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**State of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

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II. Executive summary

Myanmar

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

Myanmar signed the United Nations Convention against Corruption on 2 December 2005. It ratified the Convention on 20 December 2012 and deposited its instrument of ratification with the Secretary-General the same day. The country visit for the present review was conducted from 6 to 8 May 2019.

Myanmar follows the dualist tradition with regard to obligations under international conventions and cannot directly apply international law as domestic law.

The national legal framework for preventing and combating corruption consists primarily of the Anti-Corruption Law (2013) and the Anti-Corruption Rules (2015).

The Myanmar Anti-Corruption Commission was established on 25 February 2014 under a mandate set out in the Anti-Corruption Law (2013). The Commission currently comprises 12 members, including the Chair and the Secretary.

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)

Although Myanmar has not yet adopted a national anti-corruption strategy, several anti-corruption policies have been adopted through laws and regulations, including the Anti-Corruption Law (2013), the Anti-Corruption Rules (2015) and the Directive on the Acceptance of Gifts (2016), as well as institutional strategies, such as that of the Anti-Corruption Commission. Myanmar has also adopted and is currently implementing a strategic action plan for civil service reform for the period 2017–2020, which was developed through broad stakeholder surveys and consultations, and which includes elements to prevent corruption and promote integrity, transparency and accountability. Myanmar is currently in the process of developing a national anti-corruption strategy.

In each ministry, Myanmar has established corruption prevention units, which are responsible for, inter alia, ensuring that relevant legislation and administrative regulations meet international standards.

The Anti-Corruption Law (No. 23/2013) was enacted on 7 August 2013, and the Anti-Corruption Commission was formed on 25 February 2014 under Order No. 6/2014 of the Office of the President. The Law was last revised on 21 June 2018, with its fourth amendment, which primarily strengthened the investigative authority of the Commission. The Commission is an independent ministerial-level body and, following its reorganization in 2018, comprises 12 Commissioners, including a Chair and a Secretary. The administrative staff of the Commission are selected and appointed according to the Civil Service Personnel Law. The Commission is in the process of expanding its operational staff and capacity, including by opening branch offices. It is also implementing its Strategic Anti-Corruption Plan (2018–2021), which focuses on investigations, preventing corruption, enhancing cooperation and a corruption-free society. The Anti-Corruption Law prohibits improper interference with the activities of the Commission, although measures are under consideration to further strengthen its operational independence. The Commission has been allocated adequate resources and staff, although it is still in the process of recruitment to reach its full capacity.

The Commission cooperates with relevant institutions, in particular the Ministry of Home Affairs, the Myanmar Police Force, the Bureau of Special Investigation, the

Myanmar Financial Intelligence Unit and the Union Civil Service Board, and it organizes training programmes for capacity-building among public officials. Such programmes include awareness of relevant laws to prevent and counter corruption, the application of those laws in practice and an English proficiency course.

Coordination takes place through the Anti-Corruption Commission, which ensures a unified vision in the prevention of corruption. It also follows up on the implementation of the Convention against Corruption and other relevant international instruments and conducts outreach and awareness-raising activities with the public sector, universities and business groups. In addition to its prevention mandate, the Commission also has a mandate to receive and investigate corruption complaints, including credible information originating from the public.

Myanmar participates in regional initiatives and organizations that assist in the prevention of corruption, including the South-East Asia Parties against Corruption mechanism and the Conference of the States Parties to the United Nations Convention against Corruption.

On 30 July 2015, the Anti-Corruption Commission officially informed the Secretary-General of the names and addresses 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)

The Civil Service Personnel Law (2013) established the Union Civil Service Board and governs all matters related to the appointment, promotion, delegation, remuneration and other operational aspects of the civil service. Vacancies are advertised and recruitment is conducted through a merit-based competitive process. The Constitution provides guarantees of non-discrimination in recruitment and appointment, except for personnel in certain sectors (mining, forestry and fishing) reserved exclusively for men. The Law also provides a process for persons to appeal any administrative decision relating to conditions of service. The Civil Service Personnel Rules (2014) include a code of conduct for all public servants and set forth a comprehensive performance evaluation system.

According to the Civil Service Personnel Law, training of civil servants is required to promote ethics, integrity and performance across the civil service. Regular training courses are conducted by the Central Institute of Civil Service under the guidance of the Union Civil Service Board. Moreover, a civil service academy was opened at the Central Institute on 2 January 2017 and confers postgraduate diplomas upon civil servants and provides training for advanced diplomas in civil service management for middle-level officers. The curriculum is regularly reviewed and updated in cooperation with international and local experts to meet international standards. It includes modules on the Anti-Corruption Law and the prevention of corruption. At present, there are no specific regulations to identify positions at high risk of corruption, nor is there specialized selection or training for such positions.

The criteria for the qualification and disqualification of persons standing for elected public office are outlined in the Constitution and relevant election laws for the legislative bodies, which also include eligibility criteria to run for President and Parliament. A person who has been convicted of a corruption offence is legally ineligible to stand for elected public office. The Political Parties Registration Law (2010) governs the registration and funding of political parties, which are required to submit annual financial reports on donors and expenses.

A general code of conduct, an administrative document to guide the conduct of public officials, is set forth in the Civil Service Personnel Rules (2014) for all public officials, who are overseen by the Union Civil Service Board, and provides for a range of disciplinary measures for non-compliance, including dismissal. This code includes general prohibitions on conflicts of interest. In May 2018, the Anti-Corruption

Commission adopted a code of conduct for its officials. Through its strategic action plan for civil service reform, Myanmar is implementing measures to address four main thematic areas: civil service governance; merit-based, performance-driven culture and systems; people-centred civil service leadership and capacity development; and transparency and accountability in the civil service.

The Constitution requires the President and Vice-President to submit declarations of their assets and liabilities. Under the Anti-Corruption Law, the Anti-Corruption Commission was given the mandate to apply the asset declaration requirement to other designated public officials, although this has not yet been put into practice. At present, the Commission does not conduct a verification process for the content of declarations or how they include requirements to report outside activities.

Other than the channels available to the general public, there is no dedicated mechanism or system to encourage public officials to report corruption. A draft bill on the protection of whistle-blowers and reporting persons is currently pending.

Chapter VI of the Constitution guarantees the independence of the judiciary and governs the establishment of the courts of the Union, the appointment of the Chief Justice of the Union and the Judges of the Supreme Court, and also the establishment of the high courts of the regions/states. The conduct of judges of the Union, as well as those of regions/states, is also prescribed in chapter VI of the Constitution. The Code of Judicial Ethics for Myanmar Judges was adopted on 2 August 2017. A broad range of stakeholders in the judicial sector, international partner institutions, international non-governmental organizations, non-governmental organizations and civil society organizations were consulted during the development of the Code. The Supreme Court is taking the necessary measures for the effective implementation of the Code, including through the development of ethics training programmes for judges. The Complaint Review Committee in the Supreme Court is responsible for evaluating complaints against individual judges and determining disciplinary sanctions, as appropriate. The Supreme Court is in the process of implementing its strategic reform plan for the period 2018–2022, which includes measures to prevent corruption and is available online.

According to the Constitution, the prosecution service is independent of the judiciary and under the jurisdiction of the Union Attorney General's Office. On 13 August 2017, the prosecution service adopted a code of conduct for its law officers and has incorporated that code into its training curricula. In addition, the service is in the process of implementing its strategic action plan, which includes increasing transparency and fostering public trust.

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

The procurement system in Myanmar is decentralized. The procurement process is governed by Directive No. 1/2017 of 10 April 2017, issued by the Office of the President, on the tender procedure for the procurement of civil works, goods and services and the rental and sale of public properties for government departments and organizations. The Directive applies to Union-level government departments and organizations, as well as states and regions.

To carry out construction projects, the procurement of goods and services, rentals and sales, government departments and organizations form tender committees, floor price calculation committees, tender opening and evaluation committees to manage the publication of tender announcements and to conduct performance oversight, and quality inspection and acceptance committees. Integrity violations identified during or after a procurement process can lead to administrative consequences, including the cancellation of contracts. When a complaint is filed regarding a procurement process, the tender committee must investigate when a tenderer raises complaints regarding the tender selection process with sound evidence and reasons. If the tenderer is not satisfied with the decision of the tender committee, the Ministry of Planning and Finance is to organize a complaint-handling panel comprising at least three representatives from relevant ministries after obtaining the approval of the Union

Cabinet. At present, Myanmar has developed a draft procurement law to strengthen the integrity and transparency of the procurement process, which includes specialized training for procurement officers.

The Constitution sets forth the process for the review and approval of the annual State budget through the representative legislature. Pursuant to Presidential Notification No. 3/2018, the Financial Commission was established to oversee the budgetary submissions of all ministries, as well as expenditure reports. Under Notification 35/2017, the Ministry of Planning and Finance oversees budget preparations by ministries and receives monthly reports from ministries on budgetary allocation and expenditure. Similar rules in the Notification apply at the regional and state levels. Submitted budgets are discussed in legislative committees prior to the adoption of the annual Union budget. The Law on the Auditor General of the Union (2010) sets forth the mandate and jurisdiction of the Auditor General to conduct oversight and ensure accountability in government spending, consistent with international standards and practices.

Myanmar Accountancy Council Directive 1/2009 sets out the accounting standards applicable across all ministries. All departments and organizations of the Government must apply the specified accounting methods regarding revenue and expenditure. State-owned enterprises employ a double-entry system to ensure accountability. Departments and organizations, when preparing their monthly reports, compile all related accounts following guidelines established for primary accounting units in each ministry. All such units must reconcile their monthly accounts and submit accounting reports to the Ministry of Planning and Finance within seven days after the end of each month. Currently, generally accepted accounting principles are applied in the public sector. The transition from a cash basis to an accrual basis and the implementation of the International Public Sector Accounting Standards are ongoing, in coordination with the Ministry of Planning and Finance and the Office of the Auditor General.

The government accounting system in Myanmar makes it an obligation to follow a documentary cycle and maintain adequate records in performing government accounting work and financial supervision. The preservation (for five years) and archiving of original government financial documentation and records is governed by the Central Bank of Myanmar Law (2013).

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

At present, Myanmar does not have legislation governing public access to information, although a draft law has been prepared and is under consideration. In addition, Myanmar is currently seeking to take measures to streamline bureaucracy and administrative processes through its public sector reform action plan and the future establishment of “one-stop shops” at the township level for a variety of public services. The public is made aware of legislative proceedings through televised broadcasts. All draft legislation is also published in newspapers for public review and comment. Ministries maintain websites to publish information on their structure, organization and operations. In addition, annual performance reports by each ministry are published online. The Media Law (2014) regulates media requests for government information, with due regard for the protection of privacy and government data. Pursuant to the Anti-Corruption Law, the Anti-Corruption Commission conducts periodic corruption risk assessments and has committed to making the assessment reports public.

Under the Anti-Corruption Rules (2015), the Commission is mandated to conduct public awareness activities to prevent corruption, including giving academic presentations, training staff of government institutions and releasing information to the public concerning risks and instances of corruption, including online. The Commission also organizes regular consultation symposiums with civil society stakeholders to provide updates on its activities and discuss recommendations for future action. The Anti-Corruption Law (2013) also includes incentives granted by

the Commission to persons who report instances of corruption, which can include monetary rewards. The Commission has established an online portal to facilitate public participation in the prevention and reporting of corruption.

Private sector (art. 12)

The Myanmar Companies Law (2017) requires the declaration of the ultimate holding company. In addition, the Directorate of Investment and Company Administration issued Directive No. 17/2019 on the disclosure of beneficial ownership information, which has now been implemented by the Beneficial Ownership Task Force for nearly all companies involved in extractive industries. The Myanmar Accountancy Council Law (2015) sets forth applicable accounting standards, which apply to both the public and private sectors in the same manner. Companies and organizations must keep financial reports, including annual balance sheets and directors' reports, in line with international standards. Organizations or companies that do not operate in accordance with applicable laws and regulations are to be fined and possibly placed on a public list of non-compliant entities. In addition, the Auditor General has a mandate to conduct audits of private sector entities if there are suspected tax irregularities. Pursuant to the Companies Law, private sector entities must not keep off-the-books accounts or transactions. Under the Anti-Money-Laundering Law, private sector entities must keep and preserve accounting records for a minimum of five years.

The Myanmar Ministry of Commerce regularly conducts training programmes and workshops for the private sector on the prevention and detection of corruption and money-laundering. The Myanmar Federation of Chambers of Commerce and Industry is a national non-governmental organization that covers all private businesses and involves not only local and international businesses, but also the state and regional chambers of commerce, cross-border trade associations and affiliated associations. The Federation is a consultative body for the private sector with regard to relevant draft legislation and measures to prevent corruption, detect money-laundering and counter the financing of terrorism. It also promotes measures to strengthen corporate governance and sound business practices. On 2 July 2018, the Federation signed a memorandum of understanding with the Anti-Corruption Commission to promote measures to prevent corruption in the private sector.

There are no restrictions prohibiting former public officials from employment in the private sector. Myanmar is currently considering a draft Chamber of Commerce law that would include provisions to prevent conflicts of interest and promote private sector codes of conduct.

Myanmar originally did not expressly disallow the tax deductibility of expenses that constitute bribes, but Practice Statement 1/2018 of 29 October 2018 disallowed the tax deductibility of payments constituting bribes provided to public officials. Bribery in the private sector has not been made a criminal offence.

Measures to prevent money-laundering (art. 14)

Measures to prevent money-laundering are principally governed by the Anti-Money-Laundering Law (2014), the Anti-Money-Laundering Rules (2015) and the Financial Institutions Law (2016). There are also relevant regulations adopted by supervisory agencies, such as the Directive for Customer Due Diligence Measures of the Central Bank of Myanmar, No. 21/2015 (Customer Due Diligence Directive). The Central Bank of Myanmar and the Ministry of Planning and Finance are the main supervisory agencies in the financial sector. While certain areas of the country's economy, such as gem mining and the casino industry, are particularly susceptible to money-laundering risks, there is no effective supervisory regime addressing them. Notably, corruption offences are also recognized as one of the main sources of criminal proceeds in the country.

Customer due diligence standards are generally addressed in the Anti-Money-Laundering Law (sects. 19 and 20) and the Anti-Money-Laundering Rules (rules 36 and 37). Section 19 (d) (iii) of the Law covers requirements for the verification of the

control structure of companies. Articles 8 (c) and 17 of the Customer Due Diligence Directive cover enhanced due diligence for high-risk customers. Customer due diligence requirements do not explicitly cover legal arrangements.

The definition of “beneficial owner” in section 3 (j) of the Anti-Money-Laundering Law covers persons who ultimately own or control a customer or on whose behalf a transaction occurs. Rules 30 to 32, 41 and 42 of the Anti-Money-Laundering Rules and articles 11 (b), 24, 25 and 28 of the Customer Due Diligence Directive also cover the issue of identification of beneficial owners. Rule 41 of the Anti-Money-Laundering Rules and articles 24 and 25 of the Directive require the identification of the beneficial owner through the collection of information prescribed in rules 30 and 31 of the Anti-Money-Laundering Rules and Schedule 1 of the Directive. These requirements are insufficient to identify the controlling natural person. It was also reported that authorities may have difficulties in gaining access to beneficial ownership information in practice. Record-keeping is addressed in section 23 of the Anti-Money-Laundering Law and article 58 of the Directive.

Reporting of suspicious transactions is mandatory under section 32 of the Anti-Money-Laundering Law and rules 48 and 50 of the Anti-Money-Laundering Rules. It was reported that, in practice, the number of suspicious transaction reports lags behind the existing risks in Myanmar.

Myanmar has also established the Anti-Money-Laundering Central Body, which is chaired by the Minister of Home Affairs. The Central Body is tasked with coordinating the activities of the agencies involved in anti-money-laundering efforts and also with ensuring that they can exchange information. Although there is a legislative framework for information exchange domestically, it was reported that law enforcement agencies are generally not very effective in countering and investigating money-laundering, including as a result of a lack of resources and capacity.

The Myanmar Financial Intelligence Unit, established in 2004, is a law enforcement-type financial intelligence unit. The Unit has signed 14 bilateral memorandums of understanding on matters related to combating money-laundering and countering the financing of terrorism.

The declaration system for the cross-border movement of currency and negotiable instruments is based on the Anti-Money-Laundering Law (sects. 32, 39–42 and 47) and the Anti-Money-Laundering Rules (rules 64 and 65). Myanmar Customs has the lead responsibility for detecting cross-border cash movements. All declared cross-border movements of cash and negotiable instruments above the \$10,000 threshold are recorded by the customs authority and transmitted to the Myanmar Financial Intelligence Unit on a monthly basis. However, customs controls are not in place in all border crossing areas, and no records of suspicious activity associated with the cross-border movement of cash and negotiable instruments are retained.

Wire transfer requirements are addressed in section 27 of the Anti-Money-Laundering Law and articles 38 to 44 of the Customer Due Diligence Directive, in line with the Convention.

Myanmar underwent a mutual evaluation as a member of the Asia/Pacific Group on Money Laundering and conducted a national money-laundering risk assessment in 2018. The Anti-Money-Laundering Central Body adopted the National Strategy on Anti-Money-Laundering and Countering the Financing of Terrorism (2019–2023) with the approval of the Union Cabinet Meeting No. 10/2019 on 23 May 2019.

Myanmar became a member of the Asset Recovery Inter-Agency Network for Asia and the Pacific in 2017. The Myanmar Police Force is a member of several law enforcement networks and the International Criminal Police Organization (INTERPOL).

2.2. Successes and good practices

- Development and implementation of a comprehensive public service reform strategy and the ongoing development of a national anti-corruption strategy (arts. 5 and 7)
- Adoption of a code of conduct for the Anti-Corruption Commission (arts. 6 and 8)
- Progress made in the establishment of corruption prevention units in all ministries in Myanmar, to be trained by the Anti-Corruption Commission, which will facilitate access to public services, conduct periodic reviews of relevant legislation and administrative procedures (corruption risk assessments) and foster public contributions to decision-making processes (arts. 10 and 13)

2.3. Challenges in implementation

It is recommended that Myanmar:

- Consider taking additional measures to ensure that the Anti-Corruption Commission enjoys the necessary independence to carry out its functions effectively and free from undue influence (art. 6).
- Develop and implement additional procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions (art. 7).
- Consider taking additional appropriate measures to enhance transparency in the funding of candidatures for elected public office and in the funding of political parties (art. 7).
- Continue to take measures to implement provisions of the Anti-Corruption Law pertaining to the prevention of conflicts of interest, and consider extending asset declarations to outside activities (arts. 7 and 8).
- Continue measures to finalize and adopt the following draft laws:
 - On the protection of whistle-blowers and reporting persons in the public sector, in line with the Convention against Corruption (art. 8)
 - On procurement, and consider adopting appropriate measures to regulate procurement personnel, including declarations of interest in particular public procurements, screening procedures and training requirements, in line with the Convention (art. 9)
 - On public access to information, in line with the Convention (art. 10)
- Consider taking additional measures to promote transparency among private entities regarding the identity of legal and natural persons involved in the establishment and management of corporate entities (art. 12).
- Consider taking additional measures to prevent conflicts of interest in the private sector 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 (art. 12).
- Continue to strengthen the domestic regulatory regime to deter and detect all forms of money-laundering and broaden the regime to bodies other than financial institutions, with emphasis on areas particularly susceptible to money-laundering (art. 14, para. 1 (a)).
- Continue to ensure that beneficial ownership is well understood and verified by reporting entities in practice while identifying business ownership structures (art. 14, para. 1 (a)).
- Strengthen capacity for producing and processing suspicious transaction reports by enhancing the corresponding capacities of the Myanmar Financial

Intelligence Unit and reporting entities and by raising awareness of the importance of this exercise (art. 14, para. 1).

- Continue to strengthen cooperation and the exchange of information between authorities dedicated to combating money-laundering, including the Myanmar Financial Intelligence Unit, including by enhancing their resources and technical capacity (art. 14, para. 1 (b)).
- Consider further enhancing measures to implement article 14, paragraph 2, of the Convention, including by recording information on suspicious cross-border transfers of cash and appropriate negotiable instruments (art. 14, para. 2).

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 concrete provisions in the domestic law of Myanmar referring to the concept of asset recovery or return as a fundamental principle of cooperation.

No specific legislation exists on the sharing of information by law enforcement agencies, but there are also no legislative prohibitions of such sharing. Section 11 (a) of the Anti-Money-Laundering Law allows the Myanmar Financial Intelligence Unit to exchange information with foreign counterparts, subject to the approval of the Anti-Money-Laundering Central Body. No instances of information-sharing were reported in the context of asset recovery cases.

Myanmar has only one multilateral treaty and one bilateral treaty, with India, on legal assistance in criminal matters; no specific arrangements were reported to enhance asset recovery-related mutual legal assistance.

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

Financial institutions in Myanmar are subject to “know your customer” and customer due diligence requirements, including beneficial ownership identification requirements. The reviewing experts reiterated their observations, as mentioned under article 14 above, regarding the existing deficiencies in the beneficial ownership identification regime. There are also no specific requirements for the identification of beneficial owners of funds deposited into high-value accounts.

The legislative requirements applicable to the enhanced scrutiny of individuals entrusted with prominent public functions (politically exposed persons) are not consistent. While section 22 of the Anti-Money-Laundering Law requires reporting organizations to have in place appropriate risk management systems applicable to such persons, it differentiates between scrutiny applied to “international politically exposed persons” and “domestic and foreign politically exposed persons”. In the latter case, enhanced scrutiny is applied only when the reporting organizations “determine the risk as being high” (sect. 22 (e) of the Law). At the same time, articles 4 (e), 7 (a) and 8 of the Customer Due Diligence Directive stipulate that all kinds of politically exposed persons are high-risk, while article 20 of the Directive stipulates that enhanced due diligence measures should be applied in accordance with section 22 of the Anti-Money-Laundering Law. It was also reported that, in practice, reporting entities do not appear to effectively identify politically exposed persons.

Guidelines with regard to the issues addressed in article 52, paragraph 2, of the Convention are contained in the Central Bank of Myanmar risk-based management guidance notes on combating money-laundering and countering the financing of terrorism and in the Customer Due Diligence Directive.

No examples of notifications in line with article 52, paragraph 2 (a), were provided.

Under section 23 of the Anti-Money-Laundering Law and article 58 of the Customer Due Diligence Directive, relevant records must be maintained for a period of at least five years.

Financial institutions in Myanmar are prohibited from engaging in business with shell banks, the establishment of which is prohibited under section 30 of the Anti-Money-Laundering Law. Moreover, article 35 of the Customer Due Diligence Directive prohibits financial institutions from entering into or continuing correspondent or business relationships with shell banks or with correspondent financial institutions in foreign countries that allow shell banks.

At the time of the country visit, Myanmar was in the process of establishing a disclosure system for public officials. The relevant provisions are contained in sections 47 to 50 and 61 of the Anti-Corruption Law. The disclosure mechanism lacked a procedure and practices for follow-up investigations and for the clarification of relevant information.

Myanmar has not considered taking measures to require appropriate public officials who have an interest in, or signature or other authority over, a financial account in a foreign country to report on such accounts to the authorities.

The Myanmar Financial Intelligence Unit was established in 2004.

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)

Under section 84 (1) of the Code of Civil Procedure, other States can file lawsuits in the courts of Myanmar. Section 84 (1) and (2) of the Code also establish the condition of “recognition by the President of the Union of Myanmar” of the suing State as a necessary prerequisite for allowing it to benefit from this provision, and those provisions also require the courts to take judicial notice of that recognition. However, the procedures for recognition by the President and for taking judicial notice were not clear.

There are no legislative provisions specifically covering the process of paying compensation or damages to States harmed by corruption offences or on the recognition of claims of other States parties as legitimate owners of property subject to confiscation.

Section 517 (1) of the Code of Criminal Procedure allows Myanmar courts, after the conclusion of a trial, to issue orders for the delivery of property related to any offence committed and to any person claiming to be entitled to possession of that property. It is not clear, however, whether that provision could be applicable to States.

Under section 25 of the Mutual Assistance in Criminal Matters Law, the Ministry of Home Affairs, as the central authority for mutual legal assistance, can instruct the relevant government department or organization to confiscate, seize and control “the exhibit” in accordance with the request of any foreign State and in conformity with existing laws. The authorities were unable to clarify which existing laws would be applicable. Moreover, it appears that there is limited regulation and application of value-based confiscation, which could lead to problems in enforcing foreign value-based confiscation orders in Myanmar.

Rule 9 of the Mutual Assistance in Criminal Matters Rules contains requirements regarding the content of requests for confiscation and seizure. Those provisions appear to include the possibility of domestic confiscation or seizure based on a request by another State, rather than giving effect to a foreign order. During the country visit, it was clarified that the central authority can, in practice, take its own decision to confiscate or seize in accordance with the request of a foreign State. No actual examples of such confiscations or seizures based on a request of a foreign State were provided. The reviewing experts also highlighted as a problem the lack of clear guidelines on how the central authority is to take decisions on executing foreign requests for seizure and confiscation.

The reviewing experts noted the dual criminality requirement as a prerequisite for mutual legal assistance under section 3 (a) of the Mutual Assistance in Criminal Matters Law and in that regard highlighted the importance of ensuring the full implementation of the recommendations issued during the first review cycle, in particular with regard to criminalizing active bribery and active trading of influence, providing for liability of legal persons for participation in corruption offences and ensuring that all Convention offences are considered predicate, including when they are committed outside of Myanmar. It was further noted that, under section 2 of the Anti-Money-Laundering Law, only predicate offences committed abroad by citizens or permanent residents of Myanmar could be considered as such, which would not allow predicate offences committed by foreigners abroad to be the basis for the prosecution of money-laundering offences in Myanmar.

Myanmar has an administrative procedure for non-conviction-based confiscation that can be executed by the Anti-Corruption Commission without any involvement of judicial authorities. In practice, the central authority for mutual legal assistance can also decide on the execution of a foreign request for the enforcement of a non-conviction-based confiscation order without any judicial scrutiny. In that regard, the reviewing experts noted that the absence of a judicial review in non-conviction-based confiscation procedures is a gap that could negatively affect perceptions of the domestic rule of law and inhibit the execution of mutual legal assistance requests made by Myanmar abroad. A procedure for the execution of such requests is also absent.

According to section 26 of the Mutual Assistance in Criminal Matters Law, the central authority is to administer the property seized and controlled under the request of a foreign State in accordance with the bilateral agreement, and in the absence of such an agreement, the property vests in the State. The reviewing experts highlighted that this wording did not appear to be in line with the purposes of article 54, paragraph 2 (c), of the Convention against Corruption.

Myanmar also referred to section 25 of the Mutual Assistance in Criminal Matters Law and rule 9 of the Mutual Assistance in Criminal Matters Rules as measures implementing the requirements of article 55, paragraphs 1 (a) and (b) and 2, of the Convention; in that regard, the reviewing experts noted that the requirements of article 55, paragraph 1 (b), did not appear to be implemented and that, generally, those provisions would benefit from more detailed regulations.

The requirements of article 55, paragraph 3 (a) and (b), are generally addressed in rule 9 of the Mutual Assistance in Criminal Matters Rules, except that there is no requirement to specify measures taken to notify third parties to ensure due process and to provide a statement that the confiscation order is final.

Myanmar clarified that it could provide mutual legal assistance based on reciprocity; however, it appears that, in fact, it is not possible to provide certain types of mutual legal assistance without a bilateral agreement (e.g., sharing and/or return of assets under sect. 26 (b) of the Mutual Assistance in Criminal Matters Law).

Myanmar does not impose any limitations with regard to a *de minimis* value of property as a prerequisite for providing assistance.

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

Return and disposal of assets (art. 57)

Section 26 (b) of the Mutual Assistance in Criminal Matters Law stipulates that, unless there is a bilateral agreement between Myanmar and the requesting State, confiscated property vests in Myanmar, which contradicts the requirements of article 57 of the Convention. There are no domestic provisions in Myanmar in line with the requirements of article 57, paragraphs 3 and 4, of the Convention. Since Myanmar is a dualist jurisdiction, the provisions of the Convention cannot be applied directly and

would have to be adequately reflected in domestic legislation in order to be implemented.

Myanmar has not concluded arrangements in line with article 57, paragraph 5.

3.2. Successes and good practices

- The requirements of article 35 of the Customer Due Diligence Directive for financial institutions not to enter into correspondent banking relationships with shell banks or with correspondent financial institutions in foreign countries that allow shell banks can be considered a good practice conducive to the implementation of article 52 of the Convention.

3.3. Challenges in implementation

It is recommended that Myanmar:

- Ensure that it can afford the widest measure of cooperation and assistance for the purposes of the return of assets to other States parties (art. 51).
- Continue to ensure that beneficial ownership is well understood and verified by reporting entities in practice while identifying business ownership structures; and consider introducing a statutory requirement for disclosure and records of beneficial ownership information (art. 52, para. 1).
- Take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts (art. 52, para. 1).
- Continue to ensure that enhanced scrutiny is applied to accounts sought and maintained by or on behalf of all kinds of politically exposed persons and their family members and close associates, including by streamlining relevant legislative provisions (art. 52, para. 1).
- Where appropriate, take further measures to fully implement the requirements of article 52, paragraph 2, of the Convention.
- Continue efforts to establish 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 accounts in accordance with article 52, paragraph 6.
- Ensure that the condition of the recognition of a foreign State by the President contained in section 84 (1) of the Code of Civil Procedure does not impose an undue burden on the ability of other States parties to initiate civil action to establish title to or ownership of property in the courts of Myanmar (art. 53 (a)).
- Adopt clear legislative provisions addressing the issues of compensation or damages to another State party in accordance with article 53 (b).
- Adopt clear 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, in accordance with article 53 (c).
- Adopt clear legislative provisions on giving effect to foreign confiscation orders and ordering the confiscation of property of foreign origin in line with the requirements of the Convention and streamline the confiscation provisions in domestic legislation, including on measures for value-based confiscation in line with article 31, paragraph 1 (a), article 54, paragraph 1 (a) and (b), and article 55, paragraph 1.
- Fully implement the requirements of article 54, paragraph 1 (b), including by ensuring that predicate offences committed outside of Myanmar by foreigners

can be considered as such for the purposes of adjudication of an offence of money-laundering.

- Consider introducing measures allowing the confiscation of property without a criminal conviction as part of court proceedings in line with article 54, paragraph 1 (c), and clear procedures for the execution of foreign non-conviction-based confiscation orders (art. 54, para. 1 (c)).
- Adopt clear internal guidelines for the central authority with regard to the execution of foreign requests for seizure and freezing (art. 54, para. 2 (a) and (b), and art. 55, para. 2).
- May adopt legislative provisions on giving effect to foreign freezing or seizure orders (art. 54, para. 2 (a)).
- Consider taking measures to permit its competent authorities to preserve property for confiscation in line with article 54, paragraph 2 (c) of the Convention.
- Adopt more detailed provisions addressing the requirements of article 55, paragraphs 1 and 2, of the Convention.
- Amend applicable legislation to include a statement specifying the measures taken by the requesting State to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final as required contents of incoming requests pursuant to article 55 of the Convention (art. 55, para. 3 (a) and (b) and para. 9).
- Ensure that, before lifting any provisional measure, it, wherever possible, gives the requesting State an opportunity to present reasons in favour of continuing the provisional measure (art. 55, para. 8).
- Endeavour to take measures to forward information on proceeds of corruption offences without prior requests in line with article 56 of the Convention, including by considering the adoption of relevant legislation and/or guidelines to facilitate this process and ensure that the requirement under section 11 (a) of the Anti-Money-Laundering Law, subjecting the exchange of information by the Financial Intelligence Unit to the approval of the Central Body, does not constitute a practical obstacle for such exchange (art. 56).
- 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 requests made in accordance with the Convention, taking into account the rights of bona fide third parties (art. 57, paras. 1, 2 and 3).
- Regulate the issue of the expenses incurred in asset recovery proceedings, in line with the Convention (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.