Islands have a corruption prevention mandate. The Cook Islands Police Service leads all corruption investigations. The Ombudsman is tasked with investigating claims of maladministration in public office, including complaints against the police. The Ombudsman may initiate investigations on his or her own initiative (sect. 11 (3) of the Ombudsman Act 1984). Pursuant to the Official Information Act 2008, the Ombudsman has a mandate to review and investigate complaints relating to requests for access to information. The Office of the Public Service Commissioner is responsible for receiving public complaints regarding the conduct and service delivery of and poor public administration by the Heads of Ministries, Heads of Departments and public servants.

Generally, there are legal provisions on the independence of many prevention bodies from outside influence. The Ombudsman, the Public Service Commissioner, the Police Commissioner and the Public Expenditure Review Committee and Audit Director are appointed by the Queen's Representative on the advice of the Prime Minister (in the case of the Public Expenditure Review Committee and Audit Director, reference is made to the Cabinet pursuant to sect. 21 (1) of the Public Expenditure Review Committee and Audit Act). The Chief Electoral Officer is appointed by the Government, specifically by Order in Executive Council (sect. 4 (1) of the Electoral Act 2004). The Board of the Financial Supervisory Commission is appointed by the minister responsible for finance (sect. 4 of the Financial Supervisory Commission Act 2003).

Coordination at the national level takes place through informal processes; ad hoc forms of communication are commonly used. The Anti-Corruption Committee has been used for information-sharing purposes to avoid the duplication of resources.

The Cook Islands is a member of organizations and its bodies participate in initiatives that assist in the prevention of corruption, including the Asian Development Bank/Organization for Economic Cooperation and Development Anti-Corruption Initiative, the Asia/Pacific Group on Money Laundering, the Pacific Islands Law Officers' Network, the Pacific Islands Forum Secretariat, the Association of Pacific Island Financial Intelligence Units, the Egmont Group, the Pacific Prosecutors Association, the Secretariat of the Pacific Community, the Global Organization of Parliamentarians Against Corruption, the Pacific Association of Supreme Audit Institutions and the Pacific Transnational Crime Network.

The Cook Islands was reminded to update the names and addresses of the authorities that it previously communicated to the Secretary-General of the United Nations and that may assist other States parties in developing and implementing anti-corruption measures.

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

The Office of the Public Service Commissioner is established pursuant to part VI of the Constitution and is responsible for the appointment, promotion, transfer, termination and discipline of public servants (art. 74B of the Constitution). In practice, the Office manages the Heads of Ministries, and the Heads of Ministries manage public servants under their respective ministries with oversight by the Office (p. 11 of the Heads of Ministries Manual 2018). In line with the Public Service Act 2009 and the Public Service Amendment Act 2016, the Public Service Manual was recently amended to include details of personnel policies and standards on recruitment, hiring, retention, promotion and retirement on the basis of the principles of efficiency, transparency and objective criteria. The Recruitment Policy supports good recruitment practices and promotes fairness, transparency and merit-based selection. Other policies produced by the Office of the Public Service Commissioner

include the Public Service Leave Policy, the Official Duty Travel Policy and the Employment Disputes Policy. The Office of the Public Service Commissioner determines salary ranges for the public service pursuant to Cabinet-approved remuneration (sect. 6 (1) (m) of the Public Service Act). The Remuneration Tribunal can make recommendations to the minister responsible for finance on salaries and allowances (sect. 13 of the Remuneration Tribunal Act 2005). An appeals mechanism exists for all human resource decisions and is a three-stage process: first, an appeal is made to the Head of Department; then to the Office of the Public Service Commissioner; and lastly, the employee has the option of notifying the employer of a personal grievance pursuant to the Employment Relations Act 2012 (sects. 36 and 42 of the Public Service Act). There are no specific procedures for the selection, rotation and training of individuals for positions considered especially vulnerable to corruption.

Some training programmes, including induction programmes, cover ethics, codes of conduct and conflicts of interest for public servants and members of the Parliament.

The qualification and disqualification criteria for candidates for elected public office are outlined in the Constitution and the Constitution Amendment Act 2003. The Electoral Act 2004 contains provisions on the qualification and disqualification of candidates (for example, in the event of bribery: sect. 88), as well as the accountability of campaign receipts and expenditure (sect. 108), but in relation to the latter, no action has been taken to date.

The Public Service Code of Conduct and Code of Conduct Policy guide the conduct of all public servants and provide for disciplinary action for non-compliance, including instant dismissal for serious misconduct. While the 2018 Heads of Ministries Manual clearly outlines that the Code of Conduct Policy provides the foundation for managing conflicts of interest, it is the responsibility of each Head of Ministry/agency to put in place policies and processes to address the issue, including how to mitigate potential negative impacts and to ensure that staff understand when a conflict arises and how to manage it. Some agencies, such as the Financial Supervisory Commission, have put in place additional steps to promote transparency and prevent conflicts of interest. Chapter 10 of the Public Service Manual provides for the reporting by public officials of acts of corruption; this is more extensively outlined in the Disclosure (Whistle-blower) Policy.

Some bodies have their own additional codes, such as the Code of Conduct for Police. Part XLV of the Standing Orders of the Parliament also contain a code of conduct, which includes asset disclosure requirements (also provided for in sect. 18 of the Civil List Act 2005).

Part IV of the Constitution establishes the judiciary. The Chief Justice of the High Court is appointed by the Queen's Representative, acting on the advice of the Executive Council (art. 52 (a)), and can be removed only for misbehaviour or because of an inability to discharge his or her functions (art. 54). The Justices Bench Book outlines the code of judicial conduct, which is also applicable to Justices of the Peace.

The code of ethics for law practitioners, including Crown Law Office employees, is outlined in part VII of the Law Practitioners Act 1993–1994, while professional misconduct is detailed in part III.

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

The Cook Islands has a decentralized procurement system. The Government Purchase and Sale of Goods and Service Policy 2016, developed pursuant to section 63 of the Ministry of Finance and Economic Management Act 1995–1996, governs the public procurement process. The Government's online procurement portal contains standard procurement forms. There is no law to prevent price-fixing in public tenders (the Control of Prices Act 1966 applies a fixed price to petrol) or regulate sole-source procurements. State-owned enterprises and exempt bodies, such as the Bank of the Cook Islands, are required to comply with the 2016 Policy unless they are exempted

by legislation. There is a procurement complaints process (sect. 11 of the Government Purchase and Sale of Goods and Service Policy), but no system for the domestic review and appeal of procurement decisions or for the audit of procurements. To date, there has been no appeal of a procurement decision. E-procurement is currently being trialled.

The tender process is used for all purchases with a value of over \$NZ 60,000. Quotes are sufficient for purchases below \$NZ 60,000, but quotes with a value of between \$NZ 30,000 and \$NZ 60,000 require Tender Committee approval. For quotes with a value of between \$NZ 1,000 and \$NZ 30,000 (criteria outlined in sect. 3.1 of the Government Purchase and Sale of Goods and Service Policy), Head of Agency approval is sufficient. Specific conflict of interest rules apply to procurement personnel (sect. 1.8 of the Policy).

The minister responsible for finance should submit estimates of revenue and expenditure for approval to the Parliament annually in the form of an appropriation bill (art. 70 of the Constitution). Part IV of the Ministry of Finance and Economic Management Act outlines the budget process and part XXXV the estimates and financial procedure. The minister responsible for finance should publish a budget policy statement to the Parliament for approval (sect. 11). This is accompanied by a statement of estimates (sect. 13). Not later than the day of the introduction of the first Appropriation Bill, the Minister should also submit to the Parliament a fiscal strategy report (sect. 12). The minister responsible for finance should publish an economic and financial update between 1 and 31 December, which should also contain revisions of forecasts (sect. 16). The Financial Secretary should, after the end of each financial year but not later than the end of the third month of the succeeding financial year, prepare and send to government auditors a financial statement with the total operating expenses, total operating revenues, balance between the two, level of total debt and level of net worth (sect. 26 (1)). This financial statement and report of the government auditors should be forwarded to the Speaker of the Parliament (sect. 26 (2)).

The Constitution provides for the establishment of the Audit Office (art. 71). The Office is responsible for auditing the Government's financial reports. The Office of the Public Expenditure Review Committee and Audit monitors compliance with the Public Expenditure Review Committee and Audit Act 1995–1996 and has review and audit functions as detailed in section 27 of the Act, including the conduct of audits, investigations and enquiries referred to it by the Public Expenditure Review Committee. The Audit Office and the Office of the Public Expenditure Review Committee and Audit apply the standards of the Office of the Auditor General of New Zealand and Audit New Zealand. While the Office of the Public Expenditure Review Committee and Audit is responsible to the Parliament pursuant to sect. 4 of the Public Expenditure Review Committee and Audit Act, how this works with and/or complements the work of the Public Accounts Committee remains unclear.

Government financial records are preserved by government departments for 15 years. After that time, or upon agreement, the National Archives maintains these records, pursuant to the Public Records Act 1984. The Crimes Act criminalizes the falsification of records (e.g., sect. 287 (offence of forgery); sect. 274 (falsifying accounts relating to public funds) and sect. 253 (the destruction of records)).

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

The Official Information Act provides citizens with the right to request official government information and requires the Government to satisfy the request unless there are reasons why the information should be withheld. Timelines are outlined in the Act (e.g., decisions within 20 working days (sect. 14 (1))). Conclusive reasons for withholding information include, for example, prejudicing security and defence (including of New Zealand (sect. 34 (a))), prevention, investigation or detection of offences (sect. 34 (b)) and other reasons, such as disclosure of a trade secret (sect. 8). The Ombudsman has a mandate to investigate and review complaints regarding requests for access to information (sect. 30 of the Official Information Amendment

Act 2009). Cabinet documents are considered strictly confidential and security clearance or an Official Information Act request is required to access them. The Official Information Requests Guide outlines the process for requesting official information and the management of such official information. Extensive training on the Official Information Act is offered by the Office of the Ombudsman to the Government, the Parliament and the public at large, including the Outer Islands. Some ministries and the Parliament, including the Office of the Ombudsman, the Office of the Public Service Commissioner and the Office of the Public Expenditure Review Committee and Audit have published information on their functions through their websites. The Office of the Prime Minister is requested to issue a publication setting out the functions of ministries and organizations. That information should be updated every two years (sect. 22 of the Official Information Act); however, that is yet to take place.

Members of the public and press are authorized to attend Parliamentary sittings as spectators with the permission of the Speaker, Clerk or another authorized person (part XL of the Standing Orders of the Parliament). Broadcasting of the proceedings is permitted under Order 380 and occurs on a regular basis.

The Cook Islands has used outreach activities, such as International Anti-Corruption Day, and radio awareness-raising programmes by, inter alia, the Ombudsman and the Public Service Commissioner to contribute to the non-tolerance of corruption. Anonymous reporting is permitted by some authorities, such as the Audit Office, the Ombudsman's Office, the Office of the Public Service Commissioner and the police.

Private sector (art. 12)

The Limited Liability Companies Act 2008 requires all limited liability companies to maintain certain records (sect. 32), including correct accounting records kept by the resident agent (sect. 31A). The implementation of the Act is overseen by the Company Registrar. Other acts also contain provisions on record retention, including section 32 of the Banking Act 2011 and section 18 of the Captive Insurance Act 2013. The Limited Liabilities Companies Act 2008 provides for the appointment of an auditor but does not establish the obligation for accounts to be audited.

The recording of non-existent expenditure, the entry of liabilities with incorrect identification of their objects, the use of false documentation and the intentional destruction of bookkeeping documents are all prohibited under section 258 of the Crimes Act, if the acts are committed with the intent to defraud, while forgery is covered in section 287.

The Cook Islands does not expressly disallow the tax deductibility of expenses that constitute bribes.

Measures to prevent money-laundering (art. 14)

The country's legal regime against money-laundering consists principally of the Financial Transactions Reporting Act 2017 and its Regulations, the Financial Transactions Reporting Act 2015, the Financial Supervisory Commission Act 2003, the Proceeds of Crime Act 2003, as well as guidelines issued by the Financial Intelligence Unit and prudential statements issued by the Financial Supervisory Commission.

Reporting institutions, which include all financial institutions and designated non-financial businesses and professions, must have in place internal systems to prevent money-laundering, including customer and beneficial owner identification, ongoing monitoring of transactions, the application of enhanced due diligence to high-risk customers, accounts and transactions, record-keeping and the reporting of suspicious transactions.

The Financial Intelligence Unit is responsible for collecting, analysing and disseminating financial information and intelligence on suspected cases of money-laundering, the financing of terrorist activities and other serious offences to

appropriate authorities at the national and international levels. The Unit is the anti-money-laundering supervisor for all reporting institutions. The Financial Supervisory Commission is tasked with licensing and supervising financial institutions and ensuring their compliance with internationally accepted standards. The Commission is the prudential regulator and provides support to anti-money-laundering supervision when requested by the Cook Islands Financial Intelligence Unit.

The Cook Islands published its first national risk assessment in 2008 and its second in 2015. Financial institutions and designated non-financial businesses and professions were engaged in the process and are reflecting its outcomes in their internal risk assessments. Those assessments were supplemented in 2017 with the “2017 Financial Institutions and Designated Non-Financial Businesses and Professions Sectors Review of Risks” which builds on the national risk assessment. According to the assessment, the threat presented by corruption and bribery is medium.

Anti-money-laundering supervisory and law enforcement authorities cooperate and exchange information at both the domestic and international levels.

The Financial Transactions Reporting Act (sect. 37) covers wire transfer requirements in line with the Convention.

The Cook Islands has adopted a system for the declaration of cash and bearer negotiable instruments upon entry to or departure from the country if the value of those instruments is equivalent to or exceeds \$NZ 10,000 (sect. 7 of the Currency Declaration Act 2015/2016). The Act provides penalties for non-declaration or false declarations, including fines and imprisonment (sect. 29).

The 2018 Asia/Pacific Group on Money Laundering Evaluation Report shows a high level of compliance with the Financial Action Task Force recommendations, including those related to preventive measures and supervision.

The Cook Islands contributes to the development and strengthening of regional and international cooperation in the fight against money-laundering, particularly through its participation in the Asia/Pacific Group on Money Laundering and the Egmont Group.

2.2. Successes and good practices

- Awareness-raising by the Ombudsman on the Official Information Act, as well as extensive training offered to the Government, the Parliament and the public at large, including the Outer Islands (art. 10 (b)).

2.3. Challenges in implementation

It is recommended that the Cook Islands:

- Develop and implement the National Anti-Corruption Strategy in line with paragraph 1 of article 5 of the Convention, and allocate adequate resources to ensure its effective implementation (art. 5).
- Adopt anti-corruption legislation, including the Crimes Bill, to further the implementation of the Convention (art. 5).
- Strengthen the independence of the appointment process for the Chief Electoral Officer and the Public Expenditure Review Committee and Audit Director (art. 6, para. 2).
- Endeavour to adopt adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where applicable, of such individuals to other positions (art. 7, para. 1 (b)).

- Seek to enforce section 106 of the Electoral Act 2004, notably to make regulations requiring the accountability of receipts and expenditure by political parties and candidates for election campaign purposes (art. 7, para. 3).
- Consider adopting the Whistle-blower Protection Bill and systems to further facilitate the reporting by public officials of acts of corruption to appropriate authorities (art. 8, para. 4).
- Endeavour to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict may result, including officials at the Heads of Ministries, crown agencies and State-owned enterprises (art. 8, para. 5).
- Revise the procurement legislation to (a) address price-fixing and strengthen the competitive process, including by extending its application to State-owned enterprises and other bodies that are exempt by legislation; (b) establish, within the public procurement system, an effective system of domestic review and appeal; (c) provide legal recourse and remedies to address disputes over adherence to applicable rules and procedures; and (d) provide for the auditing of procurements (art. 9, para. 1).
- Consider clarifying the functions of the Office of the Public Expenditure Review Committee and Audit and the Public Accounts Committee to ensure that there is no overlap and/or duplication (art. 9, para. 2).
- Take appropriate measures to implement effective and efficient systems of risk management and internal control, as well as corrective action (art. 9, para. 2 (d) and (e)).
- Consider measures to enable and strengthen the public reporting of activities of government institutions responsible for preventing and countering corruption, including by the Ombudsman's Office (art. 10 (c)).
- Enhance existing anti-corruption measures in the private sector, including accounting and auditing standards, and establish adequate penalties for non-compliance (art. 12, paras. 1 and 2).
- Ensure that the accounting practices listed in paragraph 3 of article 12 are effectively prohibited.
- Disallow the tax deductibility of expenses that constitute bribes (art. 12, para. 4).
- Take additional measures to ensure that the relevant anti-corruption bodies are known to the public and that reporting procedures, including for anonymous reporting, are further established and accessible to the public (art. 13, para. 2).

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

- Assistance in drafting the National Anti-Corruption Strategy in line with best practices and international standards, and institution-building of the Anti-Corruption Committee (arts. 5 and 6).
- Capacity-building of the Audit Office, the National Environmental Service and the Business Trade and Investment Board to highlight possible risks of corruption and put corruption prevention practices in place (art. 6).
- Support for the drafting of the Whistle-blower Protection Bill, as well as amendments to the Electoral Act and its regulations on the accountability of campaign receipts and expenditure (art. 7, para. 3).
- Collection of statistical data.
- Capacity-building in forensic accounting and information technology (arts. 14 and 52).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The Mutual Assistance in Criminal Matters Act 2003 governs mutual legal assistance matters and is applicable in the context of asset recovery. The Cook Islands is also a party to the Scheme Relating to Mutual Legal Assistance in Criminal Matters Within the Commonwealth.

The Crown Law Office is the authority responsible for mutual legal assistance. The Cook Islands has informed the Secretary-General of the United Nations of that. The Attorney General delegated their statutory obligations under the Mutual Assistance in Criminal Matters Act to the Solicitor General. However, requests would normally be received and sent through diplomatic channels.

To date, the Cook Islands has never refused a request related to asset recovery and has replied favourably to five incoming requests for asset restraint (as defined in sect. 50 of the Proceeds of Crime Act) and recovery. It has not yet sent out any requests for asset recovery.

Section 39 of the Financial Intelligence Unit Act allows the Financial Intelligence Unit to disclose, on its own initiative or upon request, information that relates to financial misconduct to foreign counterparts. The authorities also exchange information spontaneously through INTERPOL.

Pursuant to section 4 of the Mutual Assistance in Criminal Matters Act, the Cook Islands does not make mutual legal assistance conditional on the existence of a treaty. It has concluded several bilateral and multilateral international cooperation agreements in the areas of crime control and the tracing and recovery of proceeds of crime. The Financial Intelligence Unit has signed 13 memorandums of understanding with foreign counterparts in addition to one memorandum of understanding with the Association of Pacific Island Financial Intelligence Units.

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

Financial institutions and designated non-financial businesses and professions are subject to the anti-money-laundering requirements, in accordance with sections 23–34 of the Financial Transactions Reporting Act and Financial Supervisory Commission Prudential Statement 08-2006 (applicable to banks). These requirements cover customer due diligence, including “know your customer” and beneficial owner identification (sects. 25–34 of the Financial Transactions Reporting Act), ongoing monitoring of transactions, periodic and continuous updating of data, record-keeping (sects. 41–44 of the Act), and reporting of suspicious transactions (sects. 45–53 of the Act). The requirements also include assessing the risks of money-laundering and taking appropriate measures to manage those risks, applying enhanced due diligence to high-risk customers, accounts and transactions, including accounts of foreign and local politically exposed persons, their family members and close associates.

To assist reporting institutions in addressing their obligations under the Financial Transactions Reporting Act, the Financial Intelligence Unit has released guidance on several matters, including risk assessments, customer due diligence, record-keeping, the reporting of suspicious activity and the implementation of a compliance regime.

The Financial Intelligence Unit conducts regular education and awareness-raising sessions to assist reporting institutions in implementing the new risk-based requirements set out under the Financial Transactions Reporting Act. It has also issued the Financial Transactions Reporting Act Practice Guideline, which includes procedures to classify customers based on risks (higher-risk categories of customers, business relationships or transactions). Moreover, a list of politically exposed persons

prepared and updated by the Financial Supervisory Commission and the Financial Intelligence Unit is available on the Financial Supervisory Commission website.

The licensing procedures for banks stipulated in the Banking Act prevent the establishment of shell banks (sect. 29). Section 46 of the Banking Act and section 55 of the Financial Transactions Reporting Act prohibit correspondent banking relationships with shell banks. Moreover, section 40 (4) of the Act requires reporting institutions to take appropriate measures to satisfy themselves that their respondent institutions do not permit their accounts to be used by shell banks.

The Financial Intelligence Unit was established in 2001 and its organization, functions, duties and powers are governed by the Financial Intelligence Unit Act, which entrusts it with many tasks and functions, notably the receipt and analysis of suspicious transaction reports, the conduct of any necessary investigations and the forwarding of the results to relevant authorities. The Financial Intelligence Unit, which is a part of the Financial Supervisory Commission, is authorized to sign memorandums of understanding and to exchange information at the national and international levels. The Unit has been a member of the Egmont Group since 2004. It has also been mandated by the Cabinet to coordinate the implementation of the national regime against money-laundering and the financing of terrorism, through the Coordinating Committee of Agencies and Ministries.

The Cook Islands has not established financial disclosure systems for appropriate public officials.

The Cook Islands does not have any provisions requiring appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities or to maintain appropriate records related to such accounts.

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

There is no explicit legal basis providing legal standing to other States to initiate civil action in the courts of the Cook Islands in order to establish title to or ownership of property acquired through the commission of a corruption offence or to request compensation or damages.

Section 20 of the Proceeds of Crime Act permits the court, when having to decide on confiscation, to recognize another person's claim as a legitimate owner of property acquired through a corruption offence. However, this does not seem to extend to foreign States.

Section 38 of the Mutual Assistance in Criminal Matters Act allows the Attorney General to apply for the registration of a foreign conviction-based forfeiture order for a serious offence. Section 40 of the Mutual Assistance in Criminal Matters Act and section 25 of the Proceeds of Crime Act further provide that the registered foreign forfeiture may be enforced as if it was made by the court under the Proceeds of Crime Act. "Serious offence", as defined in the Proceeds of Crime Act, covers all the offences under the Convention. The Mutual Assistance in Criminal Matters Act also permits national authorities to obtain a domestic order of confiscation on the basis of a foreign request (sect. 2 (a) (iii)).

The courts can confiscate property of foreign origin by adjudication of an offence of money-laundering (sect. 17 of the Proceeds of Crime Act, read together with sect. 280A (1) of the Crimes Act).

Section 15 of the Proceeds of Crime Act provides for non-conviction-based confiscation by allowing the Solicitor General to apply to the court for a forfeiture order for any tainted property, within six months of a person absconding, or when a person against whom a warrant is issued dies. Although a foreign non-conviction-

based forfeiture order might not be directly enforced, section 15 of the Act can be applicable pursuant to a foreign request.

Section 38 of the Mutual Assistance in Criminal Matters Act provides for the enforcement of a foreign restraining order through its registration by the Attorney General in court.

Competent authorities can freeze or seize property upon a foreign request (sect. 18 of the Mutual Assistance in Criminal Matters Act). Moreover, the same set of measures and procedures available in domestic criminal proceedings, including those relating to the tracing, freezing, seizure and confiscation of property, are available for international cooperation (sect. 42 of the Proceeds of Crime Act).

Competent authorities can issue preservation orders without a prior request for mutual legal assistance, merely based on a foreign arrest or a criminal charge.

Section 7 of the Mutual Assistance in Criminal Matters Act specifies the information to be included in requests for mutual legal assistance sent to the Cook Islands. The failure by the requesting State to submit sufficient information is not a ground for refusing the request, but the Attorney General is not obliged to consider the request until that information is provided. The Mutual Assistance in Criminal Matters Act does not provide for the possibility of refusing to provide assistance if the property is of a de minimis value.

There is no legal provision which requires the competent authorities, before the lifting of any provisional measure and wherever possible, to give the requesting State an opportunity to present its reasons in favour of continuing the measure.

Sections 20 and 53 of the Proceeds of Crime Act provide for the general protection of bona fide third parties in cases of seizure and confiscation. This protection extends to seizure and confiscation pursuant to a foreign request.

Return and disposal of assets (art. 57)

Section 19 of the Proceeds of Crime Act, indicates that confiscated property should be transferred to the Crown. However, section 44 clearly provides that, on the basis of a request, the Court must order the return of seized property to the person who claims interest in that property if the Crown is satisfied that the person is entitled to possession of it. Pursuant to section 42, section 44 applies specifically to mutual legal assistance. The concept of “person who claims” referred to in section 44 covers foreign States. Moreover, section 100 establishes the Confiscated Assets Fund and provides that payments may be made out of the Fund to satisfy an obligation of the Crown to a foreign jurisdiction in respect of confiscated assets, whether under a treaty or an arrangement. The country’s legislation does not, however, explicitly set out the different scenarios of return covered by the Convention.

The Cook Islands does not impose any conditions on the return of assets. Its legislation also allows victims of crime to be compensated (sects. 415 and 416 of the Crimes Act).

The Cook Islands does not regulate the expenses incurred in the provision of mutual legal assistance.

There is no legal impediment that precludes the authorities from concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

3.2. Challenges in implementation

It is recommended that the Cook Islands:

- Adopt legislative or policy measures to regulate in detail the specific issues of asset recovery, in line with the requirements of chapter V (arts. 51, 55 and 57).

- Consider establishing effective financial disclosure systems for appropriate public officials, provide for appropriate sanctions for non-compliance, and consider taking measures to permit its competent authorities to share related information with foreign competent authorities (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 that relationship to the appropriate authorities and to maintain appropriate records related to such accounts (art. 52, para. 6).
- Take measures to explicitly permit another State to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of a corruption offence (art. 53 (a)).
- Take measures to explicitly permit its courts to order those who have committed corruption offences to pay compensation or damages to another State that has been harmed by such offences (art. 53 (b)).
- Take measures to explicitly permit its courts, when having to decide on confiscation, to recognize another State's claim as a legitimate owner of property acquired through the commission of a corruption offence (art. 53 (c)).
- Include in its legislation a provision requiring its competent authorities, before lifting any provisional measure and wherever possible, to give the requesting State an opportunity to present its reasons in favour of continuing the measure (art. 55, para. 8).
- Adopt legislation that will regulate in detail the specific issues of asset recovery for offences established in accordance with the Convention, in line with the requirements of chapter V (art. 57, para. 3).
- Consider adopting legislative or policy measures to regulate the expenses incurred in the provision of mutual legal assistance in asset recovery (art. 57, para. 4).

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

- Assistance with the preparation of asset recovery legislation and policy document in addition to an asset recovery guide (art. 51).
- Capacity-building to conduct a corruption risk assessment (art. 51).
- Assistance with the establishment of a financial disclosure system for appropriate public officials (art. 52, paras. 5 and 6).
