

G20 ANTI-CORRUPTION WORKING GROUP

NINE KEY PRINCIPLES OF ASSET RECOVERY BENCHMARKING SURVEY

Methodology of Benchmarking Survey

In Los Cabos, the G20 renewed its commitment to deny safe haven to the proceeds of corruption and to the recovery of stolen assets.

At Cannes, G20 countries agreed to key elements of an effective asset recovery framework and a set of principles for asset recovery to be implemented by G20 members.

The purpose of this benchmarking survey is to establish a baseline for all G20 member (and invited nonmember) countries regarding their status with respect to the principles for asset recovery as endorsed in the Cannes Declaration. A benchmarking survey will enable a better understanding and measurement of the extent to which each of the countries have demonstrated leadership in facilitating the recovery of assets. Accordingly, this survey focuses on each country's policy, legal and institutional frameworks, all critical elements in successful recovery and return of assets.

This benchmarking is based on publicly available information, and responses by countries to the G20 Anti-Corruption Working Group Data-gathering questionnaire (2012) and previous drafts of this report. In the following methodology, the whole text of each principle has been omitted for brevity. Sources used have been cited for reference, and they include:

- Open-source materials published and made freely available by each country on the Internet
- Country responses to the G20 Anti-Corruption Working Group Data-gathering questionnaire (2012)
- Country feedback to the initial drafts of this benchmarking survey
- For G8 members, Country Asset Recovery Guides compiled and published as part of the Deauville Partnership with Arab Countries in Transition and the 2012 Arab Forum on Asset Recovery
- Mutual Evaluation Reports and Follow-up Reports by FATF and FATF-Style Regional Bodies
- Reports by OECD, StAR Initiative, UNODC and other international organizations

Table: 9 Key Asset Recovery Principles

Principle (Type)	Principle (#)	Principle
Policy Development	1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
Legislative Framework	2	Strengthen Preventive Measures against the Proceeds of Corruption
	3	Set Up Tools for Rapid Locating and Freezing of Assets
	4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
	5	Adopt Laws that Encourage and Facilitate International Cooperation
Institutional Framework	6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
	7	Participate Actively in International Cooperation Networks
	8	Provide Technical Assistance to Developing Countries
	9	Collect Data on Cases; Share Information on Impact and Outcomes

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) Principle 1 is comprised of three elements:

- Does the country have a specific asset recovery policy or policy statement?
- If so, is the policy statement publicly available?
- Has the country aligned resources to support the policy?

2) Rather than identifying blanket or general statements on anti-corruption, this first principle was surveyed by checking for official statements, such as speeches or statements by national political leaders, official government press releases or official notices publicly posted on governmental websites which articulated a concrete, integrated, or concerted policy stance affirming the country's commitment to making asset recovery a policy priority and alignment of national resources to effect this policy objective. A special effort was made to identify such materials, if any, on the public websites of those agencies identified as the official liaison for asset recovery (where identifiable), or in the alternative, those identified as the official liaison for mutual legal assistance.¹

3) It was, in general, easier to determine whether a country had a specific asset recovery policy or policy statement and that the country had published the policy. It was difficult to determine whether a country had aligned sufficient level of resources to implement the policy objective. As such, the indicator for Principle 1 speaks only to the first and second elements and not to the third element, the alignment of resources.

¹ This information taken from G20, "Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide" (2012), and "Authorities designated for assistance in prevention, mutual legal assistance and asset recovery as at 13 October 2011" (CAC/COSP/2011/CRP.10) from Fourth Session of the Conference of the States Parties to the United Nations Convention against Corruption in Marrakech, Morocco, 24-28 October 2011 (accessible at <http://www.unodc.org/documents/treaties/UNCAC/COSP/Session4/V1186393e.pdf>).

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In order to determine a country’s adherence to Principle 2, we looked to the country’s most recent Mutual Evaluation Reports (MERs) and Follow-up Reports by the Financial Action Task Force (FATF) and FATF-Style Regional Bodies. This benchmarking survey considered each country’s ratings (as assigned by MER evaluators) with respect to the FATF Recommendations on:

Recommendation	FATF 2003 Recommendations (#)
Customer Due Diligence by Financial Institutions	R. 5
Politically Exposed Persons (PEPs) - Enhanced Due Diligence	R. 6
Designated Non-Financial Businesses and Professions – Customer Due Diligence	R. 12
Legal Persons – Beneficial Ownership	R. 33
Legal Arrangements – Beneficial Ownership	R. 34

2) The most current MER and/or MER Follow-up Report available were used in this benchmarking survey. The year of the report(s) is noted in the section, so as to flag any information that may post-date it. As with all other principles, country feedback to the initial drafts of the benchmarking survey was incorporated.

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) Survey for Principle 3 was conducted by reference to the findings of the June 2012 “Assets Tracing: Country Profiles” study of the G20 Anti-Corruption Working Group (ACWG), which has been published on the G20 website. The study focused on the country’s ability to locate assets on a timely basis, and as such Principle 3 indicator refers to the country’s assets tracing ability. It is hoped that a future benchmarking survey will also be able to speak to the second element of this principle, the country’s tools on freezing of assets.

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) Principle 4 focused on whether the country had established a wide range of asset recovery mechanisms, including:

- domestic non-conviction based confiscation/forfeiture or equivalent mechanisms
- recognition/enforceability of foreign non-conviction based confiscation/forfeiture orders
- existence of unexplained wealth/illicit enrichment as a criminal offense
- private law actions (civil remedies)

2) Sources used include the G20, “Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide” (2012); official government statements, published laws, FATF assessments, and FATF, StAR, World Bank, and UNODC publications. Country feedback was also fully incorporated.

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) Principle 5 encompasses the ability to undertake direct enforcement of foreign recovery orders, recognition of UNCAC as a sufficient basis for mutual legal assistance (MLA), and allow for *ex parte* freezing orders pursuant to MLA. A country’s indicator was based on its compliance rating (as assigned by the MER evaluators) with the following FATF Recommendations:

Recommendation	FATF 2003 Recommendations (#)
International Instruments	R. 35
Mutual Legal Assistance (MLA)	R. 36
Dual Criminality	R. 37
MLA on Confiscation and Freezing	R. 38
Extradition	R. 39
Other Forms of International Cooperation	R. 40

2) The most current FATF or FATF-Style Regional Bodies Mutual Evaluation Report (MER) or Mutual Evaluation Follow-up Report was used. As with all other principles, country feedback to the initial draft of the benchmarking survey was incorporated.

3) Some countries have published Asset Recovery Guides to provide contact information and detailed guidance on their asset recovery procedures. The Guides have been referenced in the relevant country section.

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) For Principle 6, the responses by the countries to the G20 Anti-Corruption Working Group Data-gathering questionnaire (2012) and country feedback to the initial drafts of the benchmarking survey were especially helpful. Country Asset Recovery Guides published by the G8 countries as part of the Deauville Partnership with Arab Countries in Transition and the 2012 Arab Forum on Asset Recovery were also consulted. Open source and other research supplemented these sources of information.

Principle 7	Participate Actively in International Cooperation Networks
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1) Adherence to Principle 7 is based on survey of the following six elements:

- Establishing focal points of contact, for corruption and asset recovery cases
- Working with existing networks (policy or operational)

- Encouraging upstream contacts with foreign counterparts
- Making information publicly available
- Encouraging spontaneous disclosures by domestic authorities
- Improving capacity to respond to MLA requests in corruption and asset recovery cases.

2) Only limited information relating to some of these elements was available in open source. Official country websites were consulted, as well as the G20 publication, “Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide” (2012) and research by StAR and others. Input from member countries (in respect of confidentiality requirements) helped round out the picture of the country’s adherence to Principle 7.

3) The survey also noted the country’s membership (or observer) status in organizations and networks, such as:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- Financial Action Task Force and FATF-Style Regional Bodies (e.g. Asia/Pacific Group on Money Laundering, GAFISUD, MENA FATF)
- The Egmont Group of Financial Intelligence Units
- ADB/OECD Anti-Corruption Initiative for Asia and the Pacific
- OECD Working Group on Bribery
- Camden Asset Recovery Inter-Agency Network (CARIN)
- Asset Recovery Inter-Agency Network in Southern Africa (ARINSA)
- Red de la Recuperación de Activos de GAFISUD (RRAG)
- La Red Iberoamericana de Cooperación Jurídica Internacional (IberRed)

4) The survey also noted whether the country had designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery, as well as points of contact for asset recovery and law enforcement cooperation with UNODC (UNCAC asset recovery focal point) and the StAR/INTERPOL Global Focal Point Initiative.

Principle 8	Provide Technical Assistance to Developing Countries
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1) Open source information was examined to determine whether or not a country has offered technical assistance or (in the case of developing countries) received technical assistance *specifically pertaining to asset recovery*. Country responses to the G20 Anti-Corruption Working Group Data-gathering questionnaire (2012) and country feedback to the initial drafts of the benchmarking survey were also incorporated.

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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1) Survey of a country’s adherence to Principle 9 involved two main elements:

- Does the country collect data on asset recovery cases?
- Does the country share information regarding the impact and outcomes of asset recovery cases?

Where information was available, we also noted whether the country had made publicly available details of amounts frozen, seized, recovered and returned in asset recovery cases.

2) For cases data collection, we examined open source information, including the websites of government agencies, regional and multilateral organizations concerned with asset recovery. We also looked to publications on asset recovery which contained case studies by government representatives, and to whether the country had collaborated with the StAR Asset Recovery cases database.

3) The extent to which a country shares information on asset recovery cases and their impact and outcomes was more difficult to discern through open source information. Nor did the survey believe it was appropriate to do so solely on this basis, as discussions on asset recovery cases also take place privately in bilateral, regional and international settings. As such, adherence to Principle 9 was inferred, in part, from the member country's membership (or observer) status in organizations or networks as listed under Principle 7.

Conclusion

The G20 Anti-Corruption Working Group undertook this benchmarking survey to establish a baseline for all G20 member (and invited nonmember) countries regarding their efforts to adhere to the nine key principles for asset recovery, as endorsed in the Cannes Declaration. It is hoped that the current survey will contribute to a better understanding and measurement of the extent to which each of the countries have demonstrated leadership in facilitating the recovery of assets, as well as identify work still remaining to be done, on a country level and as a group of the world's leading economies.

Argentina - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) Argentina has a clear stance on asset recovery as a policy priority. The policy stance has been published at the website of the Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación, Oficina Anticorrupción and the website of the Oficina de Coordinación y Seguimiento en materia de Delitos contra la Administración Pública.

“Recupero de Activos en Casos de Corrupción: El Decomiso de las Ganancias del Delito - Estado Actual de la Cuestión,”² published in 2010 by the Anti-corruption Office of the then Ministry of Justice, Security and Human Rights, and endorsed by the highest levels of the Argentine government, also affirms asset recovery as a policy priority in Argentina’s broader anti-corruption strategy.

In 2011, the Office of Coordination and Follow-up Crimes Against Public Administration compiled a comprehensive investigative manual entitled, “Recupero de activos: la OCDAP lanzó el Manual de Investigación Patrimonial.”³ The complete index has been published online. The manual itself is password protected and while not publicly available, the 360+ page manual attests to the coordinated efforts undertaken and resources devoted by the Argentine government to further asset recovery.

2) Argentina has increased the resources involved with the recovery of assets, including the strengthening of agencies like the Financial Information Unit – Argentina’s Anti-Money Laundering and Combatting the Financing of Terrorism (AML/CFT) Central Authority – and creating specific units within the National Attorney General’s Office (Attorney’s Ministry).⁴

As regards to the Financial Information Unit (FIU), the staffing and resources have been increased substantially over the past years. In February, 2010 the FIU had a total number of 76 agents and by October 2011 that number increased to 130. For 2012, the staff of the FIU grew to 188 agents. Likewise, the Budget of the FIU for 2013 was approved, allocating ARS 45,660, 000 (US\$ 8,987,250),⁵ which represents an increase of 57% as compared to 2012.⁶ Moreover by Decree No. 469/2013, published in the official gazette on May 6th 2013, were improved the capacities of the FIU by the

² Luis F. Arocena and Claudia A. Sosa, “Recupero de activos en casos de corrupción: el decomiso de las ganancias del delito estado actual de la cuestión,” (Argentina Ministerio de Justicia, Seguridad y Derechos Humanos de la Nación; Oficina Anticorrupcion, 2010), at

<http://www.anticorrupcion.gov.ar/documentos/Recupero%20de%20Activos%20-%20form%20red.pdf>

³ “Recupero de activos: la OCDAP lanzó el Manual de Investigación Patrimonial,” summary and links provided at http://www.mpf.gov.ar/Accesos/Dcap/documentos/Gacetilla_presentacion_Manual.pdf

⁴ Information provided by Argentina, March 2013.

⁵ All conversion of Argentine Peso to US Dollars was done using Oanda.com, using March 14, 2013 (receipt of information from Argentina) as date of conversion.

⁶ Information provided by Argentina, March 2013. Argentina also noted that the FIU’s activities have a strong focus on asset recovery and tracking of the “money trail.” As of March 2013, the FIU was acting as the plaintiff in 35 judicial cases, had obtained provisional measures /injunctions aimed at confiscations totalling ARS 346,200,277.87 (US\$ 68,142,600), and collaborating with the judiciary in 187 other cases. In money laundering cases, Argentina had obtained confiscations of assets totalling ARS 2,912,406 (US\$ 573,248).

expanding of its organizational structure.⁷

3) In December 2012, the National Attorney General's Office (Attorney's Ministry) created a special unit called the Office of the Prosecutor for Economic Crimes and Money Laundering (PROCELAC), whose aim is to combat complex economic crime and the recovery of assets.⁸

This Unit has six operational areas: Money Laundering and Terrorist Financing, Economics and Banking Fraud, Securities Market, Tax Fraud and Smuggling, and Crimes against Public Administration and Bankruptcy. PROCELAC is staffed with professionals who have a high-degree of expertise in the field. In addition to operations, PROCELAC is also comprised of sections on technical assistance aimed at recovery of assets, as well as research and technical consultancy which will provide support to PROCELAC investigations and other prosecutors' offices throughout the country that collaborate with PROCELAC.

PROCELAC's Technical Assistance section provides technical assistance to the Prosecutor General and heads of the operational sections, principally with regards to the recovery of assets. Moreover, within the Technical Assistance section, a specific experts group called "Assets Recovery" has been created. This group will analyze, develop and implement general policies and specific measures aimed at barriers to recovery of such property. PROCELAC currently has personnel of 70 agents, and the budget foreseen for the PROCELAC during 2013 is of ARS 63,100,000 (approximately USD 12,721,774.19).

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2010 FATF/GAFISUD Mutual Evaluation Report, Argentina was rated Partially Compliant or Non-Compliant with all five of the specified FATF Recommendations used to infer adherence with this principle:

Argentina: 2010 MER	Rating
R. 5 Customer Due Diligence	NC
R. 6 Politically Exposed Persons	PC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	NC
R. 34 Legal Arrangements – Beneficial Owners	NC

2) Argentina indicated that Resolution UIF 52/2012 of the Financial Intelligence Unit has updated the regulatory regime concerning Politically Exposed Persons (Resolution UIF 11/2011), in accordance to the 2012 Revised FATF 40 Recommendations.⁹

⁷ See <http://www.boletinoficial.gov.ar/Inicio/index.castle?s=1&fea=06/05/2013>

⁸ Information provided by Argentina, March 2013. The creation of PROCELAC was pursuant to PGN Resolution N° 914 (issued on December 21, 2012). See also, Organization of American States, Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption, Republic of Argentina Final Report (Adopted at the March 21, 2013 Plenary Session), para 46 and infra. (Entire report at: http://www.oas.org/juridico/PDFs/mesicic4_arg_en.pdf.)

⁹ Argentina response to Question 17 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

3) Since the publication of the MER in October 2010, Argentina presented an action plan and has made significant progress on AML/CFT. This continuous progress has been recognized by the FATF. In addition, in December 2012 Argentina was removed from the Enhanced Follow Up Process of GAFISUD, which is indicative of the current level of compliance with the 40 Recommendations.

Among the main progress by Argentina are:

I) Enactment of Law 26.683 (published in the Official Gazette on June 21, 2011), which introduced substantial amendments to the anti-money laundering framework, including:

- Criminalization of ML as a stand-alone crime into a new specific chapter of the Criminal Code called “Crimes against Economic and Financial Order.”
- Criminalization of “self-laundering.”
- Addition of two new typical verbs¹⁰ (“disguise”, and “put into circulation in the market”)
- Inclusion of criminal liability of legal persons and non-conviction based confiscation for specific cases.
- Broadening CDD measures and the duty to report suspicious transactions.
- Removal of previous tax secrecy limitation to the FIU

II) Enactment of Law 26.733 (O.G. 28/12/2011), which criminalized several economic crimes, including Insider Trading, Market Manipulation and financial bribery.

III) Enactment of Law 26.734 (O.G. 28/12/2011), which amended the legal framework on Terrorist Financing to cover terrorist acts, individual terrorists and terrorist organizations. The law also provides for the criminal liability of legal persons and non-conviction based confiscation.

IV) Decree 918/12 (O.G. 14/06/2012), which regulated the administrative freezing of terrorist assets and established public procedures for listing/delisting of terrorists in accordance with relevant Security Council of the United Nations Resolutions.

V) Law 26.831 (BO 28/12/2012), which amended the regime of the securities market, strengthened the powers of the National Commission of Securities and removed the secrecy provisions among supervisors which should have a positive impact on domestic and international cooperation.

3) Argentina’s progress since the 2010 MER and work remaining have been noted by the FATF on a number of occasions, including in June 2012 and February 2013. As an Outcome of the Plenary meeting of the FATF conducted in Rome on 20-22 June 2012, the FATF stated: “The FATF welcomed the continued progress made by Argentina and the substantial steps taken in addressing its AML/CFT deficiencies identified in the mutual evaluation in October 2010, in particular the new Presidential Decree creating a framework for freezing of terrorist-related assets. The FATF also welcomed Argentina’s updated action plan on measures and milestones to assess Argentina’s effective implementation of its money laundering offence, and urges Argentina’s continued progress in this area for October 2012. The FATF will continue to work with Argentina in the follow-up process and encourages Argentina to continue addressing its remaining AML/CFT deficiencies.”¹¹

¹⁰ The typical verbs constitute criminal conducts prescribed by law as offenses punishable by law.

¹¹ <http://www.fatf-gafi.org/documents/documents/outcomesofthepenarymeetingofthefatfrome20-22june2012.html>.

4) In February 2013, FATF noted: “In June 2011, Argentina made a high-level political commitment to work with the FATF to address its strategic AML/CFT deficiencies. Since October 2012, Argentina has taken substantial steps towards improving its AML/CFT regime, including by enacting a new capital markets law on 28 December 2012, which improves licensing and supervision of the securities sector, enhances co-operation mechanisms, and removes secrecy among domestic agencies, improving the exchange of AML/CFT information with a positive impact on financial transparency. However, the FATF has determined that certain strategic AML/CFT deficiencies remain. Argentina should continue to work on implementing its action plan to address these deficiencies, including by: (1) addressing the remaining deficiencies with regard to the criminalisation of money laundering, confiscation of funds related to money laundering, and freezing terrorist-related assets; (2) addressing the remaining issues for the Financial Intelligence Unit and suspicious transaction reporting requirements; (3) further enhancing the AML/CFT supervisory programme for all financial sectors; (4) further improving and broadening customer due diligence measures; and (5) enhancing the appropriate channels for international co-operation and ensuring effective implementation. The FATF encourages Argentina to address its remaining deficiencies and continue the process of implementing its action plan.”¹²

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The indicator for Principle 3 is derived from the assessment undertaken by the June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of Argentina’s assets tracing capabilities.

While Argentina does not have a central bank information database, for identifying and locating unknown bank accounts, a request must be sent to all financial institutions upon court order decision. For identifying real estate, landowners’ registration/deed registration is not mandatory. In paragraph 3) below are described the legal consequences of non-registration. For identifying companies, a registry exists, but not at the national level. In paragraph 4) below are described the mechanisms available to gather information. There are no mechanisms in place to consistently and rapidly identify the holders of life insurance and securities. In paragraph 5) below are described the actions adopted in order to fix that situation.¹³

2) According to Argentina, the country has increased its resources pertaining to asset recovery, including through the strengthening of the Financial Information Unit and in December 2012, the creation of the special unit -- the Office of the Prosecutor for Economic Crimes and Money Laundering (PROCELAC) -- within the National Attorney General’s Office (Ministerio Público Fiscal) whose aim is to combat complex economic crime and the recovery of assets. Both are described in greater detail under Principle 1.¹⁴

¹² Financial Action Task Force, High risk and non-cooperative jurisdictions, “Improving Global AML/CFT Compliance: On-going process - 22 February 2013,” Section on Argentina, at: <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/improvingglobalamlcftcomplianceon-goingprocess-22february2013.html#argentina>

¹³ Information provided by Argentina (May 2013).

¹⁴ Information in paragraphs 2-6 provided by Argentina, March 2013 and May 2013. The creation of PROCELAC was pursuant to PGN Resolution N° 914 (issued on December 21, 2012). See also, Organization of American States, Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption,

Argentina has increased the resources involved with the assets recover, either from the strengthening of agencies like the Financial Information Unit -the AML/CTF central authority- or through the creation of specific units within the National Attorney Generals's Office (Ministerio Público Fiscal).

As regards to the Financial Information Unit (FIU), the staffing and resources have also been increased substantially over the last years. In fact, in February, 2010 the FIU has a total number of 76 agents and by October 2011 that number increased to 130. For 2012, the staff of the FIU grew until 188 agents. Likewise, the Budget of the FIU for 2013 was approved, allocating ARS 45 660 000, which represents an increase of 57% as compared to 2012.

Furthermore, the activity of the FIU has a strong focus on asset recovery and tracking the "money trail." In fact, the FIU currently acts as plaintiff in 35 judicial cases, has obtained provisional measures/injunctions aimed to confiscation by a total of ARS 346,200,277.87, and is collaborating with the Judiciary in 187 other cases. In ML cases there have been obtained confiscation of assets by ARS 2.912.406.

In addition, PGN Resolution Nº 914 (issued on December 21, 2012) created into the National Attorney Generals's Office (Ministerio Público Fiscal) a special unit called "Office of Economic Crime and Money Laundering" (PROCELAC), aimed at combating complex economic crime and the recovery of assets.

This Unit has six operational areas: Money Laundering and Terrorism Financing, Economics and Banking Fraud, Securities Market, Tax Fraud and Smuggling, Crimes against Public Administration and Bankruptcy. The human resources of the PROCELAC are highly-qualified and have a high-degree of expertise in the field.

The PROCELAC, moreover, has been provided with a Technical Assistance Area aimed at the recovery of assets, and also with a "Body of Researches" and a "Technical Consultancy" that provide support in PROCELAC's investigations as well as to the prosecutor's offices throughout the country where collaboration is provided.

The Technical Assistance Area provides technical assistance to the General Prosecutor and the heads of the operational areas, principally with regards to the recovery of assets. Indeed, into this area it has been created a specific expert group called "Assets Recovery" which will analyze, develop and implement policies of general application and specific measures to avoid the frustration of recovery of such property. The personnel of PROCELAC are of 70 agents, and the budget foreseen for the PROCELAC during 2013 is of ARS 63,100,000 (approximately USD 12,721,774.19).

3) Transfer or encumbrance on real property would render the act to be non-legally binding on third parties.¹⁵ This serves as a serious deterrent to non-registration. In this regard, it has been noted that "Argentine real estate is based on the principle of public registration. To have an unobjectionable right over a real estate property, the establishment and transmission must be registered and extinction acts must be registered in the public registry office (Articles 2505 and 3135 of the Civil Code and Article 2 of

Republic of Argentina Final Report (Adopted at the March 21, 2013 Plenary Session), para 46 and infra. (Entire report at: http://www.oas.org/juridico/PDFs/mesicic4_arg_en.pdf.)

¹⁵ Information provided by Argentina (March 2013).

Law No. 17,801).”

Since 2010, Argentina implemented the National System of Information of Real Estate Registries (SINAREPI), which centralizes the information of the Registries of Real Estate across the country, facilitating the exchange of information among them. Up to date, 18 provinces were incorporated into the system. At present all major provinces have adhered to SINAREPI.

This system improves, facilitates and updates the access to information and allows Argentina to have unique and reliable on-line databases, providing an integrated access to real estate information for the Financial Information Unit and the Judicial Branch.

4) Concerning the registration of legal persons, at a national level, Argentina is implementing a National Registry of Companies to unify and centralize all data on legal persons throughout, according to the provisions of the Law 26047 (National Register of Companies) of July 7th 2005.¹⁶ This law empowers the Inspección General de Justicia (IGJ) to organize and operate national registries of shareholding companies (the National Registry of Companies Divided by Shares, created by section 2 of Law 19 550 and incorporated into the operational structure of IGJ by Executive Order 1755/2008), non-shareholding companies, foreign companies, civil associations and foundations. These functions and faculties are regulated by IGJ Resolution 7/IGJ/05. IGJ, within the Ministry of Justice and Human Rights, manages the Public Registry of Commerce in the City of Buenos Aires and the other registers for the city. In order to implement the registries at a national level as envisioned in Law 26 047, each of the 23 provinces must pass a provincial law in order to be part of this system. So far fourteen provinces: Chaco, Chubut, Entre Ríos, La Pampa, La Rioja, Mendoza, Neuquén, Jujuy, Rio Negro, Salta, San Juan, Santa Cruz, Tierra del Fuego and Tucuman, plus the City of Buenos Aires (15 jurisdictions), have done so and are now participating in the centralized registries. The Provinces of Buenos Aires, and Santa Fe, are planning to adhere soon.

Moreover, in March 2012, the Federal Administration of Public Revenues (AFIP) promulgated a new regulation (RG N° 3293) in order to obtain annual updated information regarding the holding of shares in all legal persons in the country. This regulation was analyzed in the framework of the combined Phase 1 and Phase 2 peer review report, at the Global Forum on Transparency and Exchange of Information for Tax Purposes. In that scheme the OECD published that the review shows that Argentina’s legal and regulatory framework ensures that ownership information in relation to all relevant entities is available directly in the databases of the tax administration and that the competent authority has broad powers to collect information. In general, inputs received from Argentina’s exchange of information partners suggest that since 2011 it has made significant progress in handling requests for information. In particular, response times are faster and several of Argentina’s EOI partners praised the quality of its co-operation since the restructuring of its EOI system.¹⁷

5) With respect to the securities sector, Law 26.831, enacted in December 2012, eliminated the principle of self-regulation of the securities market and expanded the powers of the National Securities Commission (CNV), establishing this entity as a regulator of the securities market and giving the powers for the registration, control and sanction of the agents involved in the securities markets.

The Law also provides that the restrictions of confidentiality of the information of the CNV, the Central

¹⁶ Information provided by Argentina (March 2013).

¹⁷ See

<http://www.oecd.org/countries/argentina/globalforumontaxtransparencywelcomesnewmembersandreviews12countries.htm>

Bank (BCRA) and the Superintendence of Insurance of the Nation (SSN) are not applicable to the requirements that they make to each other, simplifying the exchange of information. The law also states that restrictions on the secret of the CNV, BCRA and the SSN do not apply to requirements of the Financial Intelligence Unit (UIF).

6) Law 25 246 (as amended) enables the FIU to regulate, supervise and sanction in AML/CTF matters to all reporting parties bound by the law. By using these powers, the FIU issues Resolutions to provide for specific CDD measures and procedures, which complement the provisions of Article 21 of the law, which sets general parameters for DDC policies. The FIU is empowered by Article 14 of the law to require this and other information from regulated entities, when deemed necessary.

In Addition, the FIU has direct access to the databases of different organisms, among which are the Registries of Real Property from several provinces, National Department of Migrations National Registry of Motor Vehicle Ownership, the Federal Administration of Public Revenue (AFIP) and the Superintendence of Insurance of the Nation (SSN).

7) Presidential Decree 918/2012¹⁸ grants new options for freezing terrorism-related assets and these powers have been applied.¹⁹

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) Argentina permits various alternative asset recovery mechanisms, including civil compensation for harm suffered (“acción civil de carácter resarcitorio”), asset immobilization, and seizure of the assets derived from crime from natural persons who have benefited, despite not being charged.²⁰

2) Law 26683 (O.G. 21/06/2011), included provisions for criminal liability of legal persons and non-conviction based confiscation for money laundering crimes (in Argentina any crime can be considered predicate offense of money laundering).

Article 6 of Law 26.734 (O.G. 28/12/2011) extends the criminal liability of legal persons and non-conviction based confiscation to terrorist financing cases.

3) Argentina has the ability provide mutual legal assistance to other jurisdictions in non-conviction based confiscation cases involving money laundering (which covers all predicate offenses) and terrorist financing.

¹⁸ Decreto N° 918/2012. ENCUBRIMIENTO Y LAVADO DE ACTIVOS DE ORIGEN DELICTIVO.

<<http://www.uif.gov.ar/uif/index.php/es/decretos/359-decreto-91812>>

¹⁹ “Improving Global AML/CFT Compliance: on-going process.” FATF (PARIS) 19 October 2012. <<http://www.fatf-gafi.org/countries/a-c/argentina/documents/improvingglobalamlcftcomplianceon-goingprocess-19october2012.html>>

²⁰ See pages 39-42. Recupero de activos en casos de corrupción.

4) Illicit enrichment is a criminal offense.²¹

5) Private law actions may be brought.²²

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2010 FATF/GAFISUD Mutual Evaluation Report, Argentina was rated Partially Compliant or Non-Compliant with most of the specified FATF Recommendations used to infer adherence with Principle 5:

Argentina: 2010 MER	Rating
R. 35 International Instruments	PC
R. 36 Mutual Legal Assistance (MLA)	PC
R. 37 Dual Criminality	C
R. 38 MLA on Confiscation and Freezing	PC
R. 39 Extradition	PC
R. 40 Other Forms of International Cooperation	NC

2) As noted under Principle 3, since the 2010 MER, Argentina has made significant progress on AML/CFT and its efforts have been recognized by the FATF on a number of occasions. In addition, in December 2012 Argentina was removed from the Enhanced Follow Up Process of GAFISUD, which is indicative of the current level of compliance with the 40 Recommendations.²³

Among the most important advances made by Argentina in international cooperation and mutual legal assistance:

- Substantial improvement to the Mutual Legal Assistance system, shortening the response time to foreign requests (for example, after a year, the average response time went decreased from 4 months to 3 months).
- Progress in efforts to unify the database of the Registries of Real Property and the National Registry of Companies, allowing access to better information on these subjects.
- Law 28 831 (BO 28/12/2012) removed secrecy provisions between supervisors, allowing for better information exchange and enhanced international cooperation.
- The FIU, in its capacity as the National Coordinating Body on AML/CFT, has issued the FIU Resolution N° 30/2013 (BO 18/02/2013), by which it establishes clear channels for the domestic and international exchange of AML/CFT information.
- The FIU has issued regulations pertaining to the protection of the information provided by foreign FIUs thus ensuring the proper use and safeguarding the confidentiality of the information (FIU Resolution N° 194/2010).
- The FIU has concluded many Memoranda of Understanding (MOUs) with its foreign counterparts (including recently with the FinCEN of USA). The FIU currently has 33 MOUs, and

²¹ Brun, J.P. et al., *Asset Recovery Handbook A Guide for Practitioners* (World Bank, 2011), at 36.

²² ICC FraudNet, *Asset Tracing & Recovery: The FraudNet World Compendium*, (Berlin: Erich Schmidt Verlag GmbH & Co., 2009), Argentina chapter at 216.

²³ Information provided by Argentina (March 2013).

24 additional MOUs are in the process of being approved.

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) Argentina has undertaken asset recovery efforts through the Oficina Anticorrupción of the Ministro de Justicia, Seguridad y Derechos Humanos de la Nación. Argentina's 2010 FATF/GAFISUD Mutual Evaluation Report states that the staff of the Unidad Fiscal de Lucha contra el Lavado de Dinero (UFILAVDIN) has received training program approval for Asset Tracking and Recovery (paragraphs 21-23).²⁴

2) PGN Resolution Nº 914 of December 21, 2012, also created a new structure within the National Attorney General's Office aimed to the prosecution of all economic crimes throughout the country, named Office of the Prosecutor for Economic Crimes and Money Laundering ("Procuraduría de Criminalidad Económica y Lavado de Activos," PROCELAC), in order to enhance and further the fight against crimes related to money laundering and terrorist financing, economic and banking fraud, capital markets, tax crimes and smuggling, crimes against public administration, and bankruptcy.

This new institutional structure, composed of a team of specialized prosecutors, will coordinate various operational areas: Money laundering and terrorist financing, economic and banking fraud, Capital Markets, tax crimes and smuggling, crimes against public administration, and restructuring and bankruptcy. In addition to these operational areas, the unit includes a Technical Assistance section, which will be composed of a research body, technical consultancy, **assets recovery**, and IT support. PROCELAC absorbed the structure and functions of the former Office of Coordination for Crimes against Public Administration (OCDAP), which had a team of professionals dedicated to assets recovery (identification and tracking).

Principle 7	Participate Actively in International Cooperation Networks
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1) Regarding Mutual Legal Assistance, Argentina has a very visible website with detailed information on the MLA process: www.cooperacion-penal.gov.ar. Argentina has indicated that the country has designated both an appropriate authority responsible for mutual legal assistance requests relating to asset recovery to UNODC (UNCAC asset recovery focal point)²⁵ and points of contact for law enforcement cooperation on asset recovery cases through RRAG and IberRed.²⁶

2) Previous StAR studies have identified Argentina as having personnel who "*facilitate contact with counterparts, provide informal assistance, help with MLA request preparations (reviewing drafts), and*

²⁴ FATF/GAFISUD Mutual Evaluation of Argentina (2012), paragraphs 21-23, accessed at <http://www.fatf-gafi.org/countries/a-c/argentina/documents/mutualevaluationofargentina>.

²⁵ Argentina response to Question 26 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

²⁶ Argentina response to Question 27 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

help in following up an MLA request.”²⁷

3) Argentina participates in the following networks:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- FATF and GAFISUD
- The Egmont Group of Financial Intelligence Units
- OECD Working Group on Bribery
- CARIN (non-member collaborator)
- RRAG
- IberRed

Principle 8	Provide Technical Assistance to Developing Countries
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1) Argentina has provided valuable technical assistance to other countries on anti-corruption matters and asset recovery.²⁸ Argentina’s technical assistance to other countries as regards to assets recovery has been in the context of its membership in regional bodies with specific competences in this subject. An example is the collaboration provided by Argentina in the framework of GAFISUD and its participation in the “Management of Seized and Forfeited Assets in Latin America Project” (BIDAL) conducted by the OAS-CICAD.

2) In addition, in March 2012, under the auspices of the Minister of Justice, the Ministry of Justice and Human Rights organized a “Regional Meeting on Asset Recovery,” on the identification, freezing and recovery of assets of illicit origin. Participants included prosecutors, judicial magistrates, GAFISUD authorities, legislators and other officials from countries in the region²⁹.

²⁷ Brun, et al, *StAR Asset Recovery Handbook* (World Bank, 2011), at 125.

²⁸ Argentina response to Question 4 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012): “In June 2011 Argentina hosted a Workshop on “Analysis of the Draft Model Law on the Declaration of Interests, Income, Assets and Liabilities of Persons Performing Public Functions” which was co-organized by the Anti-Corruption Office and the OAS. This working session was attended by international experts from Argentina, Brazil, Chile, Colombia, Spain, Mexico and the United States as well the World Bank and the OAS Secretariat. The OAS decided to hold the conference in Buenos Aires, among other things, because of the significant developments that the country has in the matter and the technical and legal knowledge of its experts.”

²⁹ As a result of that meeting the National Register of Seized Property During Criminal Procedures (created by Decree No. 826/2011) published the work “Integral Vision on the recovery of assets of illegal origin”, with the considerations made by the Minister of Justice, the head of the registry, the head of the FIU, and other high level officials.

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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1) Argentina published (on the website of the Anticorruption Office) its completed self-assessment of compliance with the United Nations Convention against Corruption.³⁰ Argentina indicated that the final report had not yet been sent by the UNODC Vienna to the Argentine authorities for validation, but when the final report becomes available, Argentina plans to publish the final report.³¹ The 2010 self-assessment report included a list of Argentina's asset recovery cases accompanied by citations of pertinent court decisions.

2) Argentina has made public its self-assessment case studies on specific asset recovery experiences in the Skanska S.A.³² and IBM Arg. S.A. –D.G.I.³³ cases, and published details of amounts seized, recovered or returned through the websites of relevant government entities.³⁴ Argentina also participated in the 2012 UNODC Experts Group Meeting on the Asset Recovery Digest and contributed follow-up case information and analysis.

3) Argentina's information sharing has also been inferred from its participation in regional and international networks, as listed under Principle 7.

4) Decree 826/2011 of June 17, 2011 created the National Registry of Seized and Confiscated Assets (RNBSD), whose aim is the identification, registration, appraisal, and location of the total of the assets seized, confiscated or affected to an injunction during a criminal procedure.³⁵

5) PGN Resolution Nº 914 of December 21, 2012, created a new structure into the National Attorney General's Office aimed to the prosecution of all economic crimes throughout the country, named the Office of the Prosecutor for Economic Crimes and Money Laundering ("Procuraduría de Criminalidad Económica y Lavado de Activos," PROCELAC). One of PROCELAC's duties is maintaining a complete and updated record of the different kinds of economic crimes, including recovery of assets.

6) Argentina's FIU developed (in sanitized form) several typologies and publish them in its website. Moreover, FIU periodically sends information to the National Congress on the results and impact of the actions taken to fight against money laundering and terrorist financing (AML/CFT), including those relating to the recovery of assets related to illegal activities.

Australia - Final

³⁰ Argentina Self-Assessment (non-final) report, United Nations Convention against Corruption, 08/10/2010, accessed at http://www.anticorruccion.gob.ar/documentos/AR_UNCAC_2010.pdf.

³¹ Argentina response to Question 7 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

³² "Síntesis Del Recupero De Activos En Causa "Skanska S.A." " Oficina Anticorrupción, 2010.

<<http://www.anticorruccion.gob.ar/documentos/Actualidad%20caso%20Skanska.pdf>>

³³ "Síntesis Del Recupero De Activos En Causa "IBM Arg. S.A. –D.G.I." " Oficina Anticorrupción, 2010.

<<http://www.anticorruccion.gob.ar/documentos/Actualidad%20de%20IBM-DGI.pdf>>

³⁴ Argentina response to Question 24 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012); Informes de Gestión OA: <http://www.anticorruccion.gob.ar/gestion.asp>; PJA: www.pjn.gov.ar; www.csjn.gov.ar; www.cij.gov.ar; OCDAP: http://www.mpf.gov.ar/biblioteca/newsletter/notasweb/prensainv_2_2_2.pdf.

³⁵ Information provided by Argentina (March 2013).

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) Australia indicated that the country does not have a specific asset recovery policy or policy statement with respect to the proceeds of corruption.³⁶

2) Australia, however, espouses a strong commitment to asset recovery, including as demonstrated by the statement posted on the website of the Australian Federal Police on Proceeds of Crime Act.³⁷

3) Australia actively supports regional and international asset recovery initiatives, including the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific³⁸ and the Stolen Asset Recovery (StAR) Initiative.³⁹

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2005 FATF Mutual Evaluation Report, Australia was rated Partially Compliant or Non-Compliant with four of the specified FATF Recommendations used to infer adherence with this principle:

Australia: 2005 MER	Rating
R. 5 Customer Due Diligence	NC
R. 6 Politically Exposed Persons	NC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	LC
R. 34 Legal Arrangements – Beneficial Owners	PC

2) Australia provided detailed information in the G20 Anti-Corruption Working Group Data-gathering questionnaire (2012) regarding the country’s significant legislative and regulatory efforts since the MER seven years ago, to strengthen its AML regime, including Customer Due Diligence requirements on financial institutions and Designated Non-Financial Businesses and Professions, customer due diligence requirements pertaining to Politically Exposed Persons (PEPs), and beneficial ownership of legal persons and legal arrangements.⁴⁰ Australia also indicated that a specific campaign around PEP procedures is scheduled for the 2013/14 financial year.⁴¹

³⁶ Australia response to Question 21 of the G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

³⁷ Australia Federal Police, “Proceeds of Crime,” <http://www.afp.gov.au/policing/proceeds-of-crime.aspx>

³⁸ Member countries and economies <<http://www.oecd.org/site/adboecdanti-corruptioninitiative/theinitiativesmembercountriesandeconomies.htm>>

³⁹ Stolen Asset Recovery Initiative (StAR), “About Us” <<http://star.worldbank.org/star/about-us/our-vision>>

⁴⁰ Australia response to Question 16 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

⁴¹ Australia response to Question 17 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012) and updated information provided by Australia in March 2013.

3) The present benchmark indicator reflects, in part, financial practitioner input received by StAR indicating the continued weakness of measures related to beneficial ownership of legal persons.

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The indicator for Principle 3 is derived from the assessment undertaken by the June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of Australia’s assets tracing capabilities:

For identifying and locating bank accounts, a request to be sent to all financial institutions upon court order decision. For identifying real estate, there is local registration, but the beneficial owner is not disclosed in real estate transactions and such identity can be easily hidden behind legal structures. For identifying companies, a registry exists. There are no mechanisms in place to consistently and rapidly identify the holders of life insurance and securities.

2) Australia’s asset recovery unit appears to have efficient processes for finding the holders of such financial accounts and other property despite these unresolved concerns - *“Last financial year (2011-2012) over \$97 million of proceeds of crime were confiscated, more than double the \$41m seized the previous year and more than five times the amount seized two years ago.”*⁴²

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) Non-conviction based confiscation is provided for in Argentina’s Proceeds of Crime Act 2002.

2) According to the 2012 G20 “Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries”: **“Enforcing an order to restrain and/or forfeit the proceeds of crime: Note: Australian law currently only permits non-conviction based restraint or confiscation action for Canada, South Africa, UK, Ireland and USA. Under amendments recently made to Australia’s mutual assistance regime (which will commence on 20 September 2012), Australia will be able to register and enforce foreign non-conviction based proceeds of crime orders made in any country and seek a temporary non-conviction based restraining order on behalf of any country.”**⁴³

3) Income and asset disclosure is included in the requirement to declare private financial and personal interests. All Agency Heads and members of the Senior Executive Service (SES) in the Australian Public Service are required to complete a declaration of private and personal interests. Non SES employees who have responsibilities that require them to be particularly transparent about their private financial

⁴² Minister for Home Affairs, “Record \$97 million of assets seized from criminals,” October 14, 2012, at [http://www.ministerhomeaffairs.gov.au/Mediareleases/Pages/2012/Fourth%20Quarter/14-October-2012---Record-\\$97-million-of-assets-seized-from-criminals.aspx](http://www.ministerhomeaffairs.gov.au/Mediareleases/Pages/2012/Fourth%20Quarter/14-October-2012---Record-$97-million-of-assets-seized-from-criminals.aspx)

⁴³ G20 “Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide” (2012), at 11.

and personal interests may also be required to complete a declaration. Furthermore, Australia has adopted the Crimes Legislation Amendment (Serious and Organised Crime Act) 2010, a new development in confiscation law that places the onus on a person who lives beyond their means to prove that their wealth was acquired legally.⁴⁴

4) "Any person (including a foreign state) can initiate civil proceedings in Australian courts (where the offence falls within Australia's jurisdiction).⁴⁵

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2005 FATF Mutual Evaluation Report, Australia was rated Compliant or Largely Compliant with all of the specified FATF Recommendations used to infer adherence with Principle 5:

Australia: 2005 MER	Rating
R. 35 International Instruments	LC
R. 36 Mutual Legal Assistance (MLA)	C
R. 37 Dual Criminality	C
R. 38 MLA on Confiscation and Freezing	C
R. 39 Extradition	C
R. 40 Other Forms of International Cooperation	C

2) Since the MER, Australia has maintained a strong legal structure that encourages and facilitates international cooperation.

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) Australia provided a negative response to Questions 23 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012) as to the creation of a specialized asset recovery team/kleptocracy unit.

2) We believe, however, that the 2010 establishment of the multi-agency Criminal Assets Confiscation Taskforce constitutes a de facto specialized asset recovery team. As noted in the Australian Federal Police website, the Criminal Asset Confiscation Taskforce ensures a "more coordinated and integrated approach to identifying and removing the profits derived from organised criminal activity. Led by the Australian Federal Police (AFP) and utilising the resources from the Australian Crime Commission (ACC), the Australian Taxation Office (ATO) and the Commonwealth Director of Public Prosecutions (CDPP), the

⁴⁴ Tracking Anti-Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action, (OECD/StAR Initiative, 2011), at 38.

⁴⁵ Australian Government, "Australia's Approach to Fighting Corruption," at <http://unpan1.un.org/intrdoc/groups/public/documents/apcity/unpan047794.pdf>.

Taskforce has stepped up the government's fight against organised crime through a more intensive targeting of criminals' accumulated wealth."⁴⁶

Principle 7	Participate Actively in International Cooperation Networks
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1) Information on mutual legal assistance, treaty agreements, and a checklist are available at <http://www.ilsac.gov.au>, and information on civil processes, service of documents, taking of evidence, and a provided model letter of request are available at <http://www.ag.gov.au/www/agd/agd.nsf>.⁴⁷ The previously mentioned Criminal Assets Confiscation Taskforce maintains an informative website about their interaction with these processes: <http://www.afp.gov.au/policing/proceeds-of-crime.aspx>.

2) Australia has designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). Australia participates in the Global Focal Point Initiative supported by StAR/INTERPOL.⁴⁸

3) Australia also participates in the following networks:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- FATF
- ADB/OECD Anti-Corruption Initiative for the Asia Pacific
- The Egmont Group of Financial Intelligence Units,
- OECD Working Group on Bribery
- CARIN

Principle 8	Provide Technical Assistance to Developing Countries
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1) Australia has carried out regional capacity-building projects in Africa as well as Asia-Pacific that included modules on recovering the proceeds of corruption. In 2011/2012, Australia worked with the Indonesian Anti-Corruption Commission on recovering the proceeds of crime. In April 2012, Vietnam and Australia signed the *Memorandum of Understanding on Cooperation between the Ministry of Justice of the Socialist Republic of Vietnam and the Attorney-General's Department (AGD) of the Government of Australia*, under which the AGD is currently negotiating a rule of law aid program with Vietnam which will include criminal asset forfeiture in the context of corruption. AGD officers have also delivered

⁴⁶ Australia Federal Police, "Proceeds of Crime," description of Criminal Assets Confiscation Taskforce, at <http://www.afp.gov.au/policing/proceeds-of-crime.aspx>. See also, *Tracking Anti-Corruption and Asset Recovery Commitments* (OECD/StAR Initiative, 2011), at Pages 40-41.

⁴⁷ *StAR Asset Recovery Handbook* (World Bank, 2011), at 244.

⁴⁸ Australia Response to Questions 26-27 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

training on recovering the proceeds of corruption to Vietnam, Papua New Guinea, Pakistan, and Sri Lanka⁴⁹ The country also provides technical assistance through its support of the StAR Initiative.

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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1) Australia collects and publishes data on asset recovery cases, including extensive figures relating to amounts restrained, confiscated and recovered. The information is published in the annual report of the Commonwealth Director of Public Prosecutions, at <http://www.cdpp.gov.au/Publications/AnnualReports/>.⁵⁰

2) Australia's information sharing has also been inferred from its participation in regional and international networks, as listed under Principle 7.

⁴⁹ Australia Response to Question 25 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

⁵⁰ Australia Response to Question 24 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

Brazil - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) Brazil has a clear stance on asset recovery as a policy priority. The policy statement may be accessed at the website of the *Departamento de Recuperação de Ativos e Cooperação Jurídica (Internacional Department of Asset Recovery and International Legal Cooperation)*, established within the National Secretariat of Justice, Ministry of Justice.”⁵¹

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2010 GAFISUD-FATF Mutual Evaluation Report, Brazil was rated Partially Compliant or Non-Compliant with three of the relevant FATF 40 recommendations used to infer adherence with Principle 2:

Brazil: 2010 MER	Rating
R. 5 Customer Due Diligence	PC
R. 6 Politically Exposed Persons	LC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	PC
R. 34 Legal Arrangements – Beneficial Owners	N/A ⁵²

2) To address the deficiency with regard to R. 12, the Brazilian Congress approved, in July 9, 2012, an Act (Lei 12.683/12) amending the previous Money Laundering Act. Act 12.683/12 does not mention directly any profession, opting for a legislative technique of defining duties and activities instead of specifying particular professions, and thereby reaching a comprehensive approach for the issue.⁵³ Therefore, any person involved in the most vulnerable situations for money laundering, embezzlement or bribery might be subject to all control mechanisms available, company service providers and real estate agents included. Chapter V. Persons Subject to the Control Mechanism provides: The obligations set forth in articles 10 and 11 herein shall apply to natural or legal persons who engage, on a permanent or occasional basis, as a principal or secondary activity, cumulatively or not: XIV. the natural or legal persons who provide, even occasionally, advisory, consulting, accounting,

⁵¹ Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional, “Estrutura,” at <http://portal.mj.gov.br/data/Pages/MJDE2A290DITEMIDCD6F536761F44D689F338D0277BE5434PTBRIE.htm>; Recuperação de Ativos at <http://portal.mj.gov.br/main.asp?ViewID=%7B7A4BFC59-861F-4D85-B807-DAEAE3A8531C%7D¶ms=itemID=%7B401B4224-7046-4DA4-81D2-1D6F2BBD1217%7D;&UIPartUID=%7B2868BA3C-1C72-4347-BE11-A26F70F4CB26%7D>. For description of the Department’s structure and scope of activities, please see International Association of Anti-Corruption Authorities, “Department of Asset Recovery and International Legal Cooperation,” at http://www.iaaca.org/AntiCorruptionAuthorities/ByCountriesandRegions/Braziljigou/201202/t20120209_801161.shtml.

⁵² The MER noted that Recommendation 34 was “not applicable in the Brazilian context.” MER at 215, paragraph 957.

⁵³ Information provided by Brazil (May 2013).

auditing, counseling or assistance services of any nature in operations:

- a) of purchase and sale of real estate, commercial or industrial businesses, or equity holdings of any nature;
- b) of management of funds, securities or other assets;
- c) opening or management of bank, savings accounts, investments or securities accounts;
- d) of setting up, exploring or management of companies of any nature, foundations, fiduciary funds or similar structures;
- e) of a financial, business or real estate nature; and
- f) of alienation or acquisition of rights over contracts related to professional sporting or artistic activities.

For example, since the law's amendment, accountants and lawyers, when acting as consultants, are also obliged to report suspicion transactions. They are also required to update their registration under supervisory organisms and COAF, in addition to ensuring that proper internal compliance systems are in place. Other specific measures implemented with the promulgation of Act 12.683/12 are described in the Brazil's Follow Up Report approved by GAFISUD in December 2012 (*Informe de Avance de Evaluación Mutua de Brasil, Seguimiento Intesificado*). In view of these legislative amendments, Brazil has overcome some of the past deficiencies with respect to R. 12.⁵⁴

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The description for Principle 3 is derived from the assessment undertaken by the June 2012 Asset Tracing Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of Brazil's assets tracing capabilities:

For identifying and locating bank accounts, Brazil keeps a central register of bank accounts, immediately accessible by competent authorities, without a court order if for tax purpose or money laundering / financing of terrorism (ML/FT) purposes, allowing the location of the assets without delay. For identifying real estate, the beneficial owner is not disclosed in real estate transactions and such identity can be easily hidden behind legal structures. For identifying companies, registries exist at the local (state/province) level, but not at the national level, which maintain public lists of shareholders. The coexistence of different company registration system (paper and electronic form) in Brazil may affect the accuracy as well as the availability of the subject information. There are no mechanisms in place to consistently and rapidly identify the holders of life insurance and securities.

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) According to *Asset Tracing and Recovery: The FraudNet World Compendium*, "Brazilian proceedings do not have *in rem*, nor other types of non-conviction based civil confiscation actions. However, other

⁵⁴ Information provided by Brazil (March 2013).

civil remedies are available under Brazilian law.”⁵⁵

2) Illicit enrichment is a criminal offense.⁵⁶

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2010 FATF/GAFISUD Mutual Evaluation Report, Brazil was rated Compliant or Largely Compliant on five of the specified FATF Recommendations used to infer adherence with Principle 5:

Brazil: 2010 MER	Rating
R. 35 International Instruments	PC
R. 36 Mutual Legal Assistance (MLA)	LC
R. 37 Dual Criminality	C
R. 38 MLA on Confiscation and Freezing	LC
R. 39 Extradition	LC
R. 40 Other Forms of International Cooperation	LC

2) The 2010 MER noted that with respect to the rating for R. 35, “Implementation of the Vienna and Palermo Conventions: Technical deficiencies in the criminalisation of the conversion/transfer of proceeds. Insufficient range of offences in 10 designated categories of predicate offence. No direct civil or administrative liability to legal persons who have committed ML. Ineffective implementation of the ML offence.”⁵⁷ We do not have information to determine whether Brazil has taken steps to implement measures that would affect this rating.

3) One of the deficiencies pointed out by FATF documents pertained to the insufficient range of offences which constituted predicate offenses of money laundering.⁵⁸ In July 2012, Brazil amended its Money Laundering Act (Lei 12.683/12), moving away from specified predicate offenses; now, any crime may be considered as a predicate offense to money laundering. The most recent GAFISUD report noted Brazil’s efforts in this regard.

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) Brazil has created the *Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional* (DRCI), or Department of Asset Recovery and International Cooperation (DRCI) in 2004, under the National Secretariat of Justice of the Ministry of Justice to deal specifically and more efficiently with international asset recovery matters.⁵⁹

⁵⁵ (Berlin: Erich Schmidt Verlag, 2009), at 331.

⁵⁶ *StAR Asset Recovery Handbook* (World Bank, 2011), at 36

⁵⁷ 2010 MER, at 230.

⁵⁸ Information provided by Brazil (March 2013).

⁵⁹ Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional, “Estrutura,” at <http://portal.mj.gov.br/data/Pages/MJDE2A290DITEMIDCD6F536761F44D689F338D0277BE5434PTBRIE.htm>;

Principle 7	Participate Actively in International Cooperation Networks
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1) Department of Asset Recovery and International Legal Assistance under the Ministry of Justice, National Secretariat is Brazil's designated central authority for MLA.⁶⁰ Brazil's MLA process, as set forth in the 2012 G20 Guide, "Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries,"⁶¹ was not easily accessible online on the Brazilian Ministry of Justice's website or the Ministry of Foreign Affairs.

2) According to previous StAR research, Brazil is one such jurisdiction that, in larger cases, advocates an early face-to-face meeting among practitioners in the various jurisdictions who will be involved in the investigation to facilitate the exchange of information, under the rationale that this helps counterparts build trust, assess strategies, and learn about requirements for submitting MLA requests. In some cases, particularly when faced with resource constraints or in cases that involve several jurisdictions, practitioners have invited representatives of the foreign jurisdictions to attend a case conference held domestically.⁶²

3) Brazil participates in the following networks:

- UNCAC AR Working Group
- FATF, GAFISUD
- The Egmont Group of Financial Intelligence Units
- OECD Working Group on Bribery
- RRAG
- IberRed

4) As of February 6, Brazil had not designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). Brazil participates in the Global Focal Point Initiative supported by StAR/INTERPOL.

Principle 8	Provide Technical Assistance to Developing Countries
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1) We were unable to locate open source information as to whether technical assistance has been either sought or provided by Brazil to other countries.

Recuperação de Ativos at <http://portal.mj.gov.br/main.asp?ViewID=%7B7A4BFC59-861F-4D85-B807-DAEAE3A8531C%7D¶ms=itemID=%7B401B4224-7046-4DA4-81D2-1D6F2BBD1217%7D;&UIPartUID=%7B2868BA3C-1C72-4347-BE11-A26F70F4CB26%7D>. For description of the Department's structure and scope of activities, please see International Association of Anti-Corruption Authorities, "Department of Asset Recovery and International Legal Cooperation," at http://www.iaaca.org/AntiCorruptionAuthorities/ByCountriesandRegions/Braziljigou/201202/t20120209_801161.shtml.

⁶⁰ *Ibid.*

⁶¹ The guide is accessible at www.track.unodc.org.

⁶² *StAR Asset Recovery Handbook* (World Bank, 2009), at 123

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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- 1) We were unable to locate open source information as to whether Brazil systematically collects data on cases and publishes them. The Ministry of Justice issues press statements on progress of specific cases.⁶³
- 2) Brazil's information sharing has also been inferred from its participation in regional and international networks, as listed under Principle 7.

⁶³ For example, Extraído de: Ministério da Justiça - 26 de Novembro de 2009, "Brasil consegue repatriação de cerca de US\$ 30 milhões na Suíça," at <http://mj.jusbrasil.com.br/noticias/2018723/brasil-consegue-repatriacao-de-cerca-de-us-30-milhoes-na-suica>.

Canada - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) Canada has a clear policy stance on asset recovery and it is published online. In March 2011, in introducing the *Freezing Assets of Corrupt Foreign Officials Act*, the Canadian Ministry of Foreign Affairs issued a media release which included the following statements by Minister of Foreign Affairs Lawrence Cannon:⁶⁴

“Today I tabled the *Freezing Assets of Corrupt Regimes Act* in Parliament to give the Government of Canada new and more robust tools in our fight against corruption and the misappropriation of state funds by repressive foreign leaders.”

“Recent developments in the Middle East and North Africa have shown the world how important it is to have legislation in place to allow for a quick response to ensure that foreign dictators cannot hide their ill-gotten wealth in our country.”

2) The 2012 “Canada’s Asset Recovery Tools: A Practical Guide,” (AR Guide) published as part of Canada’s support of the Deauville Partnership with Arab Countries in Transition includes the following statement:

“Canada is committed to working with the global community to fight serious criminality, including corruption. States must work together to ensure that those who try to use international borders to evade justice and to hide the fruits of their criminality are not permitted to do so. Canada recognizes that robust tools of international cooperation are vital to preserving peace and security at home and abroad including with respect to asset recovery and the sharing of criminal proceeds.”⁶⁵

3) While the AR Guide has been published on the website of the Stolen Asset Recovery Initiative (StAR), we were unable to locate it on the website of Canada’s Ministry of Foreign Affairs and International Trade or the Department of Justice.

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2008 FATF Mutual Evaluation Report (MER), Canada was rated Partially Compliant or Non-Compliant with all of the specified FATF Recommendations used to infer adherence with this principle. However, it should be noted that this information is out of date, and the extent to which the

⁶⁴ Ministry of Foreign Affairs and International Trade Canada, “Harper Government Introduces Freezing Assets of Corrupt Regimes Act,” March 3, 2011, at <http://www.international.gc.ca/media/aff/news-communicues/2011/089.aspx?view=d>.

⁶⁵ Stolen Asset Recovery Initiative (StAR), Deauville Partnership, at <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery> (links to the Guide in English, French and Arabic).

information is out of date varies by jurisdiction

Canada: 2008 MER	Rating
R. 5 Customer Due Diligence	NC
R. 6 Politically Exposed Persons	NC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	NC
R. 34 Legal Arrangements – Beneficial Owners	PC

2) Subsequent to the 2008 MER, Canada undertook significant legislative reforms to its *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* and Regulations (PCMLTFR).⁶⁶ Substantial changes have been made to the legislative framework concerning customer due diligence, politically exposed persons and DNFBPs.

3) Canada’s PCMLTFR was most recently updated on 31 January 2013, which substantially addressed the deficiencies in relation to customer due diligence for both financial institutions (Recommendation 5) and DNFBPs (Recommendation 12). The FATF has concluded that Canada will have reached a level of compliance essentially equivalent to an LC with Recommendation 5 when the amendments come into force on February 1, 2014. While the FATF does not consider the level of compliance with non-core and key Recommendations, such as Recommendations 6 and 12, the FATF has noted the progress Canada has made in these areas.

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The indicator for Principle 3 is derived from the assessment undertaken for the June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of Canada’s assets tracing capabilities:

For identifying and locating bank accounts, Canada must send a request to all financial institutions upon a court order decision. For identifying real estate, landowners’ registration/deed registration is conducted at the local (state/provincial) level as the regulation of property is provincial jurisdiction under the Canadian Constitution. For identifying companies, registries exist at the national and provincial levels for companies registered within those jurisdictions. Canada does not provide for a shareholders’ registries *per se*. Registries of securities holders are in place at the provincial level in Canada.

2) In addition, Canada has implemented measures under the Criminal Code's Proceeds of Crime provisions, the Proceeds of Crime (Money Laundering) & Terrorist Financing Act and the Controlled Drugs & Substances Act that allow Canada authorities to identify and trace assets.

To this end, the Proceeds of Crime and Money Laundering resources distributed within the RCMP's Federal Policing divisional investigative units target the proceeds of organized crime for seizure under

⁶⁶ Information in paragraphs 2 and 3 provided by Canada (May 2013).

Part XII.2 of the Criminal Code of Canada.

These Federal resources are complimented by integrated partners which include members of other police forces, the Canada Revenue Agency, the Department of Justice, Forensic Accountants and Seized Property Management Department personnel.

3) On March 23, 2011, Canada enacted the *Freezing Assets of Corrupt Foreign Officials Act (FACFOA)* targeting foreign Politically Exposed Persons when "the foreign nation is in a situation of 'internal turmoil' and the freezing of assets is in the best interests of the 'international community'."⁶⁷

FACFOA was enacted in response to requests for assistance from members of the G8 Deauville Partnership with Arab Countries in Transition, to freeze assets suspected to have been illicitly obtained by corrupt foreign officials, their associates or their family members.⁶⁸ In accordance with this legislation, Canada may enact regulations to give effect to written requests from foreign states, which have recently experienced political upheaval, to freeze assets of their former leaders and senior officials or their associates and family members suspected of having misappropriated state funds or obtained property inappropriately as a result of their office or family, business or personal connections. The Regulations freeze the assets of the politically exposed foreign person listed in the Regulations by prohibiting the following activities by anyone in Canada:

- to deal, directly or indirectly, in any property, wherever situated, of a listed politically exposed foreign person;
- to enter into or facilitate, directly or indirectly, any financial transaction related to a dealing referred to in point above ;
- to provide financial services or other related services in respect of any property of a listed politically exposed foreign person.

To ensure that freeze covers property broadly associated with such person for the duration of the freeze, which is 5 years with possibility of renewal, Canadians in and outside of Canada, any persons in Canada and financial institutions have an ongoing duty to determine and to disclose to the RCMP whether they are in possession or control of property owned or controlled by or on behalf of a designated person.

4) In addition, the government may implement under its *United Nations Act* whatever measures are necessary to implement decisions of the United Nations Security Council, including freezing the assets of specific persons. The government may also take certain actions pursuant to *Special Economic Measures Act* to designate and freeze assets to address situations where there has been a call for economic sanctions by an international organization of states, or where there has been a grave breach of international peace and security that has resulted or is likely to result in an international crisis. Like FACFOA, the government may pass regulations under these laws that require every person in Canada and every Canadian outside Canada to disclose to the RCMP whether they are in possession or control of property owned or controlled by or on behalf of a designated person. In addition, financial entities may be required to determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a designated person.

⁶⁷ See *Tracking Anti-Corruption and Asset Recovery Commitments* (OECD/World Bank 2011), at 36-39.

⁶⁸ Information in paragraphs 3 and 4 provided by Canada (May 2013).

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) It is very important to note that the *United Nations Convention against Corruption* requires States Parties to consider adopting a mechanism for non-conviction based (NCB) asset forfeiture in certain circumstances, but this is not a mandatory provision of the Convention. Article 54 provides that State Parties shall, in accordance with its domestic law: (a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party, and “(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.”⁶⁹

2) Canada has a wide range of asset recovery mechanism, including NCB asset confiscation.⁷⁰ However, due to the constitutional division of powers in Canada where property and civil rights fall under provincial jurisdiction, NCB based asset forfeiture falls primarily under provincial law and eight of Canada’s ten provinces do have laws that permit the use of NCB confiscation orders. Federally, Canadian law provides for conviction based forfeiture with some exceptions that allow for forfeiture of property without a conviction where an accused has died or absconded. As a result and as noted in Canada’s Asset Recovery Guide, the Government of Canada cannot respond to a request for NCB asset forfeiture as such requests fall within the jurisdiction of Canada’s provinces. As such, should a foreign state seek to recover assets from Canada through NCB asset forfeiture, it may convey a request to the relevant authority where the asset is located. It may also hire private counsel to act on its behalf through a civil action before the courts of that province seeking to recover the asset(s) in question.”

3) Canada’s *Criminal Code* permits the return of seized or confiscated property to the legal owner (a judge can order forfeiture to the federal or provincial government that prosecuted the offender, unless a third party, not involved in the offence, had a valid and lawful interest in the property, in which case the court would order the property returned to that person (section 462.41). In addition, forfeiture is also applicable in cases where an accused party has died or been at large for six months (section 462.38.). The *Seized Property Management Act* makes the assets are available for return through the sharing with a cooperating State, providing that there exists a reciprocal bilateral agreement.⁷¹

4) Private law actions are permitted.⁷²

⁶⁹ Full text of the United Nations Convention against Corruption can be accessed at http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

⁷⁰ Information in paragraph 2 provided by Canada (May 2013).

⁷¹ International Centre for Criminal Law Reform and Criminal Justice Policy, “Canadian Public Integrity and Anti-Corruption Measures and the United Nations Convention against Corruption,” (2007), accessed at http://www.icclr.law.ubc.ca/china_ccprcp/files/Presentations%20and%20Publications/06%20Canadian%20Public%20Integrity_English.pdf

⁷² See for example, Republic of Trinidad and Tobago, *Trinidad and Tobago (B.W.I.A. International) Airways Corporation, Trinidad-Tesoro Petroleum Company Limited, and Trinidad and Tobago Racing Authority v. John Frederick Cameron, Litigation Administrator for the Estate of John H. O’Halloran, et al*, Court file No. 29841/88, Ontario Court of Justice (General Division) Judgment of June 3, 1991, at StAR Asset Recovery Watch cases database, “John H. O’Halloran,” at <http://star.worldbank.org/corruption-cases/node/18517>.

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2008 FATF Mutual Evaluation Report, Canada was rated Compliant or Largely Compliant with all of the specified FATF Recommendations used to infer adherence with Principle 5:

Canada: 2008 MER	Rating
R. 35 International Instruments	LC
R. 36 Mutual Legal Assistance (MLA)	LC
R. 37 Dual Criminality	C
R. 38 MLA on Confiscation and Freezing	LC
R. 39 Extradition	LC
R. 40 Other Forms of International Cooperation	LC

2) There is no indication that Canada’s compliance with these Recommendations has changed significantly since the country’s 2008 MER.

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) Canada does not have a single centralized for asset recovery unit/kleptocracy unit. Canada employs a whole of government approach which draws on the expertise and resources of multiple authorities including Canada’s Central Authority at the Department of Justice, the Royal Canadian Mounted Police, the Department of Foreign Affairs and International Trade Canada to manage requests for asset recovery by foreign states. Canada has a comprehensive law enforcement regime for recovering assets related to domestic offences and for recovering proceeds in Canada derived from an act committed outside of Canada that, if committed in Canada, would have constituted an offence punishable by indictment in Canada. Thus, according to Canada, it has not been necessary for Canada to create a specialized central unit or team dedicated to asset recovery/kleptocracy because the capacity to deal with such matters is integrated into existing resources.

Principle 7	Participate Actively in International Cooperation Networks
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1) The Canadian Central Authority (International Assistance Group, Department of Justice Canada) for handling MLA requests did not have a readily locatable web presence where detailed information on the MLA process can be accessed. However, according to Canada’s AR Guide, its MLA process is described in the “G8 Step-by-Step Guide on Mutual Legal Assistance,” at http://www.coe.int/t/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf. The 2012 G20 “Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide”(2012) also describes Canada’s MLA process.

2) Canada's Asset Recovery Guide indicated that the description of Canada's MLA process is available in French and Arabic through the Canadian Central Authority.⁷³ The contact information is given on page 9 of the Asset Recovery Guide.

3) Canada liaison office in Brussels to facilitate processing of MLA requests from countries in Europe and liaison official in Paris to assist in the processing of requests to and from France.

4) Informal assistance may be provided by the FINTRAC (FIU and FI Supervisor) <http://www.fintrac.gc.ca/>, the Office of the Superintendent of Financial Institutions <http://www.infosource.gc.ca/inst/sif/fed04-eng.asp>, provincial securities regulators, and the police. MOUs are required only by FINTRAC (both as supervisor and as FIU). All other authorities are empowered to provide certain decentralized types of assistance in the absence of MOUs.

5) The Royal Canadian Mounted Police has a network of liaison officers posted in strategic locations around the world. The aim is to support the RCMP's mandate in the fight against transnational crime by training and deploying highly skilled multilingual officers to those various strategic locations. In addition to international operational support, the network of LO also enhances and supports the GoC's commitment for mutual cooperation and the need for Canada to maintain, enrich and develop partnerships throughout the world.

6) Canada participates in the following networks:

- UNCAC Open-Ended Intergovernmental Working Group on Asset Recovery
- FATF (member), Asia/Pacific Group on Money Laundering (member), Caribbean Financial Action Task Force (Cooperating and Supporting Nation), and the Financial Action Task Force of South America Against Money Laundering (GAFISUD) (observer)
- The Egmont Group of Financial Intelligence Units
- OECD Working Group on Bribery
- CARIN
- StAR
- Interpol

6) Canada has designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). Canada participates in the Global Focal Point Initiative supported by StAR/INTERPOL.

Principle 8	Provide Technical Assistance to Developing Countries
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1) Canada has provided technical assistance in support of asset recovery.⁷⁴ In June 2011, for example,

⁷³ Stolen Asset Recovery Initiative (StAR), Deauville Partnership, at <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery> (links to the Guide in English, French and Arabic).

⁷⁴ Information provided by Canada (May 2013).

Minister of State of Foreign Affairs (Americas and Consular Affairs) Diane Ablonczy announced Canada's assistance for a UNODC-led project "Combating Proceeds of Crime by Strengthening the Asset Recovery Systems in Latin America."⁷⁵ The project supported the setting up of two Asset Recovery Networks in Central and South America based on the Camden Asset Recovery Inter-Agency Network (CARIN) model in which Canada takes part. The project will forge professional and operational links within the region and to other jurisdictions and operate to the mutual benefit of all concerned.

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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1) The Canadian Ministry of Foreign Affairs and International Trade has published extensive information on the *Freezing Assets of Corrupt Foreign Officials Act* (FACFOA) and the *Freezing Assets of Corrupt Foreign Officials* (Egypt and Tunisia) Regulations. The website includes text of the legislation and regulations, including amended and updated lists of "persons whose assets are subject to freezing under the Freezing Assets of Corrupt Foreign Officials (Tunisia and Egypt) Regulations. These changes took effect as of December 14, 2012, which is the date the amending Regulations were registered (SOR/2012-284)."⁷⁶

2) Some information on Canadian asset recovery cases can be accessed online; some relevant court decisions are also accessible online or through relevant courts.

3) Canada's information sharing has also been inferred from its participation in regional and international networks, as listed under Principle 7.

⁷⁵ <http://www.international.gc.ca/media/aff/news-communiques/2011/175.aspx>

⁷⁶ Ministry of Foreign Affairs and International Trade Canada, "Tunisia and Egypt," accessed on January 22, 2013, at http://www.international.gc.ca/sanctions/tunisia_egypt-tunisie_egypte.aspx?lang=eng&view=d

France - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) France confirmed on the G20 Anti-Corruption Working Group Data-gathering questionnaire that the country does have a specific asset recovery policy or policy statement with respect to the proceeds of corruption.⁷⁷ The policy is not publicly published.⁷⁸

2) France’s “Guide for Asset Recovery in France,” which was produced as part of the Deauville Partnership with Arab Countries in Transition, contains the following statement: “Asset recovery is a key issue in the fight against organized crime and corruption.”⁷⁹ France has been one of the few countries to take steps to trace, freeze and return assets in anticipation of asset recovery.⁸⁰

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2011 FATF Mutual Evaluation Report, France was rated Partially Compliant with two of the specified FATF Recommendations used to infer adherence with Principle 2:

France: 2011 MER	Rating
R. 5 Customer Due Diligence	LC
R. 6 Politically Exposed Persons	PC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	PC
R. 33 Legal Persons – Beneficial Owners	LC
R. 34 Legal Arrangements – Beneficial Owners	LC

2) France indicated that guidance has been issued with respect to Politically Exposed Persons.⁸¹ We do not have the basis, however, to determine whether France’s compliance level on R. 6 or the other Recommendations have changed since the 2011 MER.

⁷⁷ France response to Question 21 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

⁷⁸ France response to Question 22 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

⁷⁹ Guide can be downloaded at: Stolen Asset Recovery Initiative (StAR), Deauville Partnership, at <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery> (links to the Guide in English, French and Arabic).

⁸⁰ *Tracking Anti-Corruption and Asset Recovery Commitments* (OECD/World Bank, 2011), at 23

⁸¹ France response to Question 17 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The discussion for Principle 3 is derived from the assessment undertaken by the June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of France’s assets tracing capabilities:

France has a central register of bank accounts, immediately accessible by competent authorities, without a court order if for tax purpose or money-laundering/ financing of terrorism (ML/FT) purposes. Real estate, companies, and securities are also subject to strong national registration regimes.

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) According to France’s Asset Recovery Guide, “The French judicial system regarding asset recovery is based on criminal conviction: no confiscation can be ordered without declaration of guilt by a court. Confiscation constitutes a criminal sanction pronounced in addition to imprisonment and/or fine. [] Hence non conviction based confiscation is not allowed according to domestic law, France may accept to execute foreign NCB order, under certain circumstances, according to a MLA request.”⁸²

2) Courts may order the restraint or seizure of assets pending the outcome of a trial even early an early stage of an investigation. When assets are found and determined to be the proceeds or an instrumentality of the alleged offense. Restitution of the restrained assets may be ordered.⁸³

3) France has introduced a criminal offence for owning “unjustified” assets, a law that can be used against the proceeds of crime in cases where assets are disproportionate to the lifestyle of their owner, who has habitual contact with criminals.⁸⁴

4) Private law actions are permitted.⁸⁵

⁸² “Guide for Asset Recovery in France,” at 6, at <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery> (links to the Guide in English, French and Arabic).

⁸³ *StAR Asset Recovery Handbook* (World Bank, 2011), at 171.

⁸⁴ *StAR Asset Recovery Handbook* (World Bank, 2011), at 171; *Tracking Anti-Corruption and Asset Recovery Commitments* (OECD/StAR Initiative), 2011, at 38.

⁸⁵ Including under Article 1382 of the Civil Code [torts]. Source: StAR staff attorney (former French prosecutor).

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2011 FATF Mutual Evaluation Report, France was rated Compliant or Largely Compliant with all of the specified FATF Recommendations used to infer adherence with Principle 5:

France: 2011 MER	Rating
R. 35 International Instruments	LC
R. 36 Mutual Legal Assistance (MLA)	LC
R. 37 Dual Criminality	C
R. 38 MLA on Confiscation and Freezing	LC
R. 39 Extradition	LC
R. 40 Other Forms of International Cooperation	LC

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) The “Guide for Asset Recovery in France” states:

France has established two agencies dedicated to asset recovery cases, appointed as focal points in the above mentioned cooperation networks.

The PIAC, platform for identification of criminal asset, is a law enforcement unit, created in 2005, dedicated to identification of criminal asset, and is empowered to conduct financial and patrimonial investigations under supervision of a judicial authority. It also centralizes all information relating to detection of illegal assets all over the French territory and abroad. It has been appointed as focal point in the different cooperation networks mentioned above.

The AGRASC, agency for management and recovery of seized and confiscated asset, is an asset management office, created in order to improve criminal asset management and to provide the courts with legal and technical assistance. It can also be ordered to execute MLA requests, under the control of a judicial authority.⁸⁶

⁸⁶ “Guide for Asset Recovery in France,” at 4, at <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery> (links to the Guide in English, French and Arabic).

Principle 7	Participate Actively in International Cooperation Networks
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1) In France, the central authority for legal assistance in criminal matters is the Bureau of International Mutual Assistance in Criminal Matters (Bureau de l'Entraide Pénale Internationale). Detailed contact information is provided online at http://annuaire.service-public.fr/services_nationaux/administration-centrale-ou-ministere_168985.html. The Bureau is part of the Criminal Affairs and Pardons Division, located in the Justice Ministry in Paris.

France has also empowered a number of agencies to pursue anti-corruption efforts that may result in asset recovery, including: Customs, Gendarmerie Nationale, Interregional specialized courts for organized and financial crime, Investigating judges, Judicial police, specifically l'Office Central de Repression de la Grand Delinquance Financiere, and Prosecution offices.⁸⁷ France has sent abroad liaison magistrates to Algeria, Canada, Croatia, Germany, Italy, Morocco, Netherlands, Poland, Spain, United Kingdom and United States. France hosts liaison magistrates from Canada, Germany, Italy, Morocco, Netherlands, Spain, United Kingdom and United States to provide advice and support that facilitates MLA between French and foreign authorities.

2) France participates in the following networks:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- FATF
- The Egmont Group of Financial Intelligence Units,
- OECD Working Group on Bribery (member)
- CARIN

3) France has designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). France participates in the Global Focal Point Initiative supported by StAR/INTERPOL.

Principle 8	Provide Technical Assistance to Developing Countries
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1) France provides technical assistance to developing countries, and nations, and allocated resources in placing legal liaisons in foreign jurisdictions to provide both formal and informal assistance in the MLA process.⁸⁸ France has designated the French Central Service for the Prevention of Corruption (SCPC) as the competent authority that may technically assist other countries concerning corruption (including as well prevention than other issues such as techniques of investigation, MLA, asset recovery, etc.).

2) SCPC organises an annual one-week session attended by magistrates and public agents from various

⁸⁷ StAR Asset Recovery Handbook (World Bank, 2011), at 133.

⁸⁸ StAR Asset Recovery Handbook (World Bank, 2011), at 125; *Tracking Anti-Corruption and Asset Recovery Commitments* (OECD/StAR Initiative, 2011), at 42.

countries; and at the bilateral level, provides assistance to different anticorruption authorities, such as in a recent example, the Cameroonian National Commission Against Corruption (June 2012), or as part of the implementation of training programs financed by international organisations.⁸⁹

3) Other French technical assistance specifically focused on asset recovery include the G8 Deauville Partnership with Arab Countries in Transition, work with other multilateral working groups related to ongoing investigations, and the international conference on asset recovery involving European countries and Southern American countries (March 2012).⁹⁰

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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1) France indicated that it does not publish, or otherwise make publicly available, information on asset recovery cases, such as amounts frozen, seized, recovered or returned.⁹¹

2) France's information sharing has also been inferred from its participation in networks, as listed under Principle 7.

⁸⁹ France comments received on initial draft of this benchmarking survey.

⁹⁰ France response to Question 25 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

⁹¹ France response to question 24 of the G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

Germany – Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) Germany has confirmed that the country has not created nor made publicly available a specific asset recovery policy or policy statement with respect to the proceeds of corruption.⁹²

2) However, in its Government Strategy, “Anti-Corruption and Integrity in German Development Policy” asset recovery plays an important role in the area of implementation of international commitments by increasing support on asset recovery to partner countries, for instance through legal assistance, training and advisory services. According to the Strategy, the following action is to be taken: “Germany will move asset recovery higher up on its development cooperation agenda, and support partner countries in recovering illegally acquired assets”⁹³ In addition, statements on importance of asset recovery generally were found on the websites of regional authorities: Ministry of Justice in North Rhine-Westphalia - “*Vermögensabschöpfung - Straftaten dürfen sich nicht lohnen*”⁹⁴ and Rhineland Palatinate Police - “*Kriminaldirektion Ludwigshafen - Sachbereich Vermögensabschöpfung*.”⁹⁵

3) Germany is not a State Party to the United Nations Convention against Corruption.

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2010 FATF Mutual Evaluation Report, Germany was rated Partially Compliant or Non-Compliant with all of the specified FATF Recommendations used to infer adherence with Principle 2:

Germany: 2010 MER	Rating
R. 5 Customer Due Diligence	PC
R. 6 Politically Exposed Persons	PC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	NC
R. 34 Legal Arrangements – Beneficial Owners	NC

2) Germany indicated, however, that the country had undertaken significant legal reforms to ameliorate

⁹² Germany response to Questions 21-22 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

⁹³ Information provided by Germany (March 2013): Strategiepapier “Antikorruption und Integrität in der deutschen Entwicklungszusammenarbeit,” Seite 30, at http://www.bmz.de/de/publikationen/reihen/strategiepapiere/Strategiepapier318_4_2012.pdf (English version will be online soon).

⁹⁴ Information provided by Germany (March 2013): Unofficially translated as “Asset Recovery, crime must not be rewarded” at <http://www.justiz.nrw.de/JM/justizpolitik/schwerpunkte/vermoegensabsch/index.php>.

⁹⁵ Statement at http://www.polizei.rlp.de/internet/nav/aae/aae509c6-071a-9001-be59-2680a525fe06&ic_uCon=e6c4045d-9df5-1101-2068-abd7913a4f82&conPage=1&conPageSize=50.htm.

most of these deficiencies, as excerpted below:

“Since the adoption of its mutual evaluation report in February 2010, Germany has made significant progress to remedy a large part of deficiencies, in particular by passing a number of laws covering various aspects of its AML/CFT regime. The FATF itself reached this conclusion in its analysis of Germany’s first follow-up report. [...]”

CDD: The Act to Optimise the Prevention of Money Laundering of 22 December 2011 inserted the clear requirement that financial institutions and DNFBPs always have to satisfy themselves of the veracity of the information collected regarding the beneficial owner by taking risk-adequate measures. This amendment ensures that in all cases not only is the beneficial owner identified, but also verified, and that institutions and persons covered by the AML Act only have discretion with regard to the scope of the measures necessary for this purpose given the level of risk. This is also supported by the new edition of the section 4 (6) where the last sentences require the contracting party to prove the identity of the beneficial owner to the financial institution or DNFBP.

Regarding the beneficial owner in the context of a trust arrangement, Germany has adopted a much broader definition. This definition refers explicitly to a settlor (Treugeber); furthermore by this definition any natural person who otherwise directly or indirectly exercises a controlling influence on the management or distribution of assets or property is also deemed a beneficial owner. Additionally, a new provision has been inserted which covers cases where a person other than the contracting party is nevertheless deemed the actual beneficial owner by virtue of that party’s (beneficial) control of the business relationship.

The amendment of section 5 of the AML Act has the aim of addressing both the issue of CDD exemptions without risk assessment as well as the absence of certain obligations in case of situations that are deemed to present low risk. The amendments of section 5 (1) stipulate that financial institutions and DNFBPs must now take into account the circumstances of the individual case and make sure that the preconditions for simplified customer due diligence are not outweighed by other risk factors in the concrete case. A new sentence 2 of section 5 (1) of the amended AML Act now refers to the scope of simplified due diligence as a legal consequence of a lower level of risk and provides for the obligations 1) to identify the contracting party and, in the case of business relationships, 2) to monitor continuously the business relationship as minimum requirements in lower risk cases while the scope of measures to verify the identity and to monitor may be reduced as appropriate. In this context the Act to Optimise the Prevention of Money Laundering of 22 December 2011 deleted the former reference to section 3 (2) sentence 1 no. 4 of the AML Act in section 5 (1) sentence 1 of the AML Act. This reference had allowed the application of simplified CDD also in cases of doubts about the veracity of the information gathered in the course of identifying the contracting party. Thus, the provisions set out above make it clear that neither the prerequisites for applying simplified due diligence nor the legal consequences of lower risk may be interpreted as exempting financial institutions and DNFBPs from the obligation of conducting their own risk assessment of the individual case and taking adequate measures.

PEPS- In relation to Recommendation 6, the Act to Optimise the Prevention of Money Laundering of 22 December 2011 amended the AML Act by 1) requiring the application of enhanced due diligence measures also to situations where the beneficial owner of the contracting party is a politically exposed person (PEP); 2) deleting the limitation “based outside the country” in the relevant provision of the AML Act, which leads to PEPs being subject to enhanced due diligence obligations even if they exercise their prominent public function abroad, but reside in Germany; 3) rephrasing the reference from “immediate manager or immediate superior management level” to “superior employee” as the person whose

approval is necessary to establish or continue the relationship. Thereby, Germany has adequately addressed the deficiencies stated in its MER with regard to Recommendation 6.

DNFSBPs- All the new and amended legal provisions that were described in the comments to Recommendations 5 and 6 in relation to identification and verification of beneficial owners as well as enhanced customer due diligence with regard to PEPs are equally applicable to DNFBPs. Therefore, the legislative measures taken by Germany have also improved compliance with Recommendation 12.

LEGAL PERSONS - In respect of the measures to ensure the transparency of the ownership control of legal entities (Recommendation 33) a proposal for an amendment of the German Stock Corporation Act (Aktiengesetz) has been made. According to that proposal, bearer shares may only be issued if (1) the shares of the stock corporation are publicly listed or (2) if the shares have been immobilised. In the later case, the law will require them to be held with a regulated financial institution or professional intermediary. If the stock corporation does not comply with these rules, the bearer shares will be treated as registered shares. Also, stock corporations issuing registered shares will have to keep a shareholder register irrespective of whether the shares are certified.

LEGAL ARRANGEMENTS - As mentioned earlier in the comment to Recommendation 5, some measures have been put in place to increase the transparency of the Treuhand arrangements (Recommendation 34). Contracting parties are subject to corresponding duties of cooperation and disclosure under the law by virtue of the new section 4 (6) sentences 2 and 3 of the AML Act which requires them to prove the identity of the beneficial owner to the financial institution or DNFBP.⁹⁶

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The indicator for Principle 3 is derived from the assessment undertaken by June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of Germany’s assets tracing capabilities:

For identifying and locating bank accounts, direct access by the authorities to the data held by financial institutions on the accounts’ holders. This can be undertaken without court order. For identifying real estate, registers are kept at the state level, but are highly integrated, computerized, and easily accessible. For identifying companies, a national registry exists, and additional information about structure and assets are available through supervisory authorities. There is no registry of life insurance and securities; however, deducing ownership of all securities to be held and owned in Germany can be done on the level of credit institutions.

⁹⁶ Germany initial feedback to benchmark survey (2012).

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) Germany indicated that German law provided for Non-Conviction Based asset forfeiture actions under specific circumstances, sec 76a German Criminal Code (http://www.gesetze-im-internet.de/englisch_stgb/index.html). In the case of an extended confiscation (sec. 73d German Criminal Code), the standard of proof is lowered to some extent. Extended confiscation involves the confiscation of assets where circumstances justify the assumption that these assets were acquired as a result of criminal acts even though a connection between these assets and a specific criminal act cannot be established.⁹⁷ Extended confiscation is also applicable in NCB proceedings.

2) German law allows for the enforcement of NCB asset forfeiture decisions. According to Germany's feedback to the initial benchmark survey draft, "German law makes a difference between the cooperation with EU member states and third states. The enforcement of decisions of another EU member state is regulated by sec. 88 to 89 LICAM (English text available at http://www.gesetze-im-internet.de/englisch_irg/index.html). The sections are based on the EU Framework Decision on the application of the principle of mutual recognition to confiscation orders. With respect to all third states sec. 48 - 58 LICAM will apply. Those sections apply according to sec. 48 Sentence 2 "to requests for the enforcement of an order for confiscation or deprivation, made by a court exercising other than criminal jurisdiction in the requesting State if the order is based on a punishable offence."⁹⁸

3) Private law actions are permitted in Germany.⁹⁹

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2010 FATF Mutual Evaluation Report, Germany was rated Partially Compliant with one of the specified FATF Recommendations used to infer adherence with Principle 5:

Germany: 2010 MER	Rating
R. 35 International Instruments	PC
R. 36 Mutual Legal Assistance (MLA)	LC
R. 37 Dual Criminality	LC
R. 38 MLA on Confiscation and Freezing	LC
R. 39 Extradition	LC
R. 40 Other Forms of International Cooperation	LC

2) Germany remains a non-signatory to the UNCAC.

⁹⁷ See also, Brun and Gray, et al, *Asset Recovery Handbook: A Guide for Practitioners* (World Bank, StAR 2011), at 117.

⁹⁸ *Ibid.*

⁹⁹ ICC FraudNet, *Asset Tracing and Recovery: The FraudNet World Compendium* (Erich Schmidt Verlag, 2009), Germany Chapter, at 612-17.

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) According to Germany's response to the G20 Anti-Corruption Working Group data-gathering questionnaire (2012), "The Federal Republic of Germany has transferred all tasks relating to the tracing and recovering of assets on the national level to the Federal Criminal Police Office, *Division SO 35 - Confiscation of assets as an integral part of investigations*. As regards investigations on the federal state level, the police forces of the 16 federal states have set up equivalent units on local as well as on federal state level.

As regards International Cooperation in the field of Asset Recovery on the European Level, one has to take into account a Decision adopted by the Council of the European Union of 6th December 2007 (Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States of the European Union in the field of tracing and identification of proceeds from, or other property related to, crime.) The aim of this decision is the direct cooperation of central national offices in the identification of property as well as illegally obtained proceeds from criminal offences.

The decision of the European Union provides that the Member States shall nominate a maximum of two offices for asset recovery, referred to as Asset Recovery Offices (ARO). The Federal Republic of Germany has transferred this task to the Federal Criminal Police Office, *Division SO 35 - Confiscation of assets as an integral part of investigations* - and the Federal Office of Justice, *Division III 1 - Extradition, Assistance in Enforcement and Mutual Legal Assistance, European Judicial Network in Criminal Matters*.¹⁰⁰

Principle 7	Participate Actively in International Cooperation Networks
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1) The German Central Authority for MLA is the Bundesamt für Justiz (Federal Office of Justice).¹⁰¹

2) Informal assistance may be provided by the federal criminal police, BaFin, and the financial intelligence unit (<http://www.bka.de/>). The BKA (Bundeskriminalamt) has attaché offices in some embassies.¹⁰² Asset Recovery relevant contact information, as well as helpful Information on civil processes, judicial cooperation, taking of evidence and mode of proof, service of documents, and enforcement of judgments is fairly accessible in Germany through a variety of websites.¹⁰³

¹⁰⁰ Germany response to Question 23 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

¹⁰¹ G20, "Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide, 2012," at 39.

¹⁰² StAR Initiative, *Barriers to Asset Recovery* (World Bank, 2011), at 128.

¹⁰³ Examples described in *StAR Asset Recovery Handbook* (World Bank, 2009), at 245:

http://www.bmj.bund.de/enid/9de2c6dac41fc4c549b89d79e577a825,0/Legal_and_Justice_Policy/Judicial_Cooperation_in_Civil_Matters_15b.html, http://ec.europa.eu/civiljustice/homepage/homepage_ger_en.htm, (Federal Foreign Office) <http://www.auswaertiges-amt.de/diplo/en/Startseite.html>, (Federal Ministry of Justice) http://www.bmj.bund.de/enid/9de2c6dac41fc4c549b89d79e577a825,0/aktuelles_13h.html, (Financial intelligence unit) <http://www.bka.de/>.

2) Germany participates in the following networks:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery (observer)
- FATF (member); Asia/Pacific Group on Money Laundering, Eurasian Group, GAFIAUD (observer)
- The Egmont Group of Financial Intelligence Units
- OECD Working Group on Bribery
- CARIN
- European Judicial Network

3) Germany is also a founding member of Group of States against corruption (GRECO).

4) As of February 6, 2013, Germany had not designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). Germany participates in the Global Focal Point Initiative supported by StAR/INTERPOL.

Principle 8	Provide Technical Assistance to Developing Countries
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1) Since 2012, the support of partner countries in recovering illegally acquired assets is an essential part of Germany's anticorruption strategy.¹⁰⁴ Accordingly, Germany has moved asset recovery higher up on its development cooperation agenda. On the bilateral level, Germany has supported capacity building for national authorities, which are responsible for asset recovery. For example, Germany provides technical assistance to the anticorruption agency of Bangladesh to develop its capacity in the area of anti-money laundering. Furthermore, Germany is supporting the development of the judiciary in developing countries through technical assistance. The German Foundation for International Legal Cooperation ("Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit," IRZ Foundation) regularly organizes training seminars and courses focusing on fighting corruption, organized crime and asset recovery.

2) Most recently, on 26 and 27 March 2013, the German Foreign Office hosted a workshop in Cairo on the topic of asset recovery for participants from Egypt and Tunisia.¹⁰⁵ The workshop was implemented as one of Germany's concrete contributions in the context of the Deauville Partnership, formed as part of the G8 Member States' pledge "to fulfill our international commitments to secure the return of stolen assets and, by taking appropriate bilateral action and promoting the World Bank / United Nations Stolen Asset Recovery Initiative, support Egypt and Tunisia in the recovery of assets." The Cairo workshop's agenda covered the whole range of asset-recovery related topics, starting from the basics of international legal assistance as provided for in the legal systems of Egypt, Germany, and Tunisia. The workshop then focused on asset tracing, as in practice it is of high importance to cooperate and exchange all available information in order to find hidden assets in a requested country. The workshop concentrated on legal requirements and proceedings in Germany so as to convey to the Egyptian and Tunisian participants all required information for a successful recovery of their nations' assets. In this

¹⁰⁴ Information provided by Germany (March 2013), which provided additional details in an attachment which has been appended to this paper.

¹⁰⁵ Information provided by Germany (March 2013).

regard the agenda comprised issues such as investigating and confiscating assets, filing requests for legal assistance, as well as enforcing court orders concerning the release and liquidation of stolen assets. During the workshop participants discussed practical cases and drafted requests for legal assistance to Germany. The workshop was successful in establishing contacts between practitioners from Egypt, Tunisia and Germany in order to facilitate further cooperation. The German side was represented, *inter alia*, by a high-ranking official from the Federal Ministry of Justice and an experienced practitioner from the Federal Office of Justice in charge of bilateral cooperation in asset recovery cases.

The workshop was organized by the German Foundation for International Legal Cooperation (“Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit” - IRZ) and financed under the Transformation Partnership Programme by the German Foreign Office and the German Institute for Foreign Cultural Relations (“Institut für Auslandsbeziehungen” - IFA).

As a follow up to the workshop the German Federal Ministry of Justice - in cooperation with the German Foundation for International Legal Cooperation – is considering the possibility of hosting a study visit on asset recovery with experts from Egypt and Tunisia. The aim of this study visit is to deepen knowledge on international cooperation in asset recovery cases and to establish personal contacts. The study visit of Tunisian experts will be supported by TAIEX, the Technical Assistance and Information Exchange instrument of the European Commission.

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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1) Germany’s Federal Criminal Police Office collects data regarding assets frozen and/or seized by all federal and federal state police forces and customs authorities, but data regarding assets ultimately recovered or returned is not collected completely since the competence for judicial authorities lies within the federal states and the collection of data is not organized centrally. Those detailed statistics are not publicized or otherwise made available to the public.¹⁰⁶

2) Germany’s information sharing has also been inferred from its participation in regional and international networks, as listed under Principle 7.

¹⁰⁶ Germany response to Question 24 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

Bonn, 5. März 2013

Betr.: IRZ Aktivitäten zum Thema Vermögensabschöpfung / Vermögensrückführung
G20 ACWG - asset recovery principles - revised country profile – Germany

hier: Anfrage des BMJ / Referat INT-KOR vom 1. März 2013

Baltische Staaten:

Litauen, allerdings im Jahr 2010: Seminar für Staatsanwälte zum Thema „Cybercrime,
Vermögensabschöpfung, Ethik im Strafprozess“ in Klaipeda.

Albanien:

- In Zusammenarbeit mit der Magistratenschule Seminar zum Thema „Bekämpfung der Korruption“ in Tirana, 15./16. März 2013
- In Zusammenarbeit mit der Magistratenschule Seminar zum Thema „Ermittlungsverfahren und Vorermittlungen“ in Tirana, 9./10. April 2013

Bulgarien:

- In Zusammenarbeit mit der Staatsanwaltschaft der Republik Bulgarien 2010 ein Workshop zum Thema „Vermögensabschöpfung“ in Sofia (22./23. April 2010)
- In Zusammenarbeit mit dem Nationalen Institut für Justiz:
- Seminar zum Thema „Grenzüberschreitende Kriminalität, Geldwäsche und Gewinnabschöpfung“ in Sofia (25. - 27.04.2012)

¹⁰⁷ Provided by Germany (March 2013).

- In Zusammenarbeit mit dem Nationalen Institut für Justiz Seminar zum Thema: „Bekämpfung von Korruption und organisierter Kriminalität u.a.“ (15./16. Oktober 2012)

Multilateral:

Durchführung einer multilateralen Konferenz zum Thema „Effektive Bekämpfung der organisierten Kriminalität und Korruption, Dubrovnik, 23. – 26. November 2010), mit 140 Teilnehmern aus 18 Partnerländern

Twinning (Kroatien):

In Zusammenarbeit mit der Behörde für die Bekämpfung und Prävention der Organisierten Kriminalität und Korruption (USKOK) Durchführung des Twinning Projekts „Strengthening Capacities of USKOK“ (Laufzeit 2010 bis 2012)

Moldova:

Conference in Chisinau on cybercrime and money laundering with the General Prosecutor’s Office of the Republic of Moldova, 13-15th April 2011 (auch Vermögensabschöpfung thematisiert durch GBA)

Ukraine:

Study visit on the fight against corruption for a delegation of the General Prosecutor’s Office of Ukraine in Hamburg (joint activity with the administration of Justice of the “Freie Hansestadt Hamburg”), 10-14th September 2012

Tunesien und Ägypten:

März 2013:

Seminar zum Thema Asset Recovery (Wiedererlangung gestohlener Vermögenswerte) in Zusammenarbeit mit dem ägyptischen und tunesischen Justizministerium und dem BMJ

Armenien:

Juli 2011:

Seminar Geldwäsche und Versicherungsbetrug in Kooperation mit dem Kassationsgericht der RA und Versicherungsunternehmen

Juli 2012:

Seminar Cybercrime und Gewinnabschöpfung in Kooperation mit der Prosecutor's School

Aserbaidshan

Februar 2013:

Seminar „Cybercrime“ und Gewinnabschöpfung in Kooperation in Kooperation mit dem Azerbaijan Law Reform Centre.

Rumänien:

EU-financed project (ISEC): "Developing professional financial investigators in Romania" (refers to asset recovery and combating corruption), seminars, Train-the-trainer-seminars as well as the elaboration of a manual for practitioners; Project period: August 2011 - September 2012;

Partner: IRZ, Prosecutors Office attached to the High Court of Justice and Cassation of Romania

EU-financed project (ISEC): "Enhancing the efficiency and effectiveness in the field of Money Laundering and Assets Recovery", Project period: May 2011 - September 2012 Seminars, Elaboration of a handbook

Partner: IRZ-Foundation, Romanian Ministry of Justice, Prosecutors Office attached to the High Court of Justice and Cassation of Romania, Spanish Institute for Fiscal Studies, National Directorate for Combating Corruption at the Prosecutors Office attached to the High Court of Justice and Cassation of Romania, General Inspectorate of the Romanian Police, Ecole Nationale de Magistrature (Paris)

2 Seminars:

- Seminar on asset recovery with the Prosecutors Office attached to the High Court of Justice and Cassation of Romania in Bucharest on 2nd and 3d of May 2011
- Seminar on asset recovery with the National Directorate for Combating Corruption at the Prosecutors Office attached to the High Court of Justice and Cassation of Romania, Sinaia, 11th and 12th of December 2010

Italy - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) As a member of G8, Italy was among the countries that endorsed the asset recovery action plan. As part of Italy's commitment to the Deauville Partnership, the "Italian Asset Recovery Tools & Procedures, A Practical Guide for International Cooperation" ("Asset Recovery Guide") was jointly produced by the Ministry of Foreign Affairs, Ministry of Justice, Ministry of the Interior and the Financial Intelligence Unit.¹⁰⁸

2) Italy's Asset Recovery Guide affirms Italy's commitment to asset recovery as a policy priority:

"Italian Support for Asset Recovery and the Implementation of Chapter V of the UNCAC

- Promoting Policy at the Multilateral Level: Italy worked with G20 partners at the Seoul Summit to adopt commitments on asset recovery cooperation and to welcome, at the Cannes Summit, principles for effective asset recovery.

- Supporting Multilateral Initiatives: Italy is a partner of the Stolen Asset Recovery Initiative (StAR) and has joined the Camden Asset Recovery Inter-Agency Network (CARIN), an informal network of contact points dedicated to improving cooperation in all aspects of tackling the proceeds of crime. Italy also participates in the Asset Recovery Focal Point Initiative supported by INTERPOL and StAR."¹⁰⁹

The Asset Recovery Guide is available in English, French and Arabic on the Deauville Partnership Arab Forum on Asset Recovery website and on the website of Italian Ministry of Foreign Affairs.¹¹⁰

3) A policy statement on Asset Recovery is also posted on the website of Italian Ministry of Foreign Affairs.¹¹¹

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2006 FATF Mutual Evaluation Report, Italy was rated Partially Compliant or Non-Compliant with four of the specified FATF Recommendations used to infer adherence with Principle 2:

¹⁰⁸ The Guide may be accessed in English, French and Arabic at http://www.esteri.it/MAE/EN/Sala Stampa/ArchivioNotizie/Approfondimenti/2012/09/20120903_ManualeRecupero.htm?LANG=EN and at <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery>.

¹⁰⁹ *Ibid.*, at paragraph 8.

¹¹⁰ The Guide may be accessed in English, French and Arabic at http://www.esteri.it/MAE/EN/Sala Stampa/ArchivioNotizie/Approfondimenti/2012/09/20120903_ManualeRecupero.htm?LANG=EN and at <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery>.

¹¹¹ http://www.esteri.it/MAE/EN/Sala Stampa/ArchivioNotizie/Approfondimenti/2012/09/20120903_ManualeRecupero.htm?LANG=EN

Italy: 2006 MER	Rating
R. 5 Customer Due Diligence	PC
R. 6 Politically Exposed Persons	NC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	C
R. 34 Legal Arrangements – Beneficial Owners	PC

2) Italy's Third MER Follow-up Report in 2009 (at paragraph 12) stated that Italy has resolved most of its major deficiencies to a rating of Largely Compliant or better, particularly through the adoption of the 3rd EU AML/CFT Directive and Regulation (EC) 1781/2006 and (domestic) AML/CFT Legislative Decree 231/2007.

3) Italy also provided the following information:¹¹²

February 2011: secondary regulation by the Ministry of the Interior containing risk indicators for designated businesses and professions.

March 2011: guidance issued by the Bank of Italy concerning internal organisational and procedural requirements to be met by all financial institutions in order to prevent their involvement in money laundering and terrorist financing transactions.

May 2011: guidance issued by the Italian FIU concerning the information and data to be included in the newly introduced internet-based suspicious transactions report form by all reporting entities.

December 2011: law banning the transfer of cash over the threshold of € 1.000 (previously at € 2.500) between natural and legal persons other than banking and electronic money institutions and the Post Office.

September 2012: guidance issued by the Bank of Italy concerning operational rules to correctly implement the requirements set by Regulation (EC) 1781/2006 on information on the payer accompanying the transfer of funds.

November 2012: Law n. 190, 6 November 2012, on Anti-corruption that provides for improvements in the asset recovery related activity. Law n.190 of 6th November 2012, brings a comprehensive set of measures aimed at preventing and repressing corruption and illegality in the Public Administration. The Law gives a follow-up to main international instruments to which Italy has subscribed (1997 EU Convention against Corruption; 1997 OECD Convention against Bribery in International Business Transactions; 1999 Council of Europe Criminal Convention against Corruption; 2003 UN Convention against Corruption/UNCAC) and implements the recommendations addressed to Italy by the competent OECD and Council of Europe Bodies on the occasion of the mutual evaluation procedures conducted until now.

¹¹² Italy response to Question 17 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012). In addition, Italy published its Second Biennial Update provided to the FATF in February 2013 at http://www.dt.tesoro.it/prevenzione_reati_finanziari/area_internazionale/Antiriciclaggio_Internazionale.html

February 2013: secondary regulation issued by the Ministry of the Economy setting the list of non-EU countries and territories which impose requirements equivalent to those laid down in the EU AML/CTF regulation.

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The indicator for Principle 3 is derived from the assessment undertaken by the June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of Italy’s assets tracing capabilities:

For identifying and locating bank accounts, a national registry is accessible to authorities without a court order. For identifying real estate, landowners’ registration/deed registration is mandatory at the national level. For identifying companies, a registry exists at the national level, and nominal shareholders are identified. Securities are registered at the national level and (foreign) trust instruments are held by AML/CFT obliged agents.

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) Italy’s 2006 Mutual Evaluation Report noted: “Italian Law provides for a very comprehensive and far-reaching confiscation framework which is based on a threefold approach:

- 1) a traditional conviction based confiscation of assets derived from the offence;
- 2) a system of confiscation based on the alleviation of the burden of proof for convicted persons who cannot justify the origin of their assets; and
- 3) a preventive system of confiscation for assets in possession of persons belonging to mafia-type organizations.”¹¹³

Unique, yet not alone, among civil law jurisdictions, Italy allows for a variety of a plea bargain called a *patteggiamento* (Code of Criminal Procedure, Articles 444–48) which has been used to resolve corruption cases and effect asset recovery.

2) Italy’s Asset Recovery Guide states: “if the foreign jurisdiction does not yet have a foreign order against the asset, Italian Courts may be able to initiate an action, either as a criminal confiscation or as a “non-conviction based” (freezing and confiscating assets irrespective of a prior conviction of the owner in a criminal court) confiscation.”¹¹⁴

3) Italy indicated that it has laws pertaining to conflicts of interest for most public employees and

¹¹³ Mutual Evaluation Report, at 35.

¹¹⁴ Guide (English), at para 6a. “confiscation of property related to Foreign Offences,” at <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery>.

disclosure of income and assets by public officials and certain public employees (Law 5 July 1982, n. 441 - Provisions for the disclosure of the financial situation of holders of elective positions and executive positions in some institutions).¹¹⁵

4) Private law actions are permitted.¹¹⁶

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2006 FATF Mutual Evaluation Report, Italy was rated Partially Compliant with one of the specified FATF Recommendations used to infer adherence with Principle 5.

Italy: 2006 MER	Rating
R. 35 International Instruments	PC
R. 36 Mutual Legal Assistance (MLA)	C
R. 37 Dual Criminality	C
R. 38 MLA on Confiscation and Freezing	C
R. 39 Extradition	C
R. 40 Other Forms of International Cooperation	C

2) Italy was rated Partially Compliant on R. 35 International Instruments, for not having ratified the Palermo Convention. Italy's subsequent ratification of the Palermo Convention was acknowledged in the 2009 Follow-up Report.¹¹⁷

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) Italy's Asset Recovery Guide states that the International Police Cooperation Service (Servizio per la Cooperazione Internazionale di Polizia – SCIP) serves as the Italian an Asset Recovery Office.¹¹⁸ SCIP is an interagency service for international operational police cooperation, and comprises the national Central Bureau-Interpol, the Italian Europol National Unit and the S.I.Re.N.E. Division; SCIP is housed within the Criminal Police Central Directorate.

¹¹⁵ Italy responses to Questions 32 and 33 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

¹¹⁶ ICC FraudNet, *Asset Tracing & Recovery: The FraudNet World Compendium*, (Berlin: Erich Schmidt Verlag GmbH & Co., 2009), Italy chapter at 726-27.

¹¹⁷ Italy Third Mutual Evaluation Follow-Up Report (27 February 2009), "Recommendation 35," at 14-15 (paragraphs 67-68).

¹¹⁸ Italy Asset Recovery Guide (English), at paragraph 1 "Overview," at <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery>.

Principle 7	Participate Actively in International Cooperation Networks
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1) The Italian Ministry of Justice serves as the Central Authority for international judicial assistance in criminal matters.

2) Italy indicated that:

“Italy has ratified the European Union 1997 anti-corruption Convention as well as the 1996 First protocol to the EU 1995 Convention on the Protection of the European Communities’ financial interests.

The Anticorruption Service (SAET) of the Department for Public Administration is member of the following initiatives:

- EPOC Project within the “Criminal Justice” programme financed by the EU Commission
- E-NIS project of Transparency International
- EPAC (European Partners Against Corruption) European informal network
- the Open Government Partnerships where Italy presented its Action Plan”¹¹⁹

3) Italy participates in the following networks:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- FATF, Eurasian Group (Observer)
- The Egmont Group of Financial Intelligence Units
- OECD Working Group on Bribery
- CARIN

4) Italy has designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC. Italy participates in the Global Focal Point Initiative supported by StAR/INTERPOL.

Principle 8	Provide Technical Assistance to Developing Countries
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1) At the moment, for reasons of spending review, it would be preferable to identify external public sources for the financing of the training activities.¹²⁰ Nonetheless, In May, 2012, in Rome, the Bank of Italy hosted - in the framework of its annual programme for technical cooperation with central banks of emerging countries - a seminar devoted to the fight against money laundering, terrorism financing and the misuse of payment systems. Presentations have been given by experts from Banca d'Italia, the Italian Financial Intelligence Unit, Direzione Investigativa Antimafia and Guardia di Finanza.

¹¹⁹ Italy response to Question 7 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

¹²⁰ Information provided by Italy (March 2013).

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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- 1) Italy indicated that it does not publish or otherwise make publicly available information on asset recovery cases.¹²¹
- 2) Italy's information sharing has also been inferred from its participation in networks, as listed under Principle 7.

¹²¹ Italy response to Question 25 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

Japan - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) As part of its commitment to the G8 Deauville Partnership with Arab Countries in Transition, Japan has produced the “Practical Guide for Assets Recovery: How to return the assets concerned” (Asset Recovery Guide).¹²² The Asset Recovery Guide notes that “Japan is not a member of the United Nations Convention against Corruption though Japan has signed the Convention in 2003. However, Japan may provide asset recovery assistance to other countries, in accordance with international comity and its domestic law. All countries which Japan has diplomatic relations may send a request to Japan for asset recovery.”¹²³

2) Japan indicated that it does not have a specific asset recovery policy; however, applicable domestic laws and regulations warrant it.¹²⁴

3) In the Ministry of Foreign Affairs’ website, we located the English and Japanese versions of the multilateral statement, “The Deauville Partnership with Arab Countries in Transition Chair’s Summary of the Foreign Ministers Meeting,” which contains paragraph 9 on Arab Forum on Asset Recovery.¹²⁵

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2008 FATF Mutual Evaluation Report, Japan was rated Non-Compliant with all five of the specified FATF Recommendations used to infer adherence with this principle:

Japan: 2008 MER	Rating
R. 5 Customer Due Diligence	NC
R. 6 Politically Exposed Persons	NC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	NC
R. 34 Legal Arrangements – Beneficial Owners	NC

2) Japan indicated that since the adoption of the Mutual Evaluation Report by FATF in 2008, Japan has

¹²² Available at <http://star.worldbank.org/star/sites/star/files/Japan-practical-guide-for-asset-recovery.pdf> (also available in French and Arabic).

¹²³ Japan Asset Recovery Guide (English) at 1. <http://star.worldbank.org/star/sites/star/files/Japan-practical-guide-for-asset-recovery.pdf>.

¹²⁴ Japan response to Questions 21-22 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

¹²⁵ Website at <http://www.mofa.go.jp/index.html>; example includes “The Deauville Partnership with Arab Countries in Transition Chair’s Summary of the Foreign Ministers Meeting,” paragraph 9 on Arab Forum on Asset Recovery, in English at “http://www.mofa.go.jp/policy/un/assembly2012/speech_g8dp.html and in Japanese at http://www.mofa.go.jp/mofaj/gaiko/unsokai/67_g8dp_2.html.¹²⁶ Summary of feedback received from Japan on initial draft of benchmarking survey.

made a broad range of efforts in order to further strengthen its AML/CFT systems in accordance with FATF recommendations. The legal framework for Customer Due Diligence (CDD) and system for reporting of suspicious transaction are set out in the Act on the Prevention of Transfer of Criminal Proceeds (hereinafter referred to as “Criminal Proceeds Act”). The revised Criminal Proceeds Act was enacted by the Diet on April 27, 2011 (promulgated on April 28, 2011). The revised subordinate decrees (Cabinet Order and Ministry Ordinance) which establish the details of this Act were promulgated on March 26, 2012 and have been enforced since April 1, 2013. The revised Act and its subordinate impose a wide range of additional obligations on financial institutions and DNFBPs in order to further enhance their customer due diligence. Further, Article 4, paragraph (2) of the revised Act requires enhanced customer due diligence for high risk transactions.¹²⁶

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The indicator for Principle 3 is derived from the assessment undertaken by the June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of Japan’s assets tracing capabilities:

For identifying and locating bank accounts, a request has to be sent to all financial institutions by the Public Prosecutor or the Police. For identifying real estate, landowners’ registration/deed registration occurs at the local level, and the beneficial owner is not disclosed in real estate transactions and such identity can be easily hidden behind legal structures. For identifying companies, companies maintain their own registries, and if LEAs [Law Enforcement Authorities] are refused access they must return with a court order. However a warrant can be issued within several hours by a judge and thus meets, in Japan’s view, the requirement on the issue of the swiftness. There are no mechanisms in place to consistently and rapidly identify the holders of life insurance and securities, excepting those held by trust companies and high-level public officials.

2) The Japanese Police can, via ICPO channel, exchange information on the targeted bank accounts with other National Central Bureaus of member states.

3) Japan also indicated: “In certain circumstances, such as information on the bank accounts of the person/entities designated by the United Nations Security Council resolutions, the Ministry of Finance can make inquiries about the information to financial institutions based on the Foreign Exchange and Foreign Trade Act (Article 55-8).”¹²⁷

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) If a foreign country’s court renders a final and binding adjudication on a criminal case to confiscate assets located in Japan as proceeds of crime, such country can make a request of MLA to execute such

¹²⁶ Summary of feedback received from Japan on initial draft of benchmarking survey.

¹²⁷ Summary of feedback received from Japan on initial draft of benchmarking survey.

confiscation order and the transfer of such assets which is subject to confiscation.¹²⁸

2) NCB forfeiture order is not considered final and binding adjudications on a criminal case to confiscate assets under the Anti-Organized Crime Law.¹²⁹

3) By bringing an action to the court as a civil case, the concerned assets may be repatriated.¹³⁰

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2008 FATF Mutual Evaluation Report, Japan was rated Partially Compliant with most of the specified FATF Recommendations used to infer adherence with Principle 5:

Japan: 2008 MER	Rating
R. 35 International Instruments	PC
R. 36 Mutual Legal Assistance (MLA)	PC
R. 37 Dual Criminality	PC
R. 38 MLA on Confiscation and Freezing	LC
R. 39 Extradition	PC
R. 40 Other Forms of International Cooperation	LC

With regards to the cooperation among financial intelligence units, the Japanese Financial Intelligence Unit, now called Japan Financial Intelligence Center (JAFIC), has become a member of the Egmont Group of Financial Intelligence Units since 2000. JAFIC has been actively participating in the activities of the cooperation among members. At the end of February, 2013, JAFIC has established cooperation frameworks for exchanging information with 52 foreign counterparts.¹³¹

As for the international cooperation, Japan can provide mutual legal assistance, including asset recovery, as a matter of international comity, in accordance with its domestic laws, even without the bilateral/multilateral mutual legal assistance treaty. Moreover, with a view to achieving more effective MLA, Japan has been actively engaged in bilateral MLAT negotiations, and the MLATs with the U.S., Korea, China, Hong Kong, Russia and EU have already come into effect.

Regarding the international agreements on mutual legal assistance and asset recovery, Japan has signed United Nations Convention Against Transnational Organized Crime (UNTOC) and United Nations Convention Against Corruption (UNCAC), and has concluded United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and International Convention for the Suppression of the Financing of Terrorism.

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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¹²⁸ Summary of feedback received from Japan on initial draft of benchmarking survey.

¹²⁹ Feedback received from Japan on initial draft of benchmarking survey.

¹³⁰ Feedback received from Japan on initial draft of benchmarking survey.

¹³¹ Information provided by Japan (May 2013).

1) While Japan does not have a specialized asset recovery team / kleptocracy unit, Japan has adequate mechanisms and is well able to identify assets concerned, freeze or confiscate and return them in providing asset recovery assistance to requesting countries. Its effectiveness is guaranteed by a close cooperation among related governmental bodies.

Principle 7	Participate Actively in International Cooperation Networks
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1) As a Signatory and observer State to the UNCAC, Japan has been actively participated in the Conferences of the State Parties to the UNCAC and in the Open-ended Intergovernmental Working Group on Asset Recovery. Further, Japan works closely with member economies of APEC (Asia Pacific Economic Cooperation) Anti-Corruption and Transparency Working Group Meeting. By actively participating in such international meetings, informal relationships with foreign counterparts have been strengthened.¹³²

2) Japan participates in the following networks:¹³³

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- FATF, Asia/Pacific Group on Money Laundering
- The Egmont Group of Financial Intelligence Units
- OECD Working Group on Bribery

3) Japan is now studying possibility to create and join into the ARIN-AP (Asset Recovery Inter-Agency Network in Asia and the Pacific).¹³⁴

Principle 8	Provide Technical Assistance to Developing Countries
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1) The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) is a United Nations regional institute, established by agreement between the United Nations and the Government of Japan, with the aim of promoting the sound development of criminal justice systems and mutual cooperation in Asia and the Pacific Region.¹³⁵ UNAFEI has hosted Asset Recovery-specific events such as (i) the Third Regional Seminar on Good Governance for Southeast Asian Countries (Manila, December 2009); the main title of the seminar was "Measures to Freeze, Confiscate and Recover Proceeds of Corruption, including Prevention of Money-Laundering,"¹³⁶ (ii) International

¹³² Feedback received from Japan on initial draft of benchmarking survey.

¹³³ Independent research and Japan Response to Questions 26-27 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

¹³⁴ Information provided by Japan (May 2013).

¹³⁵ Information provided by Japan (May 2013).

¹³⁶ Japan feedback to the initial draft of benchmarking survey. Participants in the regional seminar included twenty-three criminal justice practitioners from seven countries: the Philippines, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, and Thailand. Japan also indicated, « As a Signatory and observer State to the UNCAC, Japan has been actively participated in the Conferences of the State Parties to the UNCAC and in the Open-ended

Training Course on "Attacking the Proceeds of Crime: Identification, Confiscation, Recovery and Anti-Money Laundering Measures" (Tokyo, Autumn 2010) which was attended by 20 participants from Asia, Latin America, Caribbean and African countries including Japan.

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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- 1) Japan has indicated that it does not publish or otherwise make publicly available information on asset recovery cases.¹³⁷
- 2) According to Japan, "Information has been shared through the participation in UNCAC Open-ended Intergovernmental Working Group on Asset Recovery and in OECD Working Group on Bribery."¹³⁸
- 3) Japan's information sharing has also been inferred from its participation in additional networks listed under Principle 7.

Intergovernmental Working Group on Asset Recovery. Further, Japan works closely with member economies of APEC (Asia Pacific Economic Cooperation) Anti-Corruption and Transparency Working Group Meeting. By actively participating in such international meetings, informal relationships with foreign counterparts have been strengthened. Japan has contributed to the CPCJF (Crime Prevention and Criminal Justice Fund) managed by UNODC for supporting the anti-corruption activities in East-Asian Countries such as Vietnam and Laos."

¹³⁷ Questions 24 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

¹³⁸ Japan feedback to initial draft of benchmarking survey.

Korea, Republic of (South Korea) - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) South Korea indicated that it has a specific asset recovery policy or policy statement with respect to the proceeds of corruption that is publicly available.¹³⁹

2) South Korea also stated that “prosecutors believe that the increased budget, resources, and priority effort being made to focus on money laundering and asset recovery [that will] enable them to better detect criminal proceeds and improve performance in this area. The same efforts agreed to be undertaken in Korea’s Implementation of Action Plan followed by the MER process, to increase enforcement of its money laundering laws apply equally to increase the use of its confiscation authority, including the prosecutors’ strategy, the new asset recovery taskforces, and the incorporation of performance in this area as an evaluation factor in personnel appraisals.”¹⁴⁰

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2009 FATF/APG Mutual Evaluation Report, South Korea was rated Partially Compliant or Non-Compliant with all five of the specified FATF Recommendations used to infer adherence with Principle 2:

South Korea: 2009 MER	Rating
R. 5 Customer Due Diligence	PC
R. 6 Politically Exposed Persons	NC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	NC
R. 34 Legal Arrangements – Beneficial Owners	NC

2) With respect to Recommendations 5, 6 and 12, South Korea indicated that “the Korean government amended the Financial Transaction Reports Act in March 2010 to establish a clear legal foundation for the authority of the Commissioner of the KoFIU to issue comprehensive guidelines regarding the AML/CFT operations of financial institutions. The *AML/CFT Regulation* was enacted as the KoFIU Notice and came into force on July 30, 2010.”¹⁴¹

3) With respect to Recommendation 5, the AML/CFT Regulation stipulates all of the obligations including CDD that financial institutions should implement.¹⁴² The FATF mutual evaluation team decided that the Regulation is enforceable and cured most of the deficiencies pointed out during the 2009 mutual

¹³⁹ South Korea responses to Questions 21-22 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

¹⁴⁰ South Korea feedback to initial draft of benchmarking survey.

¹⁴¹ South Korea feedback to initial draft of benchmarking survey.

¹⁴² Information provided by South Korea (March 2013).

evaluation. In addition, in order establish a new provision to impose sanction against financial institutions and employees of the financial institutions, the Korean government amended article 17 of the Financial Transaction Reports Act in March 2012. The Act entered into force on March 22, 2013. As mentioned, with respect to Recommendation 5, the Korean government remedied the deficiency pointed out by the FATF mutual evaluation and the level of compliance reached Largely Compliant.¹⁴³

4) With respect to Recommendations 6, the Korean government stipulated the obligation to monitor, perform enhanced due diligence and have the upper management’s approval on foreign politically exposed persons in the AML/CFT Regulation (articles article 64 to 68), thereby remedying the deficiency pointed out by the FATF mutual evaluation.¹⁴⁴

5) With respect to Recommendations 12, in the AML/CFT Regulation which entered into force on December 28, 2010, the Korean government imposed the AML/CFT obligation and comprehensive set of rules on casinos.¹⁴⁵ With respect to other DNFBPs, the research on implementing obligations to DNFBPs other than casinos has been completed and discussions with relevant parties are underway regarding implementation measures. It is anticipated that by 2015, all measures imposing AML/CFT obligations to all DNFBPs will be implemented.

6) South Korea also indicated that the country had undertaken recent review of systems and controls in financial institutions or other regulated businesses regarding due diligence requirements for high risk customers such as PEPs, correspondent banking arrangements, the application of enhanced due diligence (EDD) to PB customers, customers with terrorism financing history, and countries non-compliant with FATF standards.¹⁴⁶

7) With respect to Recommendations 33 and 34, the Korean government undertook research in 2011 to remedy the deficiencies pointed out in the MER and reviewed ways to establish implementation measures.¹⁴⁷ Using a risk- based approach, the Korean government plans to establish measures to regulate beneficial ownership information of the legal persons and legal arrangements with the highest level of risk for abuse as a method for the financing of terrorism. It is anticipated that an information management system for all legal persons and legal arrangements with respect to beneficial ownership will be established.

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The description for Principle 3 is derived from the assessment undertaken by June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of South Korea’s assets tracing capabilities:

¹⁴³ Information provided by South Korea (May 2013); See FATF, Mutual Evaluation of Korea: Fifth Follow-Up Report (6 October 2011) and Sixth Follow-Up Report (29 May 2012).

¹⁴⁴ Information provided by South Korea (March 2013).

¹⁴⁵ Information provided by South Korea (March 2013).

¹⁴⁶ South Korea response to Question 17 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

¹⁴⁷ Information provided by South Korea (March 2013).

For identifying and locating bank accounts, reliance is upon a request to be sent to all financial institutions by an authority upon court order decision. When analyzing suspicious transaction reports, the FIU has access to financial information without the need of a court order, but still needs to send a circulatory letter to all financial institutions in order to locate all the assets at stake. For identifying real estate, the Land registration Department maintains a register of properties acquired by non-resident Koreans, otherwise, information is held by the real estate agents. For identifying companies, the Commercial Registration Office holds information on registration details at the national level, with additional details furnished to tax authorities, but broader company details are held at the company's registered office. There are no central registry systems in place to consistently and rapidly identify the holders of life insurance and securities, and only those held by registered trust companies may be immediately accessible. There is no central registry system to identify life insurance or securities in Korea. However, if an investigative agency has the court issued warrant, then the agency can obtain such information.¹⁴⁸

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms, Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) According to the 2009 APG/FATF Mutual Evaluation Report on South Korea: "Under Article 48 of the Criminal Act, a conviction is not required for confiscation. In the absence of a conviction, what will have to be proven are the requirements listed in the provision that the thing to be confiscated was in whole or in part used or sought to be used in the commission of a crime; or is a thing produced or acquired by means of criminal conduct; or a thing exchanged for any of the preceding types of things."¹⁴⁹

2) South Korea indicated that: "In addition, Korea has drafted an amendment to the Criminal Act to allow for non-conviction based forfeiture, which is to be submitted to the National Assembly, and may positively impact effectiveness in the future. Depending on the scope of the NCB, this may well enhance Korea's ability to provide requisite authority to seize and confiscate anti-corruption related assets without the need for a criminal prosecution. Furthermore, Korea enacted the Act on Regulation and Punishment of concealment of Proceeds of Crime. In accordance with Article 8 and Article 10 of this Act, confiscation and collection of equivalent value of proceeds of crime is feasible. With the Article 3 and Article 5 of the Act on Special Cases concerning the Confiscation and Return of Property, return of proceeds of crime and property acquired through corrupt practices became possible."¹⁵⁰

3) According to the G20 Guide on Mutual Legal Assistance, "the Republic of Korea does not recognize civil forfeiture."¹⁵¹

¹⁴⁸ For more detailed discussion of Korea's assets tracing capabilities, see *G20 Assets Tracing: Country Profiles* (June 2012).

¹⁴⁹ Mutual Evaluation Report at 47, paragraph 137.

¹⁵⁰ South Korea feedback on initial draft of benchmarking survey.

¹⁵¹ G20, "Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide 2012," Republic of Korea at 67.

4) South Korea requires asset and conflict of interest disclosures by public officials.¹⁵²

5) Private law actions are permitted. According to feedback received from South Korea: "Victims can also file a civil lawsuit against offenders for returning the proceeds of crime."¹⁵³

6) On March 5, 2013, Korean National Assembly passed the bill which amends the articles of the Criminal Act that relate to the crimes of organizing criminal groups, gambling and kidnapping, pursuant to the United Nations Convention against Transnational Organized Crime (UNTOC).¹⁵⁴ Based on the above amendment, Korea will ratify the UNTOC in the near future.

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2009 APG/FATF Mutual Evaluation Report, South Korea was rated Partially Compliant with one of the specified FATF Recommendations used to infer adherence with Principle 5:

South Korea: 2009 MER	Rating
R. 35 International Instruments	PC
R. 36 Mutual Legal Assistance (MLA)	LC
R. 37 Dual Criminality	C
R. 38 MLA on Confiscation and Freezing	LC
R. 39 Extradition	LC
R. 40 Other Forms of International Cooperation	LC

2) The Partially Compliant rating on R. 35 International Instruments came about because South Korea had not yet ratified the Palermo convention, to which the country is a signatory. Though South Korea has yet to ratify the Palermo Convention, the South Korean Ministry of Justice has taken substantial steps in that direction, including submission of an amendment to the Criminal Act to the National Assembly in July 2011 that newly adds an Obstruction of Justice offence (*i.e.* making false statements to the investigative authorities) and an amendment to the Criminal Act was submitted to the National Assembly in October 2011 that adds criminal organization offence and human trafficking related offence.¹⁵⁵

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) Since 2006, South Korea has had a special team for AML Investigation and Recovery of Proceeds of Crime within the Supreme Public Prosecutors' Office which has seen analogues subsequently introduced to five district public prosecutors' offices as well.¹⁵⁶

¹⁵² South Korea responses to Questions 32 and 33 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

¹⁵³ South Korea feedback on initial draft of benchmarking survey.

¹⁵⁴ Information provided by South Korea (March 2013).

¹⁵⁵ South Korea feedback on initial draft of benchmarking survey.

¹⁵⁶ South Korea feedback on initial draft of benchmarking survey.

Principle 7	Actively Participate in International Cooperation Networks
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1) South Korea's Central Authority for MLA is the International Criminal Affairs Division, Criminal Affairs Bureau, Ministry of Justice.¹⁵⁷

2) In December 2012, the Korean Supreme Prosecutors Office hosted a meeting in Seoul with other Asia Pacific countries to establish the Asset Recovery Inter-Agency Network for Asia and the Pacific (ARIN-AP). South Korea offered to house the ARIN-AP secretariat, establish a website in January 2013 and then to organize a meeting in first quarter of 2013 to solicit input by other countries.¹⁵⁸

3) South Korea participates in the following networks:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- FATF, Asia/Pacific Group on Money Laundering
- ADB/OECD Anti-Corruption Initiative for Asia and the Pacific
- OECD Working Group on Bribery

4) South Korea has designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). South Korea participates in the Global Focal Point Initiative supported by STAR/INTERPOL.¹⁵⁹

Principle 8	Provide Technical Assistance to Developing Countries
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1) South Korea is funding the Towards AsiaJust (TAJ), "a sub-programme of the UNODC Regional Centre in East Asia and the Pacific, [which] has worked to form an Asset Recovery Inter-Agency Network for Asia and the Pacific (ARIN-AP), a regional network of prosecutors and law enforcement to promote the comprehensive cross-border cooperation and Mutual Legal Assistance (MLA) necessary to effectively combat money laundering."¹⁶⁰

¹⁵⁷ G20, "Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide 2012," Republic of Korea at 65.

¹⁵⁸ UNODC, "UNODC promotes Asia Pacific asset recovery inter-agency network," December 6, 2012, at <http://www.unodc.org/eastasiaandpacific/en/2012/12/ar-in-meeting/story.html>.

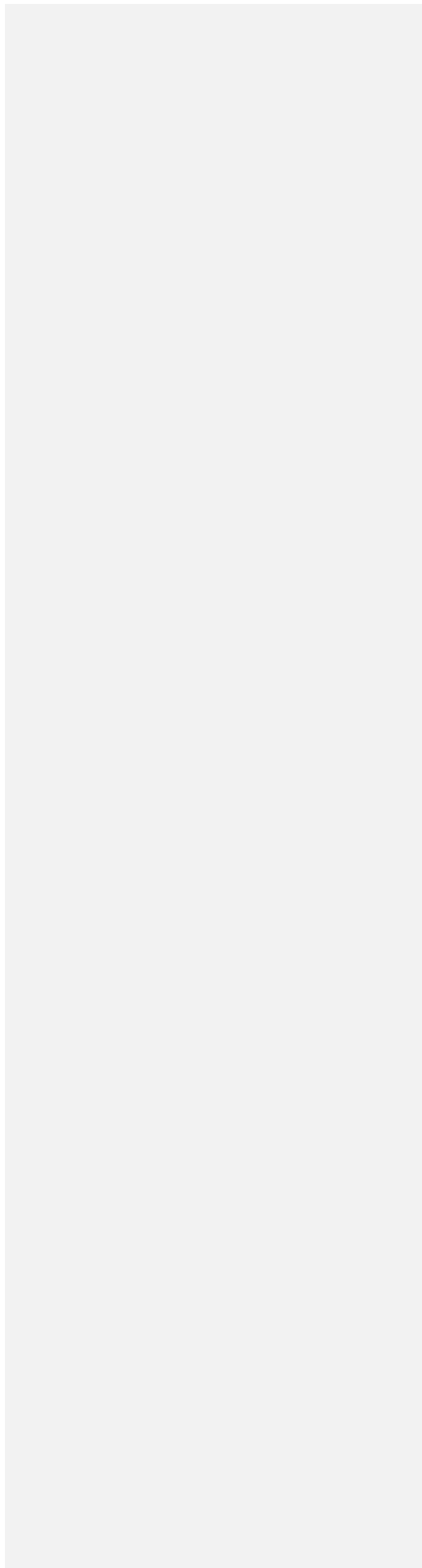
¹⁵⁹ South Korea response to Question 26 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

¹⁶⁰ UNODC, "UNODC promotes Asia Pacific asset recovery inter-agency network," December 6, 2012, at <http://www.unodc.org/eastasiaandpacific/en/2012/12/ar-in-meeting/story.html>.

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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- 1) South Korea does not publish or otherwise make publicly available information on asset recovery cases.¹⁶¹
- 2) South Korea’s sharing of information has been inferred from participation in networks listed under Principle 7.

¹⁶¹ South Korea response to Question 24 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).



Mexico - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) Mexico's actions to reform and strengthen its legislative and institutional frameworks, as described throughout this report, speak to the importance that the country attaches to asset recovery.

2) It should be noted also that Mexico was a key participant in the drafting of UNCAC Chapter 5 on asset recovery.¹⁶²

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2008 FATF/GAFISUD/IMF joint Mutual Evaluation Report, Mexico was rated Partially Compliant or Non-Compliant with three of the specified FATF Recommendations used to infer adherence with Principle 2:

Mexico: 2008 MER	Rating
R. 5 Customer Due Diligence	PC
R. 6 Politically Exposed Persons	LC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	NC
R. 34 Legal Arrangements – Beneficial Owners	LC

2) The October 19, 2012 Interim Follow-Up Report on Mutual Evaluation of Mexico stated:

“10. Mexico reports very specific progress on most other Recommendations rated PC or NC. The progress is provided in detail in the attached response from Mexico, some in the executive summary (Annex 2) and some in the table (Annex 3). As with the progress on core and key Recommendations rated PC/NC, a full analysis of the progress will only be possible once all measures have been implemented and analysed. []

11. Since its mutual evaluation, Mexico has worked to address the deficiencies identified in the MER. Many shortcomings have already been addressed, and Mexico's own estimation is that it has taken specific actions to address approximately 90% of all shortcomings identified in the MER.

¹⁶² United Nations Office on Drugs and Crime, TRAVAUX PRÉPARATOIRES of the negotiations for the elaboration of the United Nations Convention against Corruption, at 437 and throughout; at http://www.unodc.org/documents/treaties/UNCAC/Publications/Travaux/Travaux_Preparatoires_-_UNCAC_E.pdf

12. On this basis, and considering that four years have passed since the MER, it seems appropriate to table a detailed analysis of all shortcomings identified in relation to the core and key Recommendations that were rated PC/NC, and if necessary, of all other Recommendations rated PC/NC, for February 2013.¹⁶³

3) Mexico also provided the following updated information:

On October 17, 2012, the Federal Law for the Prevention and Identification of Operations carried out with Illicit Resources was published in the Official Journal of the Federation (DOF) and it will enter into force on July 17, 2013.

This law includes attachment to the regime of prevention of money laundering operations to the designated non-financial businesses and professions (DNFBPs), and it resulted in various positive outcomes, among which are:

- Weakening the financial structures of organized crime.
- Harmonizing Mexican law with current international standards to combat money laundering. Supervision of private entities and their obligation to report to the federal authorities any suspicious transactions in activities vulnerable to money laundering, such as games, raffles, credit cards, buying and selling real estate and cars, business creation and even in charitable donations.
- Outlining surveillance to detect the financial sources of organized crime and drug trafficking.
- Strengthening coordination mechanisms between the specialized units to combat money laundering in the Ministry of Finance (SHCP) and the Attorney General Office (PGR).
- Creation of Specialized Financial Analysis Unit against Organized Crime, under the supervision of the Deputy Attorney General Specialized Investigation of Organized Crime.
- Limits on cash transactions, as in the case of gambling, credit cards, prepaid cards, traveler's checks, credit loans, construction and sale of real estate, precious metals, art auctions, new and used cars, custody of cash and securities, business formation and trusts, appraisals, receiving donations, foreign trade (jewelry and works of art), among others.
- Penalties for entities that do not report irregular operations with fines up to \$4 million.
- Penalties for notaries who do not seek certificates, bills or guarantees of their customers.
- Penalties to regulated entities for not warning the Ministry of Finance and to other competent authorities regarding prohibited operations.

Furthermore, there have been amendments to the General Law of Organizations and Auxiliary Credit Activities (LGOAAC), through which the oversight activities regarding money laundering and terrorist financing by foreign exchange centers, money transmitters and unregulated Sofomes (multiple-purpose financial institution) moved from SAT (Tax Administration Service) to CNBV (National Securities Exchange Commission). The LGOAAC states that multi-purpose finance companies, unregulated exchange centers, and money transmitters (obligated entities) shall establish policies and procedures to prevent and detect acts, omissions or transactions that might favor, aid, assist or cooperation of any kind for the offenses under Articles 139 (Terrorism) or 148 Bis of the CPF or could be placed on the provisions of article 400 Bis (Operations with Illicit Resources) of the Code.

¹⁶³ Interim Follow-Up Report Mutual Evaluation of Mexico (19 October 2012), at 4, accessed at <http://www.fatf-gafi.org/media/fatf/documents/reports/Interim%20Follow-up%20Report%20Mexico.pdf>.

Moreover, the diverse general provisions on the prevention of operations with illegal proceeds and terrorist financing, arising out of the LGOAAC, indicate that the obligated entities shall prepare and submit to the CNBV a document that explains their policies for the identification and knowledge of customers or users, as well as the criteria, measures and procedures to be adopted to comply with the law's provisions.

From the above it is clear the importance of these measures for the detection of acts of corruption, as it is intended that the policies that the obligated entities use to identify customers or users, will give greater security to the operations performed by them, since it will be mandatory to request information such as name, profession, address, personal identification with photograph and signature, immigration status (case of foreigners) and identification of the legal representative.

In addition to the above, several provisions containing preventive measures against the proceeds of corruption have been published in the Official Gazette of the Federation (in Spanish, *Diario Oficial de la Federación* [DOF]):

1. The Federal Anti-Corruption Public Procurement Law, published in the DOF on June 11, 2012, seeks to impose responsibilities and penalties on individuals and corporations, domestic and foreign, for offenses in which they incur while participating in the federal procurement activities covered under this Act, as well as those to be imposed on domestic individuals and corporations, for infractions incurred in international business transactions covered under this Act.
2. Agreement A/327/12 of the Attorney General, published in the DOF on December 20, 2012, established the General Coordination of Information and Financial Analysis unit and enumerated its powers. It was created as the only competent body to design and implement systems and mechanisms for analyzing the financial and accounting information relating to acts constituting criminal tax, financial or operations with illegal proceeds and the development of an expert report/analysis which contribute to the investigations or procedural units that perform administrative or decentralized bodies of the competent institution in the matter.
3. The SAT issued on July 23, 2012 the statutory criterion 00/2012/ISR which states that "Gifts to public servants are not deductible for purposes of the income tax".
With the approval and publication of such criterion, it is confirmed that under the current tax laws in Mexico bribes to national public servants or foreign public servants in international business transactions, are considered non-deductible items. It means that in no case are they accepted as expenses in determining income tax or tax-deductible items, since the behavior described constitutes unlawful conduct contained in Articles 222 and 222 Bis of the Federal Penal Code (CPF).

There are also three legislative initiatives pending in Congress:

1. Initiative with Draft Decree amending, supplementing and repealing several provisions of the CPF and CFPP introducing responsibility of legal persons. On October 2, 2012, the House Review (Senators) received the Minutes, which is awaiting approval.
2. Initiative with Draft Decree amending and supplementing several provisions of the Federal Law of Administrative Responsibilities of Public Servants (Encourage public servants to act as whistle blowers), filed on March 3, 2011, by former President declared, which opinion was referred to the Committees on Interior, and Legislative Studies, adopted on April 12, 2011. On April 14, 2011 the House of Representatives received the Minutes. It is awaiting approval.
3. Initiative with Draft Decree amending Articles 22, 73, 79, 105, 107, 109, 113, 116 and 122 of the Constitution of the United Mexican States (Creation of the National Anti-Corruption

Commission), filed on November 15, 2012, which was referred to the Committees Opinion on Constitutional, Legislative Studies, first, in the opinion of the Interior, Anticorruption and Citizen Participation, pending approval.

Finally, in the most recent FATF Plenary Meeting, held in February of this year the international body indicated that Mexican authorities had taken sufficient actions to comply with Recommendation 5 on Customer Due Diligence.”

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The following for Principle 3 is derived from the assessment by the June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of Mexico’s assets tracing capabilities:

For identifying and locating bank accounts (of an individual or a company), a request has to be sent to all financial institutions by an authority (like the FIU for instance) with no need of a court order, allowing for location of assets by data matching undertaken by the financial institutions. However, the authorities are not allowed to request this information themselves, and must go through the relevant supervisory agency (National Banking and Securities Commission (CNBV), National Commission of Insurance and Bonds (CNSF), Tax Administration Service (SAT). When it is essential for verification of crime and responsibility of the subject under investigation, the request will be made by the Attorney General's Office (PGR) or the public servant who has been given the power or by the court (article 117 of the Credit Institutions Law).

For identifying real estate, the Land Registry [*Catastro*] is held by each of the federal States of Mexico. It is not computerized and therefore not easily accessible. For identifying companies, a registry exists, but it is not clear that all States are linked into it, or even maintain their records digitally (SIEM: <http://www.siem.gob.mx/siem/>). Any mechanisms in place to consistently and rapidly identify the holders of life insurance and securities in Mexico are unknown, and prosecutors should consult the following authorities: the Ministry of Finance (www.shcp.gob.mx), the Commission for the Protection and Defense of Financial Services Users (www.condusef.gob.mx) and/ or the National Commission of Insurance and Bonds (<http://www.cnsf.gob.mx>), in their respective jurisdictions.

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) Mexico has drafted legislation “*that would allow for non-conviction based forfeiture in Mexico and would enhance Mexico’s ability to cooperate on asset forfeiture matters with foreign countries.*”¹⁶⁴ According to Mexico, the Federal Law of Domain Extinction was published in the DOF on May 29, 2009. The legal asset for domain extinction is defined as the loss in favor of the State of the rights of property, without consideration or compensation to the owner, or for anyone who has or behave as such when

¹⁶⁴ U.S. Department of Justice, “Fact Sheet: Department of Justice Efforts to Combat Mexican Drug Cartels,” April 2, 2009, at <http://www.justice.gov/opa/pr/2009/April/09-opa-303.html>.

the goods have been used in committing any of the offenses set forth in article 22 of the Constitution of the United Mexican States (organized crime, against health, kidnapping, car theft and people-trafficking).¹⁶⁵

For the case of domain extinction it is established an autonomous legal proceedings and criminal proceedings instructed by the commission of these crimes. In this sense, should be brought some important elements of the regulation on the recovery of assets through a non-criminal forfeiture mechanism.

2) It is also important to note that the recovery of assets in Mexico is not governed by a does not have a single law, and it is not specific for acts of corruption. Instead, asset recovery is substantively regulated by the integration and interpretation of various legal rules set out in the domestic legal framework.

Therefore, in addition to the domain extinction provision, Mexico also has the following asset recovery mechanisms:

- Pre-trial seizure. Is a precautionary measure, since it is one of the first manifestations of relevance to accused subject, to impede the use of available assets that are not of lawful origin by freezing them.
- Abandonment. Is a legal concept with which the Federal Public Prosecutor (AMPF) can recover illicit assets. The procedure starts with the personal notification of the securing of material, products or instruments of crime, informing the interested party or his legal representative, that if they do not express what they deem appropriate, within a period of 90 calendar days following its notification, the goods will cause abandonment in favor of the Federal Government.
- Forfeiture. It is a penalty for which is lost coercively, final and without compensation, firstly the instruments used in the commission of the offense and, secondly, the goods that are the subject or product of such act, measure imposed by the Judge due to the criminal responsibility of the convicted.

The first two mechanisms may be exercised by the Federal Public Prosecutor (AMPF) and the Judges, while the forfeiture is only within the competence of the judges, by a judgment.

Once declared the pre-trial seizure, abandonment, domain extinction or forfeiture, the goods are transferred to the Administration and Disposal of Assets System (SAE) which is the body within the Ministry of Finance which is responsible of the administration, alienation or destination of goods which are transferred.

3) Illicit enrichment is a criminal offense.¹⁶⁶

4) Private law actions are permitted.¹⁶⁷

¹⁶⁵ Information provided by Mexico (May 2013). For complete information provided by Mexico, in English and Spanish, please see annex.

¹⁶⁶ Federal Penal Code, Article 224 (2003), "Enriquecimiento Illicito," in StAR Initiative, *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (World Bank, 2012), at 81-82.

¹⁶⁷ The text of the Federal Code of Civil Procedure can be accessed at <http://www.diputados.gob.mx/LeyesBiblio/pdf/6.pdf>.

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2008 FATF / GAFISUD / IMF joint Mutual Evaluation Report, Mexico was rated Partially Compliant with one of the specified FATF Recommendations used to infer adherence with Principle 5:

Mexico: 2008 MER	Rating
R. 35 International Instruments	LC
R. 36 Mutual Legal Assistance (MLA)	LC
R. 37 Dual Criminality	LC
R. 38 MLA on Confiscation and Freezing	PC
R. 39 Extradition	LC
R. 40 Other Forms of International Cooperation	C

2) With respect to R. 35, the October 19, 2012 Interim Follow-Up Report on Mutual Evaluation of Mexico noted:

“The GOM has created a multi-agency group, with the main objective of elaborating the necessary legislation proposals, in order for the Mexican legislation to be entirely consistent with the TF Convention and the UN resolutions. As part of the National Strategy for Preventing and Fighting Money Laundering and Terrorist Financing, described in detail in Section R1-B2, the Federal Executive presented to Congress a draft bill series of legislation projects on August 26, 2010.

Among those legislation projects, is a bill of decree by which several criminal and financial laws are amended. This bill seeks, among other, to establish the possibility for competent authorities to forfeit assets belonging to an indicted that are of equal value to those obtained through their criminal activity, when the latter have been lost, consumed, extinguished or cannot be located. It is currently under analysis and discussion at the Senate.”¹⁶⁸

3) According to Mexico, on April 14, 2011, the President (Federal Executive) submitted legislative reforms which would amend, add, or repeal certain provisions of the CPF [Federal Criminal Code, Código Penal Federal] and CFPP [Federal Code of Criminal Procedure, Código Federal de Procedimientos Penales], and would allow the confiscation of property of equal value.¹⁶⁹ As of May 2013, this initiative has not been approved by the Mexican Congress and it is still pending in committees of the Senate. However, the Federal Domain Extinction Law, in its chapter on "International Cooperation" allows for the return of assets through a non-criminal forfeiture mechanism.

¹⁶⁸ Interim Follow-Up Report Mutual Evaluation of Mexico (19 October 2012), at 124-25, accessed at <http://www.fatf-gafi.org/media/fatf/documents/reports/Interim%20Follow-up%20Report%20Mexico.pdf>.

¹⁶⁹ Information provided by Mexico (May 2013).

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) According to Mexico, the country does not have a specialized unit only in asset recovery.¹⁷⁰ The various issues related to the subject, are the responsibility of different units within the Attorney General's Office (Procuraduria General de la Republica), such as:

- The General Directorate of International Procedures, responsible for international legal assistance, based on international agreements and treaties signed by Mexico in the matter. It is also empowered to establish, in coordination with the competent authorities, communication channels and mechanisms of cooperation with foreign authorities and international organizations, for activities relating to asset recovery.
- The Special Unit for Crimes Committed by Public Servants and Against the Administration of Justice of the Deputy Attorney Specialized Investigation of Federal Crimes.
- The Special Unit Operations Research Illicit Resources and Currency Forgery or Alteration, responsible for monitoring the operations crimes illegal proceeds.
- The General Coordination of Information and Financial Analysis (created in December 2012), to investigate the financial structures linked to alleged operations linked with criminal organizations and prevent the use of their resources to finance criminal activities.

Principle 7	Participate Actively in International Cooperation Networks
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1) While Mexico provides a good deal of information online on the mechanics of informal and formal cooperation process,¹⁷¹ the extent to which cooperation regarding asset recovery takes place in practice is not known.

2) We were able to locate information regarding Mexico's extensive cooperation with the United States on asset recovery issues stemming from transnational crime.¹⁷²

¹⁷⁰ Information in paragraph 1 provided by Mexico, which also provided as source "Regulation of the Organic Law of the General Attorney," A/327/12 Agreement for the Establishment of the General Coordination of Information and Financial Analysis and its faculties (http://www.dof.gob.mx/nota_detalle.php?codigo=5282933&fecha=20/12/2012).

¹⁷¹ Examples listed in *StAR Asset Recovery Handbook* (World Bank, 2011) at 245-46: Ministry of Foreign Affairs, Information on letters rogatory: <http://www.sre.gob.mx/english>; Tracking service for letters rogatory: <http://webapps.sre.gob.mx/rogatorias/>; Attorney-General's Office- requests and receives MLA requests on criminal matters: <http://www.pgr.gob.mx/>; Assistant Attorney General for Special Investigations and Organized Crime: <http://www.pgr.gob.mx/prensa/2007/coms07/170407.shtm>; Financial intelligence unit: <http://www.apartados.hacienda.gob.mx/uif/index.html>.

¹⁷² See example: "Fact Sheet: Department of Justice Efforts to Combat Mexican Drug Cartels" U.S. Department of Justice, 2 April 2009, <http://www.justice.gov/opa/pr/2009/April/09-opa-303.html>

3) Mexico participates in the following networks:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- FATF, GAFISUD (member); Moneyval (observer), CFATF (other)
- OECD Working Group on Bribery
- CARIN
- The Egmont Group of Financial Intelligence Units
- RRAG
- IberRed

4) Mexico has designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). Mexico participates in the Global Focal Point Initiative supported by StAR/INTERPOL.

Principle 8	Provide Technical Assistance to Developing Countries
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1) According to Mexico, information is not available as to whether technical assistance on asset recovery has been received by Mexico or provided by Mexico to other countries.

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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1) Mexico's information sharing has been inferred from its participation in networks listed under Principle 7.

Annex: Additional Information Provided by Mexico

Principle 3

i) To find out if a corporation has bank accounts in Mexico, according to Article 180 of the CFPP, (Federal Criminal Procedure Code), information or financial system documentation should be sent to the National Banking and Securities Commission (CNBV), National Commission of Insurance and Bonds (CNSF), Tax Administration Service (SAT), according to their rules of procedure. Requests for information and documentation of a fiscal nature shall be made to the Ministry of Finance (SHCP).

The application of information request will be made by the Attorney General's Office (PGR) or the public servant who has been given the power, or by the court, where it is essential for verification of crime and responsibility of the subject under investigation.

While the tax information and/or financial information of any person who is under investigation for the commission of a crime is not directly available to the ministerial authorities, this does not imply that whether or not one can have access to it.

ii) In Mexico there are two property regimes: private property and social property. To find out who is the owner of a property in private ownership in the Federal District (individual or company), you can consult the Public Registry of Property and Commerce of Mexico, allowing the general public to investigate files registration. This service is also offered by the Public Property Records on each state, containing property information under its jurisdiction.

If a property is registered as a property of the person under investigation, the Public Property Registry must submit a Certificate of Registration File with information regarding the property and the name of the last owner.

Regarding the social ownership, the application shall be made to the National Agrarian Registry, responsible for providing legal documentary security according to the provisions of the Land Law in relation to the property control of communities and ejidos (common lands).

The information related to real estate that are registered in the name of natural or legal persons, can be found in the Public Registry of Property, whether they are located in Mexico City or some entity, however, the fact they do not have a digitized record does not prevent that the requested information is provided.

iii) To find out if a person has formed companies or businesses in Mexico, it is possible to conduct a research in the Public Registry of Property and Commerce of Mexico City whenever their headquarters are located in Mexico City. Similarly, it is possible to identify whether a natural or legal person hold assets of a company.

Regarding business partnerships or civil associations located in some of the States, the application must be made directly to the corresponding Public Registry.

Available information for business or companies in the name of natural or legal persons can be found in the Public Registry of Property and Commerce if they are located in the Federal District (Mexico City) and whether it is business information in the States, you will have to go to the Trade Register

nevertheless they do not have digitized information, it will not prevent the information would be provided.

Also, it is noted that the Ministry of Economy has implemented a business register called Mexican Business Information System (SIEM: <http://www.siem.gob.mx/siem/>)

iv) To find out whether a natural or legal person owns non-bank financial interests in the country, such as life insurance, prosecutors should consult the following authorities: the Ministry of Finance (www.shcp.gob.mx), the Commission for the Protection and Defense of Financial Services Users (www.condusef.gob.mx) and/ or the National Commission of Insurance and Bonds (<http://www.cnsf.gob.mx>), in their respective jurisdictions.

en Español:

i) Para averiguar si una persona jurídica posee cuentas bancarias en México, de acuerdo con el artículo 180 del CFPP, la información o documentación del sistema financiero debe solicitarse a la Comisión Nacional Bancaria y de Valores (CNBV), Comisión Nacional de Seguros y Fianzas (CNSF), Servicio de Administración Tributaria (SAT), atendiendo a su reglamento interno. Las solicitudes de información y documentación de naturaleza fiscal deberán realizarse a la Secretaría de Hacienda y Crédito Público (SHCP).

La solicitud de requerimiento de información en cuestión, se realizará por parte de la Procuraduría General de la República (PGR) o el funcionario público al que se le haya conferido el poder, o por la autoridad judicial, cuando sea esencial para la verificación del delito y la responsabilidad del sujeto investigado.

Si bien la información fiscal y/o financiera de alguna persona que se encuentre sometida a investigación por la comisión de algún delito no está a disposición directa de las autoridades ministeriales, ello no implica que no se tenga o no se pueda tener acceso a ella.

ii) En México existen dos regímenes de propiedad: propiedad privada y propiedad social. Para averiguar quién es el propietario de un inmueble en el régimen de propiedad privada en el Distrito Federal (persona natural o jurídica), se puede consultar el Registro Público de Propiedad y Comercio del Distrito Federal, que permite al público en general investigar en los archivos de registro. Este servicio también es ofrecido por los Registros de Propiedad Pública de cada entidad federativa, que contienen información de los inmuebles bajo su jurisdicción.

Si se encuentra un inmueble registrado como propiedad de la persona sujeta a investigación, el Registro de Propiedad Pública debe entregar un Certificado del Archivo de Registro con información concerniente al inmueble y al nombre del último dueño. En lo que se refiere al régimen de propiedad social, las solicitudes deberán hacerse al Registro Agrario Nacional, responsable de proporcionar seguridad documentaria legal de acuerdo a lo establecido en la Ley Agraria, en lo referente al control de propiedad de comunidades y ejidos.

La información relacionada con bienes inmuebles que se encuentren registrados a nombre de personas físicas o jurídicas, puede ser consultada en los Registros Públicos de la Propiedad, ya sea que éstos se encuentren ubicados en el Distrito Federal o en alguna Entidad, sin embargo, el hecho de que no se tenga un registro digitalizado no impide que la información solicitada se proporcione.

iii) Para averiguar si una persona ha constituido compañías o negocios en el Distrito Federal, es posible realizar investigaciones al respecto en el Registro Público de Propiedad y Comercio del Distrito Federal siempre que sus oficinas centrales estén ubicadas en el Distrito Federal. De igual forma, es posible identificar si una persona natural o legal posee activos de una compañía.

En cuanto a las sociedades de negocios o asociaciones civiles localizadas en algunas de las entidades federativas, la solicitud deberá hacerse directamente al Registro Público correspondiente.

La información existente de empresas o compañías a nombre de personas físicas o jurídicas puede ser consultada en los Registros Públicos de la Propiedad y del Comercio si se encuentran ubicados en el Distrito Federal y si se trata de información de empresas en las Entidades, se deberá recurrir al Registro del Comercio correspondiente, no obstante que no se tenga la información digitalizada, ello no impedirá que la información se proporcione.

Asimismo, es de resaltar que en el ámbito de competencia de la Secretaría de Economía se tiene implementado un registro de empresas denominado Sistema de Información Empresarial Mexicano (SIEM: <http://www.siem.gob.mx/siem/>)

iv) Para averiguar si una persona natural o legal posee intereses financieros no-bancarios en el país, como seguro de vida, el Ministerio Público debe consultar a las siguientes autoridades: la Secretaría de Hacienda y Crédito Público (www.shcp.gob.mx), la Comisión de Protección y Defensa al Usuario de Servicios Financieros (www.condusef.gob.mx) y/o la Comisión Nacional de Seguros y Fianzas (<http://www.cnsf.gob.mx>), según corresponda, en el ámbito de sus respectivas competencias.

Principle 4 (English and Spanish)

Returning assets through non-criminal via (p.16-17-18)

The Requesting Party shall request via international legal assistance, the return of proceeds of crime assets complying with the requirements of Article 66 of the Federal Law of Domain Extinction). Note that this law is limited, as it is only applicable for offenses described in article 22 of the Political Constitution of the Mexican United States, such as: organized crime, against health, kidnapping, car theft and trafficking people. The requirements are:

1. When the competent authority of a foreign government present requests legal assistance on the basis of international legal instruments which the Mexican State is part of or by virtue of international reciprocity.
2. The request for international legal assistance shall be handled by the General Attorney or by the central authority established by the international instrument, and in its absence by the Ministry of Foreign Affairs.
3. Based on the application of international legal assistance, the Public Prosecutor in court exercise the domain extinction action and request precautionary measures referred to the Federal Law of Domain Extinction.

Regarding the evidence in the application of this Law, it can be consulted at the website of the PGR, bottom left, heading topics of interest-Property subject to extinction
<http://www.pgr.gob.mx/Temas%20Relevantes/Administracion%20de%20los%20Recursos/bienes%20asegurados/bienes%20extincion%20de%20dominio.asp>

It is also important to note that the recovery of assets in Mexico does not have a single law, and it is not specific for acts of corruption, but that the substance is regulated from an integration and interpretation of various legal rules set out in the domestic legal order.

Thereby in addition to the domain extinction figure, Mexico also has the following asset recovery:

1. The pre-trial seizure.
2. The abandonment.
3. The forfeiture.

The first two may be exercised by the Federal Public Prosecutor (AMPF) and the Judges, the confiscation it is only the competence of the judges, by a judgment.

The pre-trial seizure is of particular importance in the investigation. Its basis is the Art.181 and following in the CFPP (Federal Criminal Procedure Code).

On legal-administrative procedure stated in the Federal Law for the Management and Disposal of Public Sector Assets for the purposes of Article 40 of the CPF (Federal Criminal Code), it is, for confiscation in case you get a judgment delivered by the Judge.

The pre-trial seizure is of especial importance as a precautionary measure, since it is one of the first manifestations of relevance to accused subject, to impede the use available assets that are not of lawful origin by freezing them.

The abandonment, meanwhile, is a legal concept with which the AMPF can reposes illicit assets and it is set in Article 182 A and 182 B of CFPP (Federal Criminal Procedure Code). The procedure starts when personally notify the securing of material, products or instruments of crime, perceives the interested party or his legal representative, to express not what they deem appropriate, within a period of 90 calendar days following its notification, the goods will cause abandoned in favor of the Federal Government, raising a detailed record of notification; which will be able to be realized by edicts when the identity or address is not known, in which case it will be published only once in the Official Journal and in a national circulating newspaper.

The forfeiture, it is a penalty for which is lost coercively, final and without compensation, firstly, the instruments used in the commission of the offense and, secondly, the goods that are the subject or product of such act, measure imposed by the Judge due to the criminal responsibility of the convicted. The forfeiture of instruments and proceeds of crime objects is regulated by Articles 40 and 41 of the CPF, and the procedure for confiscation of property, in Articles 181-182 of the CFPP-R, as well as Bilateral Treaties and Legal Aid.

On the other hand, in cases of pre-trial seizure (freezing) and domain extinction of property under criminal law, it is subject to the provisions of the second paragraph of Article 22 of the Constitution of the United Mexican States, and the provisions of Articles 40 and 224 of the CPF, 182 Q of the CFPP, 1, 5 and 6 bis of the Federal Law for the Management and Disposal of Public Sector Assets; 65 of its Regulations 4 and 29 of the Federal Law against Organized Crime, and other applicable provisions. Once declared the assurance, abandonment, domain extinction or forfeiture, the goods are transferred to the Administration and Disposal of Assets (SAE) which is the body within the Ministry of Finance, which is responsible for administering, alienate or destination of goods which are transferred.

The National Banking and Securities Commission (CNBV), through the Vice President of Preventive Process Monitoring, in order to streamline the care process information requirements of authorities, particularly those involved in prevention and combating money laundering, implemented the Care System Requirements Authorities (SIARA), with which it has gone from a manual process to intensive in the use of automated systems, replacing physical sending and receiving documents. Thus, communication between the authorities and the CNBV is conducted through electronic media, reducing the time for assurance or location accounts.

En Español:

La legislación mexicana si prevé mecanismos en esta materia, lo cual se expone a continuación:

La iniciativa a la que se hace alusión en el análisis del principio 4, es la relativa a la Ley Federal de Extinción de Dominio, la cual fue publicada en el Diario Oficial de la Federación el 29 de mayo de 2009. La figura jurídica de extinción de dominio se define como la pérdida a favor del Estado, de los derechos sobre los bienes, sin contraprestación ni compensación alguna para su dueño, ni para quien se ostente o comporte como tal, cuando dichos bienes hayan sido utilizados en la comisión de alguno de los delitos previstos en el artículo 22 de la Constitución Política de los Estados Unidos Mexicanos (delincuencia organizada, contra la salud, secuestro, robo de vehículos y trata de personas).

En el caso de extinción de dominio, se establece un procedimiento jurisdiccional y autónomo del proceso penal que se instruya por la comisión de los delitos mencionados. En ese sentido, deben señalarse algunos elementos importantes de la regulación en materia de devolución de activos por la vía no penal.

Devolución de activos por la vía no penal.

La Parte Requirente deberá solicitar vía asistencia jurídica internacional la devolución de activos producto del delito cumpliendo con los requisitos que establece el artículo 66 de la Ley Federal de Extinción de Dominio. Cabe señalar que esta ley es limitativa, ya que sólo se puede aplicar para ciertos delitos que señala el artículo 22 de la Constitución Política de los Estados Unidos Mexicanos, como son: delincuencia organizada, contra la salud, secuestro, robo de vehículos y trata de personas. Los requisitos que se tienen que cumplir son:

1. Cuando la autoridad competente de un Gobierno extranjero presente solicitud de asistencia jurídica con fundamento en los instrumentos jurídicos internacionales de los que sea parte el Estado mexicano o por virtud de reciprocidad internacional.
2. La solicitud de asistencia jurídica internacional se tramitará por la Procuraduría General de la República o por la autoridad central que establezca el instrumento internacional de que se trate, y en su defecto por la Secretaría de Relaciones Exteriores.
3. Con base en la solicitud de asistencia jurídica internacional, el Ministerio Público ejercitará ante el juez la acción de extinción de dominio y solicitará las medidas cautelares a que se refiere la Ley de Extinción de Dominio.

Respecto de la evidencia en la aplicación de la Ley citada se puede consultar la página Web de la PGR, esquina inferior izquierda, rubro temas de interés-Bienes sujetos a extinción (<http://www.pgr.gob.mx/Temas%20Relevantes/Administracion%20de%20los%20Recursos/bienes%20asegurados/bienes%20extincion%20de%20dominio.asp>)

Asimismo, es importante señalar que la recuperación de activos en México no tiene una legislación única, ni es específica para actos de corrupción, sino que dicha materia se regula a partir de una integración e interpretación de diversas disposiciones jurídicas que se establecen en el orden jurídico nacional.

De ese modo, además de contar con la figura de extinción de dominio, México cuenta también con las siguientes para la recuperación de activos:

1. El aseguramiento.
2. El abandono.
3. El decomiso.

Las dos primeras, pueden ser ejercidas por el Agente del Ministerio Público Federal (AMPF) y los Jueces; el decomiso, únicamente es competencia de los jueces, mediante sentencia.

El aseguramiento es de especial trascendencia en la investigación. Su fundamento es el Art.181 y siguientes del CFPP.

El procedimiento jurídico-administrativo lo señala la Ley Federal para la Administración y Enajenación de Bienes del Sector Público, para los efectos del Art. 40 del CPF, esto es, para su decomiso en caso que llegue una sentencia dictada por el Juez.

Es de especial importancia el aseguramiento, ya que, como medida cautelar es de las primeras manifestaciones de relevancia contra el sujeto de investigación, al inmovilizar la posibilidad de que disponga de bienes que no son de procedencia lícita.

El abandono por su parte, es una figura jurídica con la que el AMPF cuenta para la recuperación de bienes ilícitos y está previsto en el Art. 182 A y 182 B del CFPP. El procedimiento se inicia al momento de notificar de manera personal el aseguramiento de los objetos, producto o instrumentos del delito, se apercibe al interesado o a su representante legal, que de no manifestar lo que a su derecho convenga, en un término de 90 días naturales siguientes al de su notificación, los bienes causarán abandono a favor del Gobierno Federal, levantando una acta circunstanciada de la notificación; misma que podrá realizarse por edictos cuando se desconozca la identidad o domicilio, en cuyo caso se publicará por una sola ocasión en el DOF y en un periódico de circulación nacional.

El decomiso, es aquella pena por la cual se pierden de manera coactiva, definitiva y sin derecho a indemnización, por una parte, los instrumentos utilizados en la comisión del ilícito y, por otra, los bienes que son objeto o producto de tal actuar, medida impuesta por el Juez en razón de la responsabilidad penal del sentenciado.

El decomiso de instrumentos, objetos y productos del delito, se encuentra regulado por los artículos 40 y 41 del CPF, y el procedimiento para el aseguramiento de bienes, en los artículos 181 a 182-R del CFPP, además de Tratados bilaterales en materia de Asistencia Jurídica.

Por otro lado, tratándose de casos de aseguramiento (congelamiento) y decomiso de bienes por la vía penal, se estará a lo dispuesto por el párrafo segundo del artículo 22 de la Constitución Política de los Estados Unidos Mexicanos, así como lo establecido por los artículos 40 y 224 del CPF; 182 Q del CFPP; 1, 5 y 6 bis de la Ley Federal para la Administración y Enajenación de Bienes

del Sector Público; 65 de su Reglamento; 4 y 29 de la Ley Federal contra la Delincuencia Organizada, y demás disposiciones relativas y aplicables.

Una vez declarado el aseguramiento, abandono, extinción de dominio o decomiso; los bienes son transferidos al Servicio de Administración y Enajenación de Bienes (SAE) que es el órgano desconcentrado de la Secretaría de Hacienda y Crédito Público, que tiene la responsabilidad de administrar, enajenar o dar destino a los bienes que le sean transferidos.

Cabe mencionar que la Comisión Nacional Bancaria y de Valores (CNBV), a través de la Vicepresidencia de Supervisión de Procesos Preventivos, con el fin de agilizar el proceso de atención de los requerimientos de información de autoridades, particularmente de las que participan en la prevención y combate del lavado de dinero, implementó el Sistema de Atención de Requerimientos de Autoridades (SIARA), con el que se ha transitado de un proceso manual a uno intensivo en el uso de sistemas automatizados, sustituyendo el envío y recepción física de documentos. Con ello, la comunicación entre las autoridades y la CNBV se lleva a cabo a través de medios electrónicos; reduciendo así los tiempos para el aseguramiento o localización de cuentas.

South Africa - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) South Africa's commitment to asset recovery as a policy priority is exemplified by the 2010 speech by the Minister of Justice and Constitutional Development at the meeting of the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA):

"criminals must know that not only would they suffer incarceration but that ill-gotten wealth would be forfeited in favour of ensuring that justice indeed prevails. I am therefore pleased to witness these measures at combating crime being implemented because asset forfeiture will guarantee investors and all other role players in our regional economy of the legitimacy of our development agenda. Crime and corruption cast doubt as to the viability of our economy and the route of asset forfeiture is fitting response to these threats on our economic and social welfare as a region."¹⁷³

2) Minister Jeff Radebe, Minister of Justice and Constitutional Development, launched the Corruption Watch on 26th January 2012. South Africa's emphasised Government's efforts in uprooting corruption and its endeavours to target corruption.

'As government we have taken progressive steps to combat corruption, which hitherto has been a persisted culture both in our private and public sectors. Our aim is to ensure that criminals must be denied the opportunity to benefit from ill-gotten wealth. The achievements of the Asset Forfeiture Unit prove without doubt that economic crimes can be successfully fought within the Rule of Law. For the first time in the history of this country, the so called "top dogs" of crime are made to face justice and give account of their assets. It is therefore necessary to do an appraisal of the achievements of the AFU, with the recall of some of the important cases such as...

'As government, we note the initiatives of Corruption Watch with appreciation and believe that it will exploit the uncharted territory in the private sector, in particular. We trust that it would augment Government's efforts in uprooting corruption and its endeavours will be targeted at corruption. I make emphasis in this regard because for corruption to take effect, both public and private sector officials are often in a tango in their collusion to defraud our nation of proper development. I therefore look forward to Corruption Watch's positive contribution to the concerted efforts of the Justice Crime Prevention and Security Cluster to fighting crime and corruption and making South Africa a safe and corruption free society and in turn ensure a better life for all!

Just to remind you of the World Bank's definition on corruption is that it is "behaviour on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed." '

¹⁷³ Keynote Address at the Annual General Meeting of the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA), Mr Jeff Radebe, MP, Minister of Justice and Constitutional Development, Pretoria, South Africa, 26 July 2010, at http://www.justice.gov.za/m_speeches/2010/20100726_min_arinsa.html.

3) The comments above show that asset forfeiture is a priority. Not only did the government pass legislation dealing with asset forfeiture, but it also speedily established a specialist unit to implement the asset forfeiture legislation, namely the Asset Forfeiture Unit, and the Minister has been vocal about and supportive of its endeavours.

4) SA does not have a formal asset forfeiture policy. However, significant resources have been devoted to it by National Treasury to ensure that the profit is taken out of crime. It currently employs about 140 staff full-time. In addition, it is part of the Anti-Corruption Task Team set up to deal with serious corruption cases. As a specialist unit in the National Prosecuting Authority, the AFU is described as follows on the webpage of the NPA:

“The Asset Forfeiture Unit (AFU) was established in May 1999 in the Office of the National Director of Public Prosecutions to focus on the implementation of Chapters 5 and 6 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998.) (POCA). The AFU was created in order to ensure that the powers in the Act to seize criminal assets would be used to their maximum effect in the fight against crime, and particularly, organised crime.”¹⁷⁴

5) The proceeds of crime which is forfeited or confiscated ultimately goes back to the victims of crime or is paid into the Criminal Assets recovery Account (CARA) where sums of money can be allocated to specific law enforcement agencies or to institutions, organisations or funds established with the object to render assistance to victims of crime.

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2009 FATF/ESAAMG Mutual Evaluation Report, South Africa was rated Partially Compliant or Non-Compliant with all five FATF 40 Recommendations used to infer adherence with this principle:

South Africa: 2009 MER	Rating
R. 5 Customer Due Diligence	PC
R. 6 Politically Exposed Persons	NC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	NC
R. 34 Legal Arrangements – Beneficial Owners	PC

2) We do not have information which indicates that South Africa has taken steps to strengthen its compliance with the specified FATF Recommendations since its 2009 Mutual Evaluation Report.

¹⁷⁴ <http://www.npa.gov.za/ReadContent387.aspx>

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The indicator for Principle 3 is derived from the assessment undertaken by the June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of South Africa’s assets tracing capabilities:

For identifying and locating bank accounts, reliance is placed upon a request to be sent to all financial institutions by an authority, with no need of a court order, allowing the location of accounts by data matching undertaken by the financial institutions. This is a reference to the informal process used through SABRIC where they merely indicate whether the person has an account or not. That bank is then subpoenaed as opposed all the various registered banks. The FIC can also provide the information but it can only be used if specific requirements are met.

2) For identifying real estate, all transactions relating to the purchase and sale of real estate must be recorded on the property deed which is registered electronically in one of South Africa’s nine Deeds offices and can be accessed by authorities. For identifying companies, South Africa maintains a useful, if unverified, registry through the Companies and Intellectual Property Commission. There are no central registry systems in place to consistently and rapidly identify the holders of life insurance and securities, however records are kept by the respective institutions and except for the life insurance information are readily accessible. Access to life insurance information by any person is not clearly regulated; however the law enforcement agencies would get direct access to the procedure stipulated in section 205 of the Criminal Procedure Act No.51 of 1977 (CPA).

3) Intelligence regarding bank accounts and transactions as well as intelligence regarding transactions at Credit Bureaus can also be obtained from the Financial Intelligence Centre (FIC). It however needs to be converted into admissible evidence before it can be used in court.

4) The FIC is also able to place a hold on a bank account for 5 days. Under certain conditions they can extend the hold for a longer period.

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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- 1) South Africa has both conviction and non-conviction based recovery mechanisms.
 - a. Preservation/forfeiture is effected through an independent statute that introduces a separate proceeding that can occur independently of or parallel to related criminal proceedings.
 - b. Restraint/confiscation is reliant on a parallel criminal process.

2) In both instances the proceedings are governed by the rules of civil procedure (rather than criminal procedure laws).¹⁷⁵

¹⁷⁵ See for example, The Magistrates’ Courts Act 32 of 1944, Part II: Civil Matters (ss26-88), accessed at <http://www.justice.gov.za/legislation/acts/1944-032.pdf>.

3) Section 20 read with section 21 of International Co-operation of Criminal Matters Act, Act 75 of 1966 (ICCM) allows for the enforcement of foreign conviction based and non-conviction based orders.

4) In addition to the ICCMA, South Africa is also able to render assistance on the basis of bi-lateral or multi-lateral treaties.

5) South Africa in terms of the Prevention and Combatting of Corrupt Activities Act, Act 12 of 2004, makes provision for an investigation to be conducted against any person who is in possession of unexplained wealth. Prevention of Organised Crime Act, Act 121 of 1998, makes provision for the forfeiture unexplained wealth.

6) In addition there are asset forfeiture provisions in legislation such as the Drugs Act and special provisions in POCTATARA. There is also provision for collecting evidence for purposes of asset forfeiture in the Interception and Monitoring Prohibition Act 127 of 1992. The CPA also provides for a compensation order.

7) Private law actions are permitted in the form of civil judgments, sequestration/liquidation and Anton Pillar Mareva-type injunctions which is a civil anti-dissipation interdict.

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2009 FATF/ESAAMG Mutual Evaluation Report, South Africa was rated Compliant or Largely Compliant with all of the specified FATF Recommendations used to infer adherence with Principle 5:

South Africa: 2009 MER	Rating
R. 35 International Instruments	LC
R. 36 Mutual Legal Assistance (MLA)	LC
R. 37 Dual Criminality	C
R. 38 MLA on Confiscation and Freezing	LC
R. 39 Extradition	LC
R. 40 Other Forms of International Cooperation	C

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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“The Asset Forfeiture Unit (AFU) was established in May 1999 in the Office of the National Director of Public Prosecutions to focus on the implementation of Chapters 5 and 6 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998.)(POCA). The AFU was created in order to ensure

that the powers in the Act to seize criminal assets would be used to their maximum effect in the fight against crime, and particularly, organised crime.”¹⁷⁶

With the Government of South Africa assessing the impact of corruption on governance and the economy in general, it created the Anti-Corruption Task Team (ACTT) in 2011. The ACTT is mandated to investigate, prosecute and initiate AFU proceedings in cases involving corruption where the amount of R5million or more is involved. The key features of the ACTT, is that it is a multi-disciplinary approach that includes criminal investigators, financial investigators, prosecutors (including asset forfeiture specialists,) forensic capabilities, the National Treasury, the Financial Intelligence Centre, the Special Investigating Unit (SIU) and the South African Revenue Service . In addition, “The Special Investigating Unit (SIU) is an independent statutory body that is accountable to Parliament and the President. It was established by the President, conducts investigations at his request, and reports to him on the outcomes. [] The [body’s] mission captures the mandate of the SIU to investigate fraud, corruption and maladministration, and to institute civil litigation to recover losses suffered by the State, or prevent further losses.”¹⁷⁷

Principle 7	Participate Actively in International Cooperation Networks
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1) South Africa’s Central Authority for Mutual Legal Assistance is the Director General of the Department of Justice & Constitutional Development.¹⁷⁸ South Africa publishes a good deal of information on the MLA process and the country’s contacts for international cooperation.¹⁷⁹ South Africa participates in the following networks:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- OECD Working Group on Bribery
- ARINSA (member), CARIN (observer) - the ARINSA Secretariat is hosted by the NPA
- The Egmont Group of Financial Intelligence Units

2) South Africa has designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement co-operation with UNODC (UNCAC asset recovery focal point). South Africa participates in the StAR/INTERPOL Global Focal Point Initiative.

¹⁷⁶ Stolen Asset Recovery Initiative (StAR), “Towards a Global Architecture for Asset Recovery” (World Bank/UNODC 2009), at 31: “Box 17: Partnerships in Capacity Building,” at <http://star.worldbank.org/star/publication/towards-global-architecture-asset-recovery>

¹⁷⁷ “THE SPECIAL INVESTIGATING UNIT (SIU) GENERAL INFORMATION FACT-SHEET” at <http://www.siu.org.za/> also notes: “As the focus of the SIU is on civil litigation, it does not have the power to arrest or prosecute suspects. When it uncovers evidence of criminal activity, it hands a court-ready docket to the SAPS and/or the Scorpions (DSO). The SIU works closely with the National Prosecuting Authority (NPA), to ensure that prosecutions take place as soon as possible. It also works with the Asset Forfeiture Unit (AFU) in cases where the powers of this unit are more suitable for recovering the proceeds of crime.”

¹⁷⁸ G20, “Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide 2012,” at 94. Detailed information can also be located at <http://www.justice.gov.za/docs/emlatreaties.htm>; National Prosecuting Authority Department of International Relations and Cooperation: <http://www.dfa.gov.za>; Department of Justice and Constitutional Development: <http://www.justice.gov.za/>; Financial Intelligence Centre: <http://www.fic.gov.za/Default.aspx>. See also, *StAR Asset Recovery Handbook (World Bank 2011)*, at 246.

¹⁷⁹ *StAR Asset Recovery Handbook (World Bank 2011)*, at 246.

Principle 8	Provide Technical Assistance to Developing Countries
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- 1) According to the StAR *Asset Recovery Handbook*, “In 2008, South Africa provided on-the-job training for staff from a neighbouring country (Botswana) who had been in South Africa on secondment. In 2009, the AFU [Asset Forfeiture Unit] (with StAR sponsorship) opened its national training days for prosecutors and financial investigators, to representatives from three neighbouring countries (Botswana, Namibia and Swaziland). The AFU has expressed interest in further developing these partnerships.”¹⁸⁰
- 2) SA is planning a similar programme with UNODC and ARINSA to place financial investigators from other African jurisdictions with the NPA’s AFU in order to transfer skill in the area of financial investigations.

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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- 1) South Africa’s information sharing may be inferred from its participation in networks listed under Principle 7. The information is shared through the participation in the networks.
- 2) The AFU is mandated to move applications in terms of Chapters 5 and 6 of POCA, which specifically deals with asset recovery. The unit is further mandated to maintain statistical information on all cases, in respect of amounts frozen, seized, recovered and returned in asset recovery cases or paid into CARA.
- 3) The information is made available to the public at large and is reported on in the NPA Annual Report and to Parliament. The NPA Annual Report is published on the NPA website.

¹⁸⁰ Stolen Asset Recovery Initiative (StAR), “Towards a Global Architecture for Asset Recovery” (World Bank/UNODC 2009), at 31: “Box 17: Partnerships in Capacity Building,” at <http://star.worldbank.org/star/publication/towards-global-architecture-asset-recovery>.

South Africa Annex : Principle 2¹⁸¹

Since the adoption of the 2009 joint Financial Action Task Force (FATF) and Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) Mutual Evaluation Report of South Africa's Anti-Money Laundering (AML) and Counter Terrorist Financing (CFT) regime, South Africa has continued to strengthen its measures to combat money laundering and the financing of terrorism through policy development, implementation of effective compliance standards and the production of quality financial intelligence in collaboration with the private sector and public agencies. South Africa has started a review of the Financial Intelligence Centre Act, 2001 (FIC Act), to address the deficiencies identified in the country's FATF mutual evaluation report. The issues to be addressed in the form of amendments to the relevant legislation include the following:

- An amendment to include a specific provision that requires an institution to conduct CDD when it has doubts about the veracity or adequacy of previously obtained customer identification information.
- An amendment to require institutions to obtain a full picture of the ownership and control structure of the legal person, which will include information on the ultimate beneficial owner.
- An amendment to include a provision that an institution must record the purpose and intended nature of the business relationship at the CDD stage of the business relationship.
- An amendment to require ongoing due diligence.
- An amendment to provide for a risk based approach to customer due diligence.
- An amendment to provide specifically for the termination of the business relationship and the making of a STR if an accountable institution is unable to complete the identification and verification requirements.
- An amendment to the FIC Act to provide for the following:-
 - accountable institutions to have a risk management system in place to determine whether the customer, including a potential customer and beneficial owner, is a PEP;
 - senior management approval required before establishing or continuing a business relationship with a PEP;
 - accountable institutions would be required to take reasonable measures to establish the source of the wealth and funds of the PEP;
 - if an existing client is a PEP, the accountable institution would be required to conduct enhanced monitoring of the relationship on an on-going basis.
- An amendment to improve record keeping requirements in respect of transaction records and account files and business correspondence.

In terms of addressing the deficiencies identified under **Recommendation 33 (Legal Persons – Beneficial Owners)**, a new Companies Act was signed by the President on 8 April 2009 and gazetted in Gazette No. 32121 (Notice No. 421). This Act is called the Companies Act (Act No 71 of 2008). The Act replaces the Companies Act (Act No 61 of 1973) and came into effect on 1 May 2011.

The New Companies Act has widened the range of persons who have access to company records. Any person who holds a "beneficial interest" in any securities issued by a profit company has a right to inspect and copy:

- the Memorandum of Incorporation of the company and any amendments to it;

¹⁸¹ Information provided by South Africa (May 2, 2013).

- any rules of the company;
- the company's records on directors (which will include the identity or passport numbers of each director, an address for legal service of each director, as well as details concerning other directorships each director may hold);
- reports presented at annual general meetings of the company;
- annual financial statements;
- notices and minutes of shareholder meetings;
- written communications dispatched by the company to holders of any class of securities; and
- the securities register of the company.

A person can be said to hold a "beneficial interest" in the securities of a company if they have a right or entitlement, through ownership, agreement, relationship or otherwise, alone or together with another person to:

- receive or participate in any distribution in respect of the company's securities;
- exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or
- dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities.

The newly formed Companies and Intellectual Property Commission (CIPC), was established through the amalgamation of the Office of Companies and Intellectual Property Enforcement (OCIPE) and the Companies and Intellectual Property Registration Office (CIPRO).

Disclosure of beneficial interests

Disclosures of beneficial interests in securities of regulated companies must be included in the securities register of the company concerned (see Regulation 36(3)). The requirements relating to unregulated companies are different.

If any company (including any un-regulated company) has issued securities other than shares, the securities register relating to those securities must include the names and addresses of the holders of beneficial interests in the securities (see section 50(2)(iv) and 50(3)(b)). Regulations 32-34 outline the provisions relating to securities register. Public companies and other regulated companies that are required to produce annual financial statements must publish in their financial statements a list of the persons who hold beneficial interests equal to or in excess of 5% of the total number of securities of that class issued by the company, together with the extent of those beneficial interests (see section 50(7)(b)).

In terms of section 56 (4)(a) of current legislation, disclosure of beneficial ownership is required to be provided monthly or at a frequency as determined by the South African Central Securities Depository (STRATE) provides full beneficiary disclosure to Issuers and/or their appointed agents on a monthly or on a weekly basis.

South African company law recognises that there is a difference between the registered holder of a share and the beneficial owner of a share. The registered holder is the person who appears in the share register of the company and who is the member of the company. The registered shareholder can enforce its rights as member or shareholder against the company. The beneficial owner does not appear

in the share register but is entitled, ultimately, to the benefits flowing from the share (ownership). The beneficial owner, or the holder of the beneficial interest in the share, has no rights against the company and receives his benefit from the registered shareholder.

The change of membership in the share register does not necessarily mean that there is a change in the beneficial ownership of the shares. Ownership in shares is transferred by way of a cession of the rights in and to the shares. It may very well be that by signing a share transfer form and submitting it to the company, the parties intend to transfer ownership in the shares in addition to transferring membership, but this is not always the case.

The Companies Act 71 of 2008 draws a clear distinction between certificated and uncertificated securities. The position in regard to the transfer of ownership in uncertificated securities is different. Whatever the common law position is, transfer of ownership in an uncertificated security must be affected according to the provisions contained in section 53(2)(a)(b). The uncertificated securities register forms part of the company's share register (the Companies Act defines this as the securities register). The implication of this provision is that whoever is reflected in the securities register of the company is the registered *and beneficial* owner of that security and that it is not possible to transfer membership without transferring ownership.

The securities register of each company is kept by the entity itself and the Act requires that each Company must maintain this register according to the provisions of section 50 of the new Act. The South African Central Securities Depository keeps such information. CIPC holds information in its registry of directors as contemplated in section 66, which CIPC is responsible for its maintenance of accurate, up-to-date and relevant information concerning Commission databases, the provision of that information to the public and to other organs of state.

Share holder as defined in section 1 of the Companies Act 2008, is subject to section 57(1), means the holder of a share issued by the company and who is entered as such in the certificated or uncertificated securities register. The company will then be responsible to determine who its shareholders are and who its beneficial owners are as per circumstances.

One of the Commissions functions is the Disclosure of Information on its business registers. CIPC offers corporate information in the form of:

- copies and certified copies;
- electronic data in the form of electronic disclosure certificates and;
- data sales in the format of CD's and File Transfer Protocol (FTP).

The offering is targeted at Government Departments, lawyers, accountants, foreigners and members of the public, who wish to track enterprises and individuals, for example to begin a business, or sell products or services, or need the information for court purposes. In terms of the Law of Constructive Notice, information is available to all members of the public.

CIPC by virtue of its legislation and mandate, the registry contains certain information only, however, it is the duty of the Company to keep a shareholder register and to further keep a securities register, as per the provisions of the Companies Act 2008. Thus the information is available from these sources.

A registered co-operative must keep (in terms of the Co-operatives Act, 2005) at its offices the following:

- Its Constitution, including any amendments thereto.
- The minutes of General Meetings in a Minute Book.

- The minutes of meetings of the Board of Directors in a Minute Book.
- A list of members/register of members setting out-
 - the name and address of each member.
 - the date on which each member became a member.
 - if applicable, the date on which a person's membership was terminated.
 - the amount of any membership fees paid, the number of membership shares owned and the number and amount of member loans.
- A REGISTER OF DIRECTORS setting out-
 - the name, address and identity number of each director, including former directors.
 - the date on which such directors became or ceased to be directors.
 - the name and address of any other co-operative, company or close corporation where both present and former directors are, or were, directors or members.
- A REGISTER OF DIRECTOR'S INTEREST in contracts or undertakings.
- Adequate ACCOUNTING RECORDS

The main purpose of lodging annual returns is to update and inform the Registrar about the status of businesses. In keeping with the legislation, the Registrar needs to determine whether a registered co-operative is still in business and the Registrar is still in possession of the latest information about each and every registered co-operative.

In terms of Section 29 of the Co-operatives Act (Act No 14 of 2005):

- A co-operative must hold its first annual general meeting within 18 months of its registration.
- Subsequent annual general meetings within six months after the end of the preceding financial year.

The annual general meeting must:

- Appoint an Auditor (In terms of Section 50 of the Co-operatives Act).
- Approve a report of the board of the affairs of the Co-operative for the previous financial year.
- Approve the financial statements and Auditors report where applicable for the previous year (In terms of Section 48 of the Co-operatives Act).
- Elect directors (In terms of Section 33 of the Co-operatives Act No 14 of 2005).
- Elect a supervisory committee if required by the constitution of the co-operative.

The new Companies Act 71 of 2008 has changed the commercial landscape. The New Act, has created a degree of transparency such that the advantage of a nominee shareholder, for those beneficial shareholders who want to "remain off the red zone", will fall away.

In terms of addressing the deficiencies identified under **Recommendation 34 (Legal Arrangements – Beneficial Owners)**, an initiative was launched to make information from the trust registries available on the Internet: <https://icmsweb.justice.gov.za/mastersinformation>.

Spain - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) Spain attaches significant importance to asset recovery. In recent years, Spain has participated in international meetings such as the Arab Forum on Asset Recovery (Doha, 11-13 September 2012) and the 7th practitioner workshop on the return of Illicit Assets of Politically Exposed Persons, (Lausanne VII", 28-29 January 2013). The focus of the 2013 Lausanne meetings was "Arab Spring and the recovery of stolen assets: challenges and responses two years later" (Lausanne VII, 28-29 January 2013). Additionally, legislative reforms to amend the asset recovery framework is currently on the government's agenda.¹⁸²

2) Spain indicated that, "In accordance with Article 8.1 of the Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices [AROs] of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, Spain has designated two AROs: the Intelligence Centre against Organised Crime (CICO), within the Ministry of Interior, and the Anti-drugs Special Prosecution Office (Fiscalía Especial Antidrogas).

The Spanish Criminal Code, amended by the Organic Act 5/2010, 22 June and entered into force on 23 December 2010, introduced a new section in the Criminal Procedural Law (Article 367 septies) which refers to an Asset Recovery Office."¹⁸³ Article 367 septies of the Criminal Code also establishes that "The National Drug Plan will act as asset recovery office in its area of competence, and according to the provisions of this Act, the Penal Code and other laws and regulations that govern it." (Ley 17/2003, de 29 de mayo, por la que se regula el Fondo de bienes decomisados por tráfico ilícito de drogas y otros delitos relacionados).

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2006 FATF Mutual Evaluation Report, Spain was rated Partially Compliant or Non-Compliant with four of the specified FATF Recommendations used to infer adherence with this principle:

Spain: 2006 MER	Rating
R. 5 Customer Due Diligence	PC
R. 6 Politically Exposed Persons	NC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	PC
R. 33 Legal Persons – Beneficial Owners	PC
R. 34 Legal Arrangements – Beneficial Owners	N/A ¹⁸⁴

¹⁸² Information provided by Spain (April 2013).

¹⁸³ Spain feedback to initial draft of benchmarking survey. The Criminal Code was most recently amended in 2012: "Ley Orgánica 7/2012, de 27 de diciembre, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal en materia de transparencia y lucha contra el fraude fiscal y en la Seguridad Social."

¹⁸⁴ Mutual Evaluation Report (2006), at 139: "594. Recommendation 34 is not applicable in the Spanish context."

2) The 4th FATF Follow-up Report (October 2010; which moved Spain from regular follow-up to biennial updates) acknowledged provisions of the Act 10/2010 on the prevention of money laundering and terrorist financing, which entered into force on 30 April 2010. The Follow-up Report concluded that “Spain has taken sufficient action to bring its compliance with R.5 to a level essentially equivalent to LC [Largely Compliant].”¹⁸⁵ Concerning R. 6 and R. 12 the Follow-up Report states, “Spain has achieved a sufficient level of compliance.”¹⁸⁶ On R. 33, the Follow-up Report stated: “Spain seems to have taken the issue of transparency of legal persons very seriously. However, the deficiencies in relation to Recommendation 33 have not been fully addressed.”¹⁸⁷

3) Further to the 2006 MER and the 4th FATF follow-up report from 2010, in October 2012 the first biennial report was submitted by Spain.¹⁸⁸ The report contains additional steps being taken by Spain with regard to R. 5 and R. 33.

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The indicator for Principle 3 is derived from the assessment undertaken by the June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of Spain’s assets tracing capabilities:

For identifying and locating bank accounts, Spain will have a central register of bank accounts, immediately accessible by competent authorities (namely Spain’s Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias, or SEPBLAC), without a court order. For identifying real estate, Spain has a national land registry, and SEPBLAC has direct and immediate access to all transactions of notaries, including a complete database of such activity maintained by the Notaries Self Regulatory Organisation. For identifying companies, SEPBLAC has direct and immediate access to a national Business Registry. For identifying the holders of life insurance and securities, Spain has a centralized registry of securities’ holders and life insurance policies to which the authorities have direct and immediate access.

2) According to Spain, the Land and Business Registers are public.¹⁸⁹ The Prevention of Money Laundering and Terrorist Financing Act¹⁹⁰ [Act 10/2010, Article 43 (Financial ownership file) provides that:

1. In order to forestall and prevent money laundering and terrorist financing, credit institutions shall report to the Commission Executive, at intervals determined in the regulations, on the opening or cancellation of current accounts, savings accounts, securities accounts and term deposits. The statement shall, in any event, contain the data identifying the holders,

¹⁸⁵ 4th Follow-up Report, at paragraph 54.

¹⁸⁶ *Ibid.*, at paragraph 8.

¹⁸⁷ *Ibid.*, at paragraph 160.

¹⁸⁸ FATF Working Group on Evaluations and Implementation, Mutual Evaluation of Spain: First Biennial Update, FATF/WGEI(2012)54, (October 3, 2012), provided by Spain. The report is for Official Use only and is not publicly available.

¹⁸⁹ Information provided by Spain (April 2013).

¹⁹⁰ Act 10/2010, of 28 April 2010. Information provided by Spain (April 2013).

representatives or authorised persons, together with all other persons with withdrawal powers, the date of opening or cancellation, the type of account or deposit and the information identifying the reporting credit institution.

2. The reported data shall be included in a publicly owned file, called a Financial Ownership File, for which the Secretariat of State for the Economy will be responsible. The Commission Executive, as processor, shall, in accordance with Organic Act 15/1999, determine the technical characteristics of the database and approve the appropriate instructions.

3. When investigating crimes related to money laundering or terrorist financing, the examining judges, the Public Prosecutor's Office and, upon judicial authorisation or that of the Public Prosecutor, the law enforcement agents may obtain information reported to the Financial Ownership File. The Commission Executive may obtain the above data in the exercise of its powers. The State Tax Administration Agency may obtain the above data as laid down in General Tax Act 58/2003 of 17 December.

Any request for access to the data of the Financial Ownership File shall be adequately reasoned by the requesting body, which shall be responsible for the correct form of the demand. In no case may access to the File be demanded for any purpose other than the prevention or suppression of money laundering or terrorist financing.

4. Without prejudice to the powers that correspond to the Spanish Data Protection Agency, a member of the Public Prosecutor's Office appointed by the Attorney General in accordance with the procedures set forth in the Organic Statute of the Public Prosecutor's Office, who, in the exercise of this activity, is not carrying out his/her duties in any of the bodies of the Public Prosecutor's Office responsible for prosecuting crimes of money laundering or terrorist financing, shall ensure correct use of the file, for which purpose he/she may request full justification of the reasons for any access.

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) Spanish law does not include an NCB mechanism for asset recovery, but does allow for the recognition and direct enforcement of European Union member state restraint or seizing orders. These orders must be executed according to Spanish law.¹⁹¹ Spain does provide for substitute asset recovery, of legitimate assets equivalent in value to that of the illicit proceeds.¹⁹²

2) According to Spain, rules on freezing and confiscation will be revised in the framework of the reform of the criminal legislation now underway.¹⁹³

¹⁹¹ See Law 18/2006, 5th June (for seizures), and Law 4/2010 10th March (for confiscations) referenced in StAR Initiative, *Barriers to Asset Recovery*, Appendix B "Spain" (World Bank, 2011).

¹⁹² StAR Initiative, *Barriers to Asset Recovery*, Appendix B "Spain" (World Bank, 2011).

¹⁹³ Information provided by Spain (April 2013).

3) Private law actions are permitted.¹⁹⁴

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2006 FATF Mutual Evaluation Report, Spain was rated Compliant or Largely Compliant with all of the specified FATF Recommendations used to infer adherence with Principle 5:

Spain: 2006 MER	Rating
R. 35 International Instruments	LC
R. 36 Mutual Legal Assistance (MLA)	C
R. 37 Dual Criminality	C
R. 38 MLA on Confiscation and Freezing	C
R. 39 Extradition	C
R. 40 Other Forms of International Cooperation	LC

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) According to Spain, “These functions are currently performed by the Intelligence Centre against Organised Crime (CICO) and the Anti-drugs Special Prosecution Office (Fiscalía Especial Antidrogas).”¹⁹⁵

Principle 7	Participate Actively in International Cooperation Networks
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1) Spain’s Central Authority for MLA is the Ministerio de Justicia, Subdirección General de Cooperación Jurídica Internacional.¹⁹⁶

2) Informal assistance may be provided by the SEPBLAC (Servicio Ejecutivo de la Comisión de Prevención

¹⁹⁴ ICC FraudNet, *Asset Tracing & Recovery: The FraudNet World Compendium* (Erich Schmidt Verlag, 2009), at 948.

¹⁹⁵ Spain feedback to initial draft of benchmarking survey, which also detailed: “In accordance with Article 8.1 of the Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, Spain has designated two AROs: the Intelligence Centre against Organised Crime (CICO), within the Ministry of Interior, and the Anti-drugs Special Prosecution Office (Fiscalía Especial Antidrogas). The latest revision of the Spanish Criminal Code by Organic Act 5/2010, 22 June, which entered into force on 23 December 2010, introduces a new section in the Criminal Procedural Law (Article 367 septies) which refers to an Assets Recovery Office.

¹⁹⁶ G20, “Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide 2012,” Spain, at 89. See also, StAR Asset Recovery Handbook (World Bank, 2011) at 246: Information on civil processes, taking of evidence and mode of proof, and service of documents: http://ec.europa.eu/civiljustice/homepage/homepage_spa_es.htm; Ministry of Foreign Affairs and Cooperation: <http://www.maec.es/en>; Ministry of Justice: <http://www2.mjusticia.es/>; Financial intelligence unit: http://www.sepblac.es/ingles/acerca_sepblac/acercade.htm

del Blanqueo de Capitales e Infracciones Monetarias) (FIU); Bank of Spain; CNMV (Comisión Nacional del Mercado de Valores); DGFSP (Dirección General de Seguros y Fondos de Pensiones) (supervisory authorities); and the police.¹⁹⁷

3) Spain participates in the following networks:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- FATF
- OECD Working Group on Bribery
- CARIN
- IberRed

4) Spain has designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). Spain participates in the StAR/INTERPOL Focal Point Initiative.

Principle 8	Provide Technical Assistance to Developing Countries
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1) In the framework of GAFISUD and in collaboration with CICAD/OAS and UNODC, Spain is promoting the training /specialization (Spanish experience and best practices with regards to the exchange of information among EU’s AROs) of the institutions that build up GAFISUD’s Red de Recuperación de Activos (RRAG).¹⁹⁸

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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1) We were unable to determine whether Spain publishes data on asset recovery cases and their impact and outcomes.

2) Spain’s sharing of information has been inferred from participation in networks listed under Principle 7.

¹⁹⁷ StAR Initiative, *Barriers to Asset Recovery* (World Bank 2011), Appendix B: Spain.

¹⁹⁸ Spain feedback on initial draft of benchmarking survey.

Switzerland - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) Switzerland espouses a strong commitment to asset recovery. As noted on the website of the Federal Department of Foreign Affairs, “Switzerland has a fundamental interest in ensuring that assets of criminal origin are not invested in the finance centre Switzerland. Swiss laws and procedures to combat money laundering, corruption and the financing of terrorism are effective means of keeping out illicit funds of PEPs [Politically Exposed Persons].”¹⁹⁹ The website also notes, “Switzerland has launched several initiatives to promote internationally coordinated action to combat illicit assets of PEPs [Politically Exposed Persons]. The international financial centres must form a common front to prevent the inflow of such funds, to quickly freeze assets of criminal origin and return them to the rightful owners.”²⁰⁰

2) Moreover, Switzerland’s policy stance has been articulated on numerous occasions by the country’s highest officials, including the Federal President.²⁰¹ Ambassador Valentin Zellweger, Head of the Directorate of Public International Law, Federal Department of Foreign Affairs, also has spoken widely on the issue of asset recovery, describing the Swiss system as resting on five pillars: (1) prevention of corruption; (2) due diligence, including the development of “a very sophisticated system for identifying clients and the origin of assets”; (3) obligation to report by financial intermediaries; (4) mutual legal assistance in criminal matters, and (5) restitution.²⁰²

3) Over the past 15 years, Switzerland has returned a total of US\$1.7 billion in assets acquired unlawfully by PEPs to their countries of origin. The World Bank puts the total value of PEP assets returned during the same time period at US\$4–5 billion. Switzerland is thus well ahead of other financial centers of a comparable size in terms of the restitution of unlawfully acquired assets.

4) Since 2001, Switzerland has organized informal meetings of government experts in Lausanne on the topic of Asset Recovery (Lausanne I and II in 2001, Lausanne III in 2006, Lausanne IV in 2008 and Lausanne V in 2010 in partnership with STAR). In Paris in June 2010, Switzerland organized together with the World Bank and UNODC a Global Forum on the Recovery of Assets and Development.²⁰³ The 2012 Lausanne VI and the 2013 Lausanne VII meetings focused on post-Arab Spring asset recovery efforts.

5) Switzerland is an active participant in various international initiatives on asset recovery, including the

¹⁹⁹ “Illicit assets of politically exposed persons (PEPs),” accessed at <http://www.eda.admin.ch/eda/en/home/topics/finec/poexp.html>

²⁰⁰ *Ibid.*

²⁰¹ For example, see <http://www.eda.admin.ch/etc/medialib/downloads/edazen/dfa/head/spee11.Par.0048.File.tmp/110928%20EUnisiaTaskForceMeetingTunis.pdf>

²⁰² Speech by Ambassador Valentin Zellweger, “Swiss policy on the restitution of illicit assets: myths and facts,” 5 May 2010, accessed at <http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/finec/intcr.Par.0028.File.tmp/Discours%20ZE%20Club%20de%20la%20Presse.pdf>

²⁰³ Accessed at <http://www.eda.admin.ch/eda/en/home/topics/finec/poexp.html>.

G8 Deauville Partnership with Arab Countries in Transition. The country has comprehensive Guidelines on International Mutual Assistance in Criminal Matters, and this publication is available in English, French, German and Italian.²⁰⁴

6) At the invitation of the European Commission, Switzerland participated in the EU Task Force Meetings with regard to Tunisia in 2010 (at Swiss presidential level) and with regard to Egypt in 2012.

7) Besides additional resources that were made available for the criminal investigations by the Office of the Attorney General in the context of the Arab Spring, the FDFA aligned its resources and created a Task Force Asset Recovery in November 2011 to coordinate Swiss efforts in assisting the requesting countries in their asset recovery proceedings.

8) On the level of mutual legal assistance, a special desk has been opened at the Swiss Federal Office of Justice (FOJ) with regard to specific questions on asset recovery. The FOJ has furthermore been affiliated to the EUROPOL matrix of the Asset Recovery Offices (ARO) network of the European Union with a contact point. The FOJ organises interdepartmental meetings where cross-cutting issues regarding asset recovery proceedings in the context of the Arab Spring are discussed.

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2005 FATF Mutual Evaluation Report, Switzerland was rated Partially Compliant (PC) or Non-Compliant with three of the specified FATF Recommendations used to infer adherence with this principle:

Switzerland: 2005 MER	Rating
R. 5 Customer Due Diligence	PC
R. 6 Politically Exposed Persons	LC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	PC
R. 33 Legal Persons – Beneficial Owners	NC
R. 34 Legal Arrangements – Beneficial Owners	NA ²⁰⁵

2) The 2009 MER Follow-Up Report²⁰⁶ noted that Switzerland had taken a series of measures to address the deficiencies identified in the MER in relation to Recommendation 5. Although some gaps remained, Switzerland had taken adequate measures to implement this recommendation at a level equivalent to

²⁰⁴ They are posted on the website of the StAR, Arab Forum on Asset Recovery, together with a Checklist in Arabic at <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery>.

²⁰⁵ Non-applicable. According to Switzerland’s THIRD MUTUAL EVALUATION REPORT ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM, SUMMARY: “Swiss authorities confirmed that legal arrangements as foreseen by Recommendation 34 do not exist under Swiss law (*express trust, fiducie, Treuhand, fideicomiso*).” <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/mer%20switzerland%20resume%20english.pdf>

²⁰⁶ Financial Action Task Force, Suisse: Rapport d’évaluation mutuelle Rapport de suivi Lutte contre le blanchiment de capitaux et le financement du terrorisme (29 Octobre 2009) [hereinafter referred to as the 2009 MER Follow-Up Report], accessed at <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/mer%20switzerland%20rapport%20de%20suivi.pdf>.

Largely Compliant.²⁰⁷ The report also noted that Switzerland had taken adequate measures to implement Recommendation 12 at a level equivalent to Largely Compliant.²⁰⁸

3) Regarding Recommendation 33, Switzerland's October 2011 first biennial update to the Mutual Evaluation Report (2005) and Follow-Up Report (2009) noted that the country was closely following FATF's revision of the recommendation and to keep the Federal Council informed of the same.²⁰⁹

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) According to the Federal Department of Foreign Affairs, "Whenever required in order to safeguard the interests of the country, the Federal Council is empowered to freeze the assets of politically exposed persons (PEP) such as Head of States, high public Officials and their entourage, on the basis of Article 184, para. 3 of the Swiss Constitution. The Swiss Government (Federal Council) is entitled to take such measures in specific situations – for example in times of political upheaval – so as to preserve assets that may have been deposited in Switzerland and to prevent them from being transferred elsewhere. In this way, Switzerland provides support to the judicial authorities of the states concerned, which are thus able to initiate criminal proceedings and – in this framework – request mutual legal assistance from Switzerland. The relevant judicial authorities of the country in question are responsible for conducting the procedures necessary to demonstrate the illicit origin of the frozen assets. So it is that the Federal Council froze the assets of Marcos in 1986, assets that in the follow-up to a criminal procedure in 2003, were able to be returned to the Philippines. This is also the legal basis on which the possible assets of several personalities linked to regimes which have been toppled in various African countries have been frozen since the beginning of 2011."²¹⁰ For example, on January 19, 2011 the Federal Council decided to freeze with immediate effect any assets that might be held in Switzerland by the former Tunisian President and his associates. "By doing so, the Federal Council wishes to avoid any and all risk of the embezzlement of property belonging to the Tunisian state."²¹¹ Also, on February 11, 2011, the Federal Council decided to freeze any assets pertaining to the former Egyptian President and his associates.²¹² It did so only half an hour after the President had stepped down from his office.

2) In 2010, the Swiss Parliament passed the Act on the Restitution of Illicit Asset (RIAA), and the law entered into force in 2011.²¹³ As noted on the website of the Federal Department of Foreign Affairs, "The law comes into existence as a result of difficulties encountered by the Swiss authorities in returning assets frozen in Switzerland to so-called "failing states" following the failure of the process of international mutual assistance to produce a satisfactory result. The [] law provides for a subsidiary solution to the Federal Act on International Mutual Assistance in Criminal Matters. To resolve cases of illicit assets of PEPs deposited in Switzerland, the law comprises the three instruments of freezing,

²⁰⁷ 2009 MER Follow-Up Report, at 5.

²⁰⁸ *Ibid.*, at 6.

²⁰⁹ Available in French at: <http://www.sif.admin.ch/dokumentation/00522/00835/index.html?lang=fr>

²¹⁰ "Freeze on assets," at <http://www.eda.admin.ch/eda/en/home/topics/finec/poexp/sperr.html>.

²¹¹ "Federal Council orders freeze of any assets held by former Tunisian President Ben Ali in Switzerland", accessed at <http://www.eda.admin.ch/eda/en/home/recent/media/single.html?id=37285>.

²¹² "Federal Council orders freezing of any assets of Egypt's former President Hosni Mubarak in Switzerland", accessed at <http://www.eda.admin.ch/eda/en/home/recent/media/single.html?id=37632>.

²¹³ See, <http://www.eda.admin.ch/eda/en/home/topics/finec/poexp/sperr.html>

forfeiture and restitution in situations when the state of origin of the assets in question is unable to conduct a criminal procedure that meets the requirements of Swiss law on international mutual assistance.”²¹⁴

3) Switzerland is currently in the process of drafting a new Asset Recovery act codifying the existing policy especially with a view to the conditions for the administrative freezing of assets. In the case of the adoption of this act, it shall - in future cases - be the basis for asset freezes decided by the Government. The Swiss government opened the draft legislation (Federal Act on the Freezing and Restitution of Assets of Politically Exposed Persons obtained by Unlawful Means) for a three month public consultation on 22 May 2013.²¹⁵

4) As soon as the legal prerequisites are met, the Swiss competent authorities, namely the cantonal and federal prosecutors as well as the FOJ and other administrative entities (Customs etc.), have the possibility to freeze assets in a very timely manner (hours) based on a request for assistance .

For identifying and locating bank accounts, a request can be sent to all financial institutions upon court order decision.

Relating to the real estate assets, the real estate registry is managed in Switzerland at the cantonal level on the basis of the federal legislation. The real estate registry responds namely to demands of administrations and private persons. Any interested person is entitled to have access and receive officially certified abstracts of the registry.

The information relating to companies and persons owning companies, resp. business registered in the country is considered open source. Switzerland has a comprehensive companies registry kept and managed by cantonal registries implementing the federal legislation and operating under federal oversight. All the information contained in the companies registry can be obtained via a unique and fully integrated electronic platform.

Switzerland has no centralized database for securities and insurance. Such information can be obtained e.g. from securities firms or insurance companies.

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) According to a report by the Stolen Asset Recovery Initiative (StAR), “There is both conviction based forfeiture and non-conviction based (NCB) asset forfeiture in Switzerland. They are based on the same provisions in the Criminal Code of Switzerland, Articles 70 to 72 [], and the same procedures apply.”²¹⁶

²¹⁴ <http://www.eda.admin.ch/eda/en/home/topics/finec/poexp/sperr.html>

²¹⁵ <http://www.eda.admin.ch/eda/en/home/recent/media/single.html?id=48933>

²¹⁶ T. Greenberg, L. Gray, et al, *A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (StAR 2009), at 111-112 and *infra*.

2) According to the same StAR report, “courts in Switzerland have confirmed that Switzerland can provide criminal judiciary cooperation to the United States in an NCB asset forfeiture case despite the absence of an intention to pursue criminal proceedings.”²¹⁷

The Swiss mutual legal assistance provides for a comprehensive execution in Switzerland of both foreign “conviction based” and “non conviction based” forfeiture decisions. Foreign forfeiture orders against proceeds of the crime or instrumentalities (“in rem”) can be enforced in Switzerland, as well as money forfeiture order (confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, or “in valorem”). The execution of such foreign decisions in Switzerland is a usual procedure.

3) In the Abacha case, Switzerland repatriated assets to Nigeria on the basis of its mutual legal assistance legislation and jurisprudence even without an executable decision from the requesting State.²¹⁸ The illicit origin of a part of the funds was, according to the result of the Swiss domestic criminal proceedings opened in the same context, obvious. As for the rest of the funds frozen, they were also to return because the holders of the funds (Abacha family) were not in a position to establish their licit origin.²¹⁹

4) Victims, including victim countries, may participate as a *partie civile* in criminal proceedings. “The injured party may apply for party status upon lodging a criminal complaint, or if it is aware that a criminal investigation has already been initiated, by applying for party status in a letter to the Attorney General or Investigating Magistrate (when applicable). Preliminary evidence of the damage suffered by the injured party must be provided.”²²⁰

5) Private civil suits may be filed in Switzerland.²²¹

6) The Federal Act on the Restitution of Assets of Politically Exposed Persons obtained by Unlawful Means (Return of Illicit Assets Act, or RIAA), in force since 2011, contains legal provisions tailored specifically to cases in which the state structures in the country of origin are so weak that the restitution of kleptocrat funds via international MLA channels faces insurmountable barriers. The drafting of the act was prompted basically by Switzerland’s experiences in the cases of Mobutu (Democratic Republic of the Congo, DRC) and Duvalier (Haiti).²²²

²¹⁷ T. Greenberg, L. Gray, et al, *A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (StAR 2009), at 17 and *infra*. The report cited the decision, *A__ Company v. Federal Office of Justice*, ATF 132 II 178 (Switzerland).

²¹⁸ “Abacha funds to be handed over to Nigeria - Majority of assets obviously of criminal origin”, accessed at: <http://www.bj.admin.ch/content/bj/en/home/dokumentation/medieninformationen/2004/2004-08-18.html>.

²¹⁹ As the Abacha family was considered to constitute a criminal organisation, a reversal of the burden of proof occurred according to art 72 of The Swiss Criminal Code.

²²⁰ The FraudNet World Compendium, *Asset Tracing & Recovery*, Bernd H. Klose (Ed.) (Berlin: Erich Schmidt Verlag, 2009), Chapter on Switzerland, “2.3.5 Status of the Injured Party – Plaintiff,” at 969.

²²¹ *Ibid.*, “2.4.3 Action for Civil Damages,” at 971-2.

²²² <http://www.eda.admin.ch/eda/en/home/topics/finec/poexp/faqria.html>.

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2005 FATF Mutual Evaluation Report,²²³ Switzerland was rated Compliant or Largely Compliant with all of the specified FATF Recommendations used to infer adherence with Principle 5:

Switzerland: 2005 MER	Rating
R. 35 International Instruments	LC
R. 36 Mutual Legal Assistance (MLA)	C
R. 37 Dual Criminality	LC
R. 38 MLA on Confiscation and Freezing	C
R. 39 Extradition	LC
R. 40 Other Forms of International Cooperation	LC

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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Switzerland has two specialized Asset Recovery Units:

1) Within the FDFA, the Task Force Asset Recovery is responsible for coordinating the implementation of Switzerland's asset recovery policy at international level. The Task Force Asset Recovery works closely with the Federal Office of Justice the Office of the Attorney General and the cantonal prosecutors in charge of the execution of MLA requests. The Task Force further assures Switzerland's active participation in international fora and initiatives in the field of Asset Recovery, and it is in charge of the organization of the regular Lausanne meetings of government experts on Asset Recovery.

2) Switzerland's designated central authority with responsibility and power to receive requests for mutual legal assistance, among other requests aiming at Asset Recovery, is the Federal Office of Justice (FOJ). As a rule, most of the requests are transmitted to the cantonal or federal judicial authorities for execution.

Within the FOJ, the Mutual Legal Assistance Unit has an operational overview of asset recovery cases, including not only PEP and corruption cases but also asset recoveries related to other offences such as fraud. The MLA Unit contains a specialized asset recovery team which is among other the Swiss counterpart of the EU Asset Recovery Network.

Unlike other Ministries of justice, the FOJ has **special powers** which can speed up asset recovery cases:

- a) The FOJ is party to the asset recovery proceeding and as such can appeal the decisions issued by the cantonal and the federal judicial authorities up to the Swiss Supreme Court²²⁴.
- b) The FOJ can select certain complex and important cases of legal assistance, lead the MLA proceeding²²⁵ and decide on the merit of the case.²²⁶

²²³ Accessed at <http://www.fatf-gafi.org/countries/s-t/switzerland/documents/mutualevaluationofswitzerland.html>.

²²⁴ For example in the Marcos (Philippines) case, the return of the Marcos funds (700 mio. CHF) was possible because of the appeal lodged by the FOJ against a cantonal negative ruling.

Principle 7	Participate Actively in International Cooperation Networks
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1) Switzerland actively participates in international cooperation networks. For example, Switzerland has designated appropriate authorities (as a rule the FOJ) responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). Switzerland participates in the StAR/INTERPOL Focal Point Initiative.

3) Switzerland also actively participates in the following networks:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- FATF
- The Egmont Group of Financial Intelligence Units
- OECD Working Group on Bribery
- CARIN
- Asset Recovery Office Network (EU)

Principle 8	Provide Technical Assistance to Developing Countries
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1) Switzerland provides direct technical assistance, as well as indirect assistance to requesting countries through its support of the International Centre for Asset Recovery, the StAR Initiative²²⁷ and through the sending of MLA and/or asset tracing experts.

2) Switzerland is one of the main donors of the IMF Topical Trust Fund for AML/CFT technical assistance and finances in the framework of the global program against Money Laundering, Proceeds of Crime and the Financing of Terrorism of the UNODC a mentor program in the Mekong region.

3) In the framework of the judicial cooperation with Egypt and Tunisia, several bilateral expert meetings took place to assist the Tunisian and the Egyptian judicial authorities in establishing mutual legal assistance procedures. Also, a Swiss expert in MLA cooperation was advising the Tunisian authorities to this end.

4) In the framework of the North Africa Strategy, Switzerland attributes an annual CHF 8 million to the transition in North Africa²²⁸, used inter alia for capacity building in the field of asset recovery.

²²⁵ With the use of coercive measures (freeze bank accounts, order telephone taping etc)

²²⁶ See the Abacha (Nigeria) case where the return of CHF 500 mio. was possible due to the FOJ decision.

²²⁷ As noted on the website of the Swiss Federal Department of Foreign Affairs, "Switzerland financially supports the International Center for Asset Recovery (ICAR) in Basel, since its foundation, as well as the Stolen Assets Recovery Initiative (StAR)." Accessed at <http://www.eda.admin.ch/eda/en/home/topics/finec/poexp.html>.

²²⁸ http://www.deza.admin.ch/en/Home/Countries/North_Africa?view=extended.

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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- 1) Switzerland collects and publishes data on main asset recovery cases. The Federal Department of Foreign Affairs publishes the information on its website.²²⁹ The website also provides links to relevant legislation, official statements, and media releases.
- 2) Switzerland's information sharing has also been inferred from its participation in regional and international networks, as listed under Principle 7.

²²⁹ <http://www.eda.admin.ch/eda/en/home/topics/finec/poexp.html>

Turkey - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) Turkey indicated it has a specific asset recovery policy or policy statement with respect to the proceeds of corruption but that the statement is not publicly available.²³⁰

2) Turkey has allocated resources to support the country's asset recovery policy, particularly in the context of the country's accession to the European Union and requirements under Chapter 4: Free Movement of Capital in Common Position Paper.²³¹ For mutual legal assistance requests regarding asset recovery, a specialized unit has been established within the Ministry of Justice and regional asset recovery bureau teams are being established by the Turkey National Police. The country's efforts are described in greater detail under Principle 6.

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2007 FATF Mutual Evaluation Report, Turkey was rated Non-Compliant or Partially Compliant with all of the specified FATF Recommendations used to infer adherence with Principle 2:

Turkey: 2007 MER	Rating
R. 5 Customer Due Diligence	NC
R. 6 Politically Exposed Persons	NC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	PC
R. 34 Legal Arrangements – Beneficial Owners	N/A ²³²

2) In October 2012, FATF stated that since the 2007 Mutual Evaluation Report, "Turkey has taken significant action in order to remedy some deficiencies and improve its anti-money laundering regime."²³³ However, we do not have information which indicates that Turkey has taken steps to strengthen its compliance with the specified FATF Recommendations.

3) Turkey also noted that, since 2008, the country had made undertaken tremendous legislative reforms to strengthen preventive measures against the proceeds of corruption.

4) With regard to R. 5, Turkey has enacted the following regulations: Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism (RoM) which entered into force on 1 April 2008:

²³⁰Turkey response to Questions 21-22 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

²³¹ Information provided by Turkey (March and May 2013).

²³² 2007 MER, at 111: "Trusts do not exist under Turkish law."

²³³ FATF Public Statement, 19 October 2012, at <http://www.fatf-gafi.org/countries/s-t/turkey/documents/fatfpublicstatement-19october2012.html>.

- Regulation on Program of Compliance with Obligations of Anti-Money Laundering and Combating the Financing of Terrorism (RoC) which entered into force on 1 March 2009.
- Relevant Communiqués issued by the Turkish Financial Crimes Investigation Board (MASAK) in accordance with RoM. For instance, the provisions regarding simplified measures within the scope of customer due diligence have been regulated through MASAK General Communiqué No: 5 which entered into force on 09 April 2008.
- In September 2008, in the context of Turkey-European Union relations, MASAK submitted its Action Plan on the scope of the second opening benchmark of Chapter 4 (Free Movement of Capital), in order to fully align Turkish AML/CFT legislation with the EU acquis and FATF Recommendations. MASAK carried out the following legislative amendments in order to implement its commitments under the Action Plan: Regulation Amending the RoM which entered into force on 2 January 2010.
- MASAK General Communiqué No: 9 which entered into force on 2 January 2010.

5) Regarding R. 6 on Politically Exposed Persons (PEPs), parties listed in Art. 4 of the RoC are required to establish risk management policies for all customers and carry out risk management activities, including undertaking additional due diligence measures for high-risk groups. Furthermore, obliged parties are required to pay special attention to complex and unusual large transactions and transactions which have no apparent reasonable legitimate and economic purpose (Art. 11 and 12 and 13 of the RoC, Art. 18 of the RoM).

When faced with customers and transactions entailing high risk, the parties listed in Art. 4 of the RoC are obliged to take necessary measures to reduce the risk such as:

- Obtaining one level higher officer approval for establishing the business relationship or carrying out transaction or sustaining a current business relationship,
- Developing procedures for on-going monitoring of the transaction and customer,
- Obtaining additional information and documents under the scope of CDD and taking additional measures for verifying and certifying the information submitted, and
- Gathering as much information as possible on the purpose of the transaction and source of the asset involved in the transaction.

As a consequence, although PEPs are not explicitly defined under legislation, they are customers requiring special attention and additional due diligence measures due to their special status.

6) With regard to Recommendation 12, the following obliged parties (in addition to financial institutions) are specifically included in Article 4 of the RoM: *Presidency of Istanbul Gold Exchange (pertaining only to its custody service)*

- *General Directorate of Post and cargo companies*
- *Assets management companies*

- *Dealers of precious metals, stones and jewels*
- *Directorate General of Turkish Mint (pertaining only to its activities of minting gold coins)*
- *Precious metals exchange intermediaries*
- *Those who buy and sell immovable for trading purposes and intermediaries of these transactions (real estate agencies)*
- *Dealers of any kind of sea, air and land transportation vehicles including construction machines,*
- *Dealers and auctioneers of historical artifacts, antiques and works of art*
- *Those who operate in the field of lotteries and betting, including the Turkish National Lottery Administration, Turkish Jockey Club and Football Pools Organization Directorate*
- *Sports clubs*
- *Public notaries*
- *Freelance lawyers (pertaining only to functions within the scope of paragraph (2) of Article 35 of Law No.1136 on Lawyers such as trading of immovable, establishing, managing and transferring companies, foundations and associations provided that these functions are not contrary, in terms of right of defending, to provisions of other laws)*
- Certified general accountants, certified public accountants and sworn-in certified public accountants operating without being attached to an employer
- Independent audit institutions authorized to conduct audit in financial markets

The DNFBPs are required to comply with the obligations indicated in the statement concerning Recommendations 5 and 11 (special attention to all complex, unusual transactions).

7) Turkey's rating on R. 33 was partly attributed to the paper-based system of the country's Trade Registry, which still exists. However, the "Central Legal Entity Information System Project" carried out by the Ministry of Industry and Commerce has been accepted by the Ministry. The studies on implementation of the project to move to an electronic registry are still on-going, but the aim is to start its implementation gradually in all Trade Registry Offices. The Central Legal Entity Information System Project was accepted by the Ministry of Industry and Commerce and the work under this project is planned to be finalized by the end of 2013.

By ensuring the implementation of the project in all of the registry offices, when completed the project will make it possible, on a timely basis, to record and access electronically (online) the information required to be held by the Trade Registry regarding the ownership status of legal persons.

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The discussion for Principle 3 is derived from the assessment undertaken by the June 2012 Asset Tracing Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of Turkey's assets tracing capabilities:

For identifying and locating bank accounts, a request shall be sent to all financial institutions by an authority, usually the FIU, with no need of a court order. For identifying real estate, landowners' registration/deed registration occurs at the local level. For identifying companies, registration occurs at the local level. There is a national registry for securities but not for life insurance.

2) According to the Turkish law, the decision to seize assets is only rendered by a judge; if the delay is prejudicial it can be rendered temporarily by the public prosecutor.²³⁴ The decision of seizure rendered by a public prosecutor should be approved by a judge within 24 hours. In Turkey, the Financial Crimes Investigation Board (MASAK) has been established with the aim of effective investigation of financial crimes. This unit is comprised of specialized administrative personnel. This unit is also responsible for informing the public prosecutor and making investigation initiated when it wishes to obtain a decision to affect an asset seizure or freezing. Upon notice, if the public prosecutor determines that sufficient evidence exists, he/she will request a court order to seize the assets. The public prosecutor has the authority to decide whether or not to initiate an investigation.

3) With regard to establishing an administrative committee with officials from different units in order to freeze proceeds of terrorism, a draft bill on Preventing Terrorist Financing was adopted on February 2013. According to this law, an evaluation commission comprised of officials from seven different institutions will work together. If the commission determines that the assets were acquired through terrorism or used in terrorist financing, the said assets will be temporarily frozen for a year. After the decision to freeze is published in the official journal, the relevant parties may seek recourse in an administrative court. Within a year after the decision to freeze, the commission should ensure the initiation of an investigation by judicial authorities. Otherwise, the assets will be unfrozen.

4) For identifying and locating bank accounts, a request shall be sent to all financial institutions by an authority, usually the public prosecutor, with no need of a court order. After a public prosecutor instruction, any necessary data for the criminal investigation may be requested by the police from the banks.

5) In addition, according to article 7 of the Law no 5549 (the AML law), when requested by MASAK (the FIU) or examiners working on behalf of MASAK, public institutions and organizations, natural and legal persons, and unincorporated organizations are obliged to render necessary convenience to MASAK. The said institutions are obliged to provide all kinds of information, documents and related records in every type (e.g.: paper, electronic), all information and passwords necessary to fully and accurately access and retrieve these records to MASAK, if MASAK requests.

6) Those from whom information and documents are requested in accordance with the previous paragraph may not avoid giving information and documents by claims of exceptions to the requirements

²³⁴ Paragraphs 2-7 are information provided by Turkey (March 2013).

based on secrecy or other laws. Thus, MASAK has access to tax records and land registration records (some of the land registration records are still being monitored as paper based); and the obliged parties, comprised of financial institutions and designated non-financial businesses and professionals are required to provide all kinds of information and documents to MASAK.

7) Turkey currently has a central database of land records, enabling access to records from a single center. There is also a Trade Registry Gazette, a central database for records of new companies, at the Ministry of Customs and Trade.

8) According to FATF Public Statement 22 February 2013, "Turkey has taken significant steps towards improving its CFT regime, including by enacting a new law that addresses many of the shortcomings identified in Turkey's terrorist financing offence and creates the legal basis for the freezing of terrorist assets. The FATF welcomes this significant step made by Turkey, which improves the country's compliance with the international standards. As a consequence, the FATF has decided not to suspend Turkey's membership. In spite of this positive step, there still remain a number of on-going shortcomings in the Turkish counter-terrorist financing regime. Turkey must address these shortcomings in order to reach a satisfactory level of compliance with the FATF standards. Turkey has committed to addressing these deficiencies and will submit, prior to the next FATF meeting in June 2013, a report on how these deficiencies are being addressed."²³⁵

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) Non-conviction based confiscation/forfeiture is not available in Turkey.²³⁶ However, Turkish Penal Code stipulates "thick value application," meaning "equivalent mechanisms." Articles 55/2 and 54/2 of Turkish Penal Code regulate issues that can be defined as providing for confiscation of assets of "corresponding value."

2) We were unable to locate information as to whether Turkey permits the enforcement of foreign NCB orders.

3) Private law actions are permitted.

4) Turkey possesses a law on "unexplained wealth / illicit enrichment" which is applicable to its public officials, namely the law no 3628 on Declaration of Property, Struggle against Bribery and Corruption. The law places the burden of proof on public officials to prove the legal sources of the assets acquired by them.

5) Moreover, in Turkey, if a complainant claims that he has suffered damages as a result of the wrongful confiscation of his assets within the scope of a criminal proceeding, he can bring a civil action for compensation. According to article 141/1-j of Code of Criminal Procedures, persons whose assets are

²³⁵ Statement available at <http://www.fatf-gafi.org/countries/s-t/turkey/documents/fatfpublicstatement22february2013.html#turkey>

²³⁶ Information in this section provided by Turkey (March 2013).

seized without meeting the legal conditions or if necessary measures to protect the assets pending final resolution of the case and the assets (including any goods) were abused or not returned on a timely basis, they may claim any and all kinds of pecuniary and non-pecuniary damages from the state.

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2007 FATF Mutual Evaluation Report, Turkey was rated Partially Compliant with two of the specified FATF Recommendations used to infer adherence with Principle 5:

Turkey: 2007 MER	Rating
R. 35 International Instruments	PC
R. 36 Mutual Legal Assistance (MLA)	LC
R. 37 Dual Criminality	LC
R. 38 MLA on Confiscation and Freezing	PC
R. 39 Extradition	LC
R. 40 Other Forms of International Cooperation	LC

2) With regard to R. 35 and R. 38, since 2007, Turkey has made progress in enacting and implementing relevant legislative reforms.

3) The definition of money laundering offence in the previous law was not consistent with the Vienna and Palermo Conventions.²³⁷ However, pursuant to Law No. 5918 of 2009:

- The minimum imprisonment threshold for predicate offences is decreased from one year to six months,
 - Possessing and using the proceeds from crime which are material element of money laundering offence are explicitly punished,
 - The penalty for money laundering offence is increased from 2-5 years to 3-7 years.
- 4) In addition, with the amendments in secondary legislation (Regulation Amending the RoM and MASAK General Communiqué 9):
- The definition of beneficial owners has been revised as “natural persons who carry out a transaction within an obliged party, and natural person(s) who control(s) the natural persons, legal persons or unincorporated organizations on behalf of whom a transaction is conducted within an obliged party or who is the ultimate owner of the transaction or the account belonging to them.”
 - The statement “Financial Institutions” in the third and fourth paragraphs of article 17 of RoM called “recognition of beneficial owners and paying special attention to legal persons” has been amended as “Obligated Parties.” According to this amendment, within the scope of customer identification and verification of the beneficial owner, Obligated parties shall carry out reasonable inquiry in order to reveal the beneficial owner in cases where there is a suspicion that the person

²³⁷ Information in paragraphs 3-7 provided by Turkey (March 2013).

is acting in his/her own name but for the benefit of someone else although he/she has declared that he/she is not acting for the benefit of someone else.

5) With regard to Recommendation 38, in terms of mutual legal assistance (MLA) requests for search, seizure and confiscation, except in cases of reciprocity, in Turkey, the fundamental resources for international cooperation are bilateral agreements and multilateral conventions to which Turkey is a party. In cases where such agreements and conventions do not exist, mutual legal assistance is carried out in accordance with the rules of customary international law and the reciprocity principle.²³⁸

6) Asset Recovery Center (Suç Gelirleri Geri Alım Merkezi/with the acronym SUGAM) formed within the Ministry of Justice, General Directorate of International Law and Foreign Affairs has been assigned to receive and reply the MLA requests for search, seizure and confiscation of assets.

7) Turkey is a party to nearly all international conventions related to the proceeds of crime. However, as for the implementation of the conventions, there are some shortcomings on reporting and statistical data related to transfer to domestic law and international cooperation.

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) In Turkey, no Kleptocracy unit exists.²³⁹ The work of setting up specialized regional asset recovery bureaus under the Turkish National Police – Anti Smuggling and Organized Crimes Department – Financial Crimes and Proceeds of Crime Division are ongoing.

2) In addition, within the harmonization of legislation work regarding chapter 4 (free movement of capital), an inter-ministerial committee has been formed for setting up or designating an asset recovery unit and within the works of this committee some TAIEX seminars and study visits have been made since 2010.²⁴⁰ The list of these TAIEX activities is noted under Principle 1.

3) So far no unit has been decided to function as the asset recovery office in Turkey regarding the EU Council Decision 2007/845/JHA. However, the Ministry of Justice created a specialized unit for requests of Asset Recovery MLAs and coordinates a project for Enhancing Asset Recovery investigation in Turkey. Moreover, regional asset recovery bureaus (teams) are being set up by Turkish National Police.

The main operational areas of the Asset Recovery Organizations (AROs) are two-tiered: national and international levels.

²³⁸ Turkey also provided the following information: “The issue of mutual legal assistance is also stated in the Circular No. 69/1 dated 01.03.2008 on “Issues to be taken into Account by Judicial Authorities in International Cooperation regarding Criminal Matters” prepared by the Ministry of Justice. It is also clearly specified in Chapter IV/1 of the Circular that the Letters Rogatory of the foreign judicial authorities will be executed in accordance with the provisions of Turkish law. Thus, in cases where no bilateral agreement or multilateral convention is available, the judicial authorities of Turkey can execute Letters Rogatory relating to search, seizure and confiscation requests by applying the rules of the domestic law within the framework of reciprocity principle.” (March 2013).

²³⁹ Information provided by Turkey (March 2013).

²⁴⁰ Information provided by Turkey (March 2013).

1. It is the first task to quickly meet the requests of information by means of administrative collaboration between AROs with the purpose of pursuing and identifying proceeds of crime internationally. Following this stage, the tasks to be accomplished by the AROs within the framework of judicial collaboration are: preparation and execution of legal assistance requests, based on information obtained within the framework of administrative collaboration. Hence, the administrative collaboration is used for obtaining information that will facilitate judicial collaboration.

2. At the national level, their tasks are as follows: searching for assets that represent proceeds of crime in order that they may be seized and confiscated, representing the government in confiscation actions, and assisting the judicial authorities in activities such as management of the assets while the proceedings are ongoing.

Principle 7	Participate Actively in International Cooperation Networks
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1) Turkey's Central Authority for MLA is the General Directorate of International Law and Foreign Relations, Ministry of Justice.²⁴¹

2) Turkey participates in the following networks:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery
- FATF (member); Eurasian Group (observer)
- The Egmont Group of Financial Intelligence Units
- OECD Working Group on Bribery

3) The National Police Anti-Smuggling and Organized Crime Department (KOM) and The Ministry of Justice General Directorate of International Law and Foreign Relations are members of CARIN.²⁴² KOM has engaged in the sharing of information among members of CARIN for two years.

4) Since 2006, MASAK (Turkey's FIU) has signed Memorandum of Understanding agreements with 36 countries.²⁴³ In addition, MASAK has been exchanging information by Egmont Secure Web channel since 2001. MASAK staffs regularly follow and participate in FATF Plenary and working group meetings.

5) Turkey has designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). Turkey participates in the Global Focal Point Initiative supported by StAR/INTERPOL, and KOM, the "focal point" of Turkey, monitors the activities of StAR initiative.

²⁴¹Turkey response to Question 26 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012). See also G20, "Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide 2012," Turkey at 98.

²⁴² Information provided by Turkey (March 2013).

²⁴³ Information provided by Turkey (March 2013).

Principle 8	Provide Technical Assistance to Developing Countries
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- 1) Turkey indicated that it is not involved in technical assistance projects with developing countries aimed at helping the recovery and return of the proceeds of corruption.²⁴⁴
- 2) According to Turkey, judges and prosecutors lack, to some extent, the necessary time and awareness regarding the recovery of proceeds of crime.²⁴⁵ Accordingly, the government is planning to organize a training seminar with the participation of international experts, in particular from Holland, England, Germany and Poland.

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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- 1) Turkey does not publish or otherwise make publicly available the details of amounts frozen, seized, recovered or returned.²⁴⁶
- 2) Turkey's sharing of information has been inferred from participation in networks listed under Principle 7.
- 3) Moreover, as noted in Principle 7, since 2001 MASAK has been engaged in the exchange of information via Egmont and since 2001. As noted above, since 2006, MASAK has signed Memoranda of Understanding with 36 of its foreign counterparts.

The National Police (KOM) began to keep statistics on the encroachments in criminal investigations carried out since 2011 under the Provincial Commissions units. The statistics are shared with public authorities published in the annual reports, and have proven useful in identifying cases, crimes and criminal offenders.

²⁴⁴ Turkey response to Question 25 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

²⁴⁵ Information provided by Turkey (March 2013).

²⁴⁶ Turkey response to Question 24 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

United Kingdom - Final

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) United Kingdom indicated that it does not have a specific asset recovery policy or policy statement with respect to the proceeds of corruption.²⁴⁷

2) However, various UK agencies have affirmed asset recovery as a policy priority, and the Department for International Development (DFID) has invested resources domestically “to increase the UK capacity to trace, freeze and return stolen assets to developing countries and to tackle bribery in developing countries.”²⁴⁸

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2007 FATF Mutual Evaluation Report, the United Kingdom was rated Partially Compliant or Non-Compliant with all of the specified FATF Recommendations used to infer adherence with Principle 2:

United Kingdom: 2007 MER	Rating
R. 5 Customer Due Diligence	PC
R. 6 Politically Exposed Persons	NC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	PC
R. 33 Legal Persons – Beneficial Owners	PC
R. 34 Legal Arrangements – Beneficial Owners	PC

2) United Kingdom indicated that a number of revisions to the UK’s Money Laundering Regulations 2007 were published on 17th July 2012 and became effective on 1st October 2012, and UK authorities have conducted financial and regulated business controls and systems reviews regarding high-risk/PEP CDD requirements, correspondent banking arrangements, and other related arrangements.²⁴⁹

3) In the 2009 Mutual Evaluation Follow-Up Report, FATF had noted, “The UK has taken substantive action towards improving compliance with Recommendation 5, and nearly all of the deficiencies identified in the MER relating to the customer due diligence (CDD) framework have been addressed by the Money Laundering Regulations 2007. Although a few shortcomings remain, the UK has taken sufficient action to bring its compliance to a level essentially equivalent to LC.”²⁵⁰

²⁴⁷ UK responses to Questions 21-22 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

²⁴⁸ UK Department for International Development, “Enhancing International Action Against Corruption” project description at <http://projects.dfid.gov.uk/project.aspx?Project=201021>.

²⁴⁹ UK responses to Questions 17-18 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

²⁵⁰ Mutual Evaluation Follow-up Report (16 October 2009), at paragraph 5. The report also noted: “The UK has also made progress in addressing deficiencies in other Recommendations, especially R.6, R.7, R.12, R.24, and SR.VII. It should be noted, however, that since the decision of whether or not the UK should be removed from the

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The discussion for Principle 3 is derived from the assessment undertaken by the June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group. The study identified the following several key features of the UK’s assets tracing capabilities:

Information on bank records is in the custody of individual banks that can only be accessed when authorities send circulatory letters to all financial institutions requesting them to disclose if they detain a bank account on the name of a suspect. Account details are considered closed sources of information and access by third parties can only be given to the law enforcement agencies and only through court orders.

There is centralized database on real estate for all the registered land in England and Wales, Scotland and Northern Ireland that can be obtained from the Lands registry physically or from its website www.landregistry.gov.uk/wps/portal/Property. Information regarding real estate is classified as open source and does not require any court order in order to access the information. This information is also considered open source.

United Kingdom has a centralized data on companies kept and managed at the Companies House and can be accessed online on their website at <http://www.companieshouse.gov.uk>. The main functions of the Company House is to incorporate and dissolve limited companies, examine and store company information delivered under the Companies Act, 2006 and make information available to the public.

The United Kingdom has no centralized database for securities or insurances. It is not easy to obtain information on who holds securities or life insurance portfolios or who are the beneficial owners. This information can only be obtained from individual security or insurance companies or stock broker’s registry.

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) According to the UK’s “Obtaining Assistance from the UK in Asset Recovery: A Guide for International Partners,” (hereinafter referred to as UK Asset Recovery Guide), “UK law also provides for non-conviction based confiscation (known in the UK as ‘civil recovery’) of the proceeds of crime in cases where criminal proceedings have resulted in an acquittal, or where such proceedings have not been pursued either because it has not been possible to do so or because it is in the public interest not to do so.”²⁵¹

regular follow-up process will be based solely on the decisions regarding the Core Recommendations (in this case, R. 5 only), this paper does not provide more detailed analyses regarding these other Recommendations.” (paragraph 7). Report accessed at <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FoR%20UK.pdf>.
²⁵¹ United Kingdom, “Obtaining Assistance from the UK in Asset Recovery: A Guide for International Partners,” (UK Asset Recovery Guide), at 14. The Guide is available in English, French and Arabic; in English at <http://star.worldbank.org/star/sites/star/files/UK-Guide-to-Asset-Recovery.pdf>.

2) The UK Asset Recovery Guide also notes that “The UK is also able to offer assistance to colleagues in overseas law enforcement agencies in relation to non-conviction based (NCB) confiscation proceedings by obtaining property freezing orders and enforcing NCB confiscation orders against specific assets held in the UK.”²⁵²

3) Private law action is permitted.²⁵³ The UK Asset Recovery Guide states: “Another alternative open to foreign governments would be to undertake private proceedings through the civil courts to regain ownership of stolen assets. This route does not require the involvement of the UK Government as it would not be a party to the case. However, taking proceedings through the civil courts may interfere with criminal investigations and the UK Government would request that it be kept informed of any civil proceedings undertaken in the UK courts. The cost of any civil proceedings would of course have to be borne by the parties to those proceedings, and the UK Government would not contribute to those legal costs.”²⁵⁴

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2007 FATF Mutual Evaluation Report, UK was rated Compliant or Largely Compliant with all of the specified FATF Recommendations used to infer adherence with Principle 5:

United Kingdom: 2007 MER	Rating
R. 35 International Instruments	C
R. 36 Mutual Legal Assistance (MLA)	LC
R. 37 Dual Criminality	C
R. 38 MLA on Confiscation and Freezing	C
R. 39 Extradition	C
R. 40 Other Forms of International Cooperation	C

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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²⁵² *Ibid.* See also, *A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (World Bank, 2009), “Recovery of Proceeds of Corruption in the United Kingdom: Assistance of Law Enforcement and Tools for the Private Litigant,” at 119-134 and 139. Report accessed at http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Stolen_Asset_Recovery.pdf.

²⁵³ *A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (World Bank, 2009), “Recovery of Proceeds of Corruption in the United Kingdom: Assistance of Law Enforcement and Tools for the Private Litigant,” at 119-134. Report accessed at http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Stolen_Asset_Recovery.pdf.

²⁵⁴ United Kingdom, “Obtaining Assistance from the UK in Asset Recovery: A Guide for International Partners,” (UK Asset Recovery Guide), at 2. The Guide is available in English, French and Arabic; in English at <http://star.worldbank.org/star/sites/star/files/UK-Guide-to-Asset-Recovery.pdf>.

1) United Kingdom indicated that it has established specialized asset recovery team.²⁵⁵

2) According to a 2011 OECD/StAR report, “The United Kingdom created an International Corruption Group in the Metropolitan Police Service and City of London Police to strengthen the capacity to investigate and prosecute corruption occurring between developed and developing countries and return stolen assets.”²⁵⁶

Principle 7	Participate Actively in International Cooperation Networks
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1) The UK Central Authority (UKCA) acts as a central point for the receipt of formal requests for mutual legal assistance in England and Wales, in Northern Ireland and, in some cases, in Scotland.²⁵⁷

2) The UK SOCA maintains 140 SOCA liaison officers outside of the United Kingdom. The liaison officers support SOCA projects overseas through intelligence, R&D, and brokering relationships with key partners.²⁵⁸

3) United Kingdom participates in the following networks:

- UNCAC Open-Ended Intergovernmental Working Group on Asset Recovery
- FATF
- OECD Working Group on Bribery
- The Egmont Group of Financial Intelligence Units
- CARIN

4) United Kingdom has designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). United Kingdom participates in the Global Focal Point Initiative supported by StAR/INTERPOL.²⁵⁹

Principle 8	Provide Technical Assistance to Developing Countries
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²⁵⁵ UK Response to Question 23 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

²⁵⁶ *Tracking Anti-Corruption and Asset Recovery Commitments* (OECD/World Bank, 2011), at 40. Report accessed at <http://star.worldbank.org/star/sites/star/files/Anti-corruption-and-Asset-Recovery-commitments-%28Accra%29.pdf>.

²⁵⁷ United Kingdom, “Obtaining Assistance from the UK in Asset Recovery: A Guide for International Partners,” (UK Asset Recovery Guide), at 14. Guide in English at <http://star.worldbank.org/star/sites/star/files/UK-Guide-to-Asset-Recovery.pdf>.

²⁵⁸ UK Serious Organised Crime Agency, “SOCA working in partnership worldwide,” at <http://www.soca.gov.uk/about-soca/working-in-partnership/international-partnerships>.

²⁵⁹ UK responses to Questions 26-27 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

1) The UK Department for International Development (DFID) has provided support to foreign asset recovery, including the creation of ARINSA.²⁶⁰ DFID has provided support to authorities in Kenya and Uganda for work on international corruption cases and provided funding to the Nigerian Economic & Financial Crimes Commission (EFCC), the Nigeria financial intelligence unit (NFIU), and the Switzerland-based International Centre Asset Recovery.²⁶¹

2) The Assets Recovery Agency has provided training to financial investigators internationally.²⁶²

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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1) UK indicated that asset recovery figures have been published in the joint StAR-OECD Publication “Tracking Anti-Corruption and Asset Recovery Commitments” (http://www1.worldbank.org/finance/star_site/documents/AccraReport/Report/Accra%20Commitments.pdf), and that updated figures are being prepared for a forthcoming StAR-OECD publication. More recent figures were published in the DFID written evidence to the UK Parliament International Development Committee inquiry into tax and development. (<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmintdev/writew/130/tax22.htm>)²⁶³

2) United Kingdom’s sharing of information has been inferred from participation in networks listed under Principle 7.

²⁶⁰ UK Department for International Development (DFID), Project description, “Southern African Equivalent of the Camden Asset Recovery Inter-Agency Network (CARIN) – Called ARINSA,” at <http://projects.dfid.gov.uk/project.aspx?Project=200429>

²⁶¹ UK response to Question 25 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

²⁶² *A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (World Bank 2009), at 140-41.

²⁶³ UK response to Question 24 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

United States of America – FINAL

Principle 1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
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1) United States has a clear stance on asset recovery as a policy priority. President Obama’s statement, in September 2012, to the Deauville Partnership Arab Forum on Asset Recovery is a prominent example. President Obama “emphasized the need for G8 and other Deauville partnership countries to work together in the recovery and return of stolen assets to the people of countries like Tunisia, Egypt, and Libya. These funds are desperately needed to spur economic opportunities, create jobs, foster private sector development, and fund social programmes.” President Obama’s video statement was also published on the White House’s website.²⁶⁴

2) A detailed statement of support is described in the “U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation” (US Asset Recovery Guide), which was produced by the U.S. in accordance with its commitment to the G8 Deauville Partnership’s Asset Recovery Plan of Action. The Guide (in English) has been posted on the U.S. Department of State website²⁶⁵ and is available also in Arabic, Chinese, French, Russian and Spanish.²⁶⁶

3) In 2010, the United States launched the Kleptocracy Asset Recovery Initiative, which brings together a specialized team of experienced prosecutors led by the Criminal Division’s Asset Forfeiture and Money Laundering Division, with the support of the Fraud Section and the Office of International Affairs, along with international anti-corruption investigators of the Federal Bureau of Investigation and the Department of Homeland Security’s Immigration and Customs Enforcement Foreign Corruption Investigation Group. Its mission is as follows: 1) identification of the proceeds of kleptocracy or grand corruption; 2) freeze, seizure, and confiscation of those assets; and 3) disposition of those assets for the benefit of the people of the jurisdiction harmed by corruption.²⁶⁷

4) The United States has repeatedly indicated that asset recovery is a key policy priority and allocated resources to support this policy area. See for instance, the U.S. Department of Justice National Asset Forfeiture strategic plan 2008-2012,²⁶⁸ the U.S. Department of Treasury strategic plan 2007-2012,²⁶⁹ and the U.S. Department of State website.²⁷⁰

²⁶⁴ Report of the Arab Forum on Asset Recovery, at http://star.worldbank.org/star/sites/star/files/report_arab_forum_on_asset_recovery.pdf; President Obama’s statement posted on the White House Website, at <http://www.whitehouse.gov/photos-and-video/video/2012/09/10/president-obama-s-message-arab-forum-asset-recovery>.

²⁶⁵ <http://www.state.gov/documents/organization/190690.pdf>.

²⁶⁶ Links at StAR Initiative, Arab Forum on Asset Recovery, “Country Guides for Asset Recovery,” at <http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery>

²⁶⁷ US response to Question 22 of the G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

²⁶⁸ U.S. Department of Justice, at <http://www.justice.gov/criminal/afmls/pubs/pdf/strategicplan.pdf>

²⁶⁹ US Department of the Treasury, at <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/strategic-plan-2007-2012.pdf>.

²⁷⁰ Search for keywords “asset recovery” on the website of the Department of State (www.state.gov) yielded 2,680 results. (Accessed on January 28, 2013).

Principle 2	Strengthen Preventive Measures against the Proceeds of Corruption
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1) In the 2006 FATF/APG Mutual Evaluation Report, United States was rated Partially Compliant or Non-Compliant with four of the specified FATF Recommendations used to infer adherence with Principle 2:

United States: 2006 MER	Rating
R. 5 Customer Due Diligence	PC
R. 6 Politically Exposed Persons	LC
R. 12 Designated Non-Financial Businesses and Professions (DNFBPs)	NC
R. 33 Legal Persons – Beneficial Owners	NC
R. 34 Legal Arrangements – Beneficial Owners	NC

2) The United States has had ten Follow-up Reports since its 2006 Mutual Evaluation Report.

Principle 3	Set Up Tools for Rapid Locating and Freezing of Assets
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1) The description below for Principle 3 is derived from the assessment undertaken by the June 2012 “Assets Tracing: Country Profiles” Study of the G20 Anti-Corruption Working Group:

For identifying and locating bank accounts under section 314a of the United States Patriot Act a request may be sent by the United States’ FIU to all financial institutions, allowing for the identification and location of assets and transaction information by data matching undertaken by the financial institutions.²⁷¹ For identifying real estate, all real estate recording systems in the U.S. may be administered differently by each state, district or territory of the United States. Real estate records, including land ownership, are generally maintained at a county, borough, parish or municipal level and many, if not all, property records are available online and, if not, are otherwise publically available and “hand searchable.”

There are no centralized ownership registries of publicly traded shares or non-banking financial interests such as life insurance holdings. As for the ownership of securities, individual dealer-brokers have knowledge of the shares their clients hold and maintain such records. There are certain filings requirements under the U.S. Securities laws that would require the public disclosure of beneficial ownership interests for certain publicly traded companies and for certain stock ownership levels, but due to the heavily regulated nature of such companies, the US considers that they pose little risk of being secretly controlled by criminal elements.

²⁷¹ Under section 314(a) of the USA PATRIOT Act, US law enforcement agencies have the authority to send names of individuals, including corrupt officials, and their identifier information to over 20,000 U.S. financial institutions, without a subpoena, and to ask the banks to indicate whether they hold accounts or process transactions for the individuals. Financial institutions have 2 weeks from the posting date of the request to respond with any positive matches. If their search does not uncover any matching of accounts or transactions, the financial institution is instructed not to reply to the 314(a) request.

Principle 4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
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1) The United States may forfeit properties within the jurisdiction of the United States which constitute, are derived from, or are traceable to, a broad range of domestic and foreign offenses. In addition, U.S. confiscation authority extends to criminal proceeds and instrumentalities located outside of the United States that are traceable to a criminal defendant prosecuted in the United States or to criminal conduct occurring in part in the United States. With regard to the United States' non-conviction based forfeiture authority, as set forth in the US asset recovery guide, the United States may bring a non-conviction based forfeiture action against property rather than a criminal defendant. An underlying conviction is not required. As part of this authority, "The United States can initiate NCB confiscation proceeding against proceeds and instrumentalities of certain designated foreign offense predicates for money laundering and some U.S. offenses with inherently foreign components."²⁷²

2) Private law actions are permitted.

Principle 5	Adopt Laws that Encourage and Facilitate International Cooperation
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1) In the 2006 FATF/APG Mutual Evaluation Report, United States was rated Compliant or Largely Compliant with all of the specified FATF Recommendations used to infer adherence with Principle 5:

United States: 2006 MER	Rating
R. 35 International Instruments	LC
R. 36 Mutual Legal Assistance (MLA)	LC
R. 37 Dual Criminality	C
R. 38 MLA on Confiscation and Freezing	LC
R. 39 Extradition	LC
R. 40 Other Forms of International Cooperation	C

2) The United States provides very significant legal assistance and international cooperation in multiple areas, including those relating to asset freezing, seizure, and forfeiture. Requests to obtain mutual legal assistance can be based on one of the numerous bilateral mutual legal assistance treaties (MLATs) or one of the multilateral conventions to which the United States is a party. In their absence, requests can be based on discretionary letters rogatory or letters of request. Requests for legal assistance are executed pursuant to the terms of the treaty or convention invoked (if any) and U.S. domestic law. The United States Central Authority for formal mutual legal assistance requests is the Office of International Affairs in the Criminal Division of the U.S. Justice Department (OIA). Additionally, some types of assistance and investigative support can be provided informally through law enforcement channels. For additional information on the United States' capacity for cooperation in international asset recovery

²⁷² US Asset Recovery Tools and Procedures: A Practical Guide for International Cooperation, at 6: <http://www.state.gov/documents/organization/190690.pdf>. "The United States participates in NCB asset forfeiture, enforces foreign orders, pursues substitute assets, operates through administrative proceedings and civil *in rem* proceedings against the property itself." *A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (World Bank, 2009), throughout and at 22 (footnote 39).

cases, please reference the publication, *U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation*.

The United States also has a robust extradition practice. Extradition requests to the United States are executed pursuant to one of the many bilateral extradition treaties, although, if applicable, the scope of offenses can be expanded by reference to the appropriate multilateral convention, such as the UNCAC. OIA, in coordination with the U.S. State Department, is responsible for overseeing all extradition matters.

Principle 6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
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1) In 2010, the Department of Justice launched the Kleptocracy Asset Recovery Initiative and designated a core group of experienced prosecutors to work exclusively on recovering corrupt officials' criminal proceeds for the benefit of people harmed by theft. This initiative is led by the Asset Forfeiture and Money Laundering Section, Criminal Division, of the United States Department of Justice. This team also relies on experienced financial investigators from the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) and together with the Department of Justice' Office of International Affairs (OIA), Fraud Section, and other components, initiates investigations and helps trace, freeze, and recover the proceeds of corruption that may be located in or affect the United States.²⁷³

Principle 7	Participate Actively in International Cooperation Networks
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1) The US Central Authority for MLA is the Office of International Affairs of the Criminal Division of the Department of Justice (OIA).²⁷⁴

2) The US provides resource personnel or liaisons to assist with international cooperation.²⁷⁵ This includes OIA attorneys who are assigned to work with specific countries, other DOJ subject matter experts, as well as DOJ attachés and law enforcement attachés who are posted to numerous U.S. embassies abroad.

3) The United States participates in several networks such as the:

- UNCAC Open-ended Intergovernmental Working Group on Asset Recovery

²⁷³ "Assistant Attorney General Lanny A. Breuer Delivers Keynote Address at Money Laundering Enforcement Conference," October 19, 2010, at <http://www.justice.gov/criminal/pr/speeches/2010/crm-speech-101019.html>; "Assistant Attorney General Lanny A. Breuer Speaks at the 26th National Conference on the Foreign Corrupt Practices Act," November 8, 2011, at <http://www.justice.gov/criminal/pr/speeches/2011/crm-speech-111108.html>.

²⁷⁴ Source: "U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation" is published on the website of the US Department of State at <http://www.state.gov/documents/organization/190690.pdf>; G20 MLA Guide, « Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide 2012," may be downloaded from www.track.unodc.org.

²⁷⁵ *Tracking Anti-Corruption and Asset Recovery Commitments* (OECD/World Bank, 2011), at 42.

- FATF and FATF Style Regional Bodies
- OECD Working Group on Bribery
- CARIN

4) The United States has designated appropriate authorities responsible for mutual legal assistance requests relating to asset recovery as well as points of contact for law enforcement cooperation with UNODC (UNCAC asset recovery focal point). United participates in the Global Focal Point Initiative supported by StAR/INTERPOL.

Principle 8	Provide Technical Assistance to Developing Countries
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1) The United States provides financial support to the Stolen Asset Recovery Initiative and the global asset recovery Focal Point initiative supported by StAR and INTERPOL, and has close involvement in their activities. The United States has organized three annual African sub-regional workshops on investigation and prosecution of corruption as an initial step to asset recovery. The United States has placed several asset recovery mentors abroad to work with national counterparts, in a pilot program underway since 2009. Many country-specific technical assistance programs funded by the United States enhance partner capacity to pursue asset recovery, by focusing on financial crime investigation, techniques to prosecute corruption cases, international legal cooperation techniques, anti-money laundering, and legislative reforms in the area of restraint, confiscation, and asset management. Other U.S.-supported regional or country-specific programs develop partner capacity on tools that have both a preventive and enforcement value in relationship to asset recovery, such as asset declaration by officials. The United States published a practical guide on U.S. Asset Recovery Tools and Procedures in May 2012. It is available in English, Arabic, Chinese, French, Russian, and Spanish. See <http://www.state.gov/documents/organization/190690.pdf>²⁷⁶

Principle 9	Collect Data on Cases; Share Information on Impact and Outcomes
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1) The U.S. indicated that “The U.S. Asset Forfeiture Program is required by statute to publish annual reports which include the number of forfeitures and seizures performed by the U.S. government, the distribution of forfeited funds, and other data relating to the Program. These reports are available on the United States Department of Justice website and can be found at <http://www.justice.gov/jmd/afp/02fundreport/index.htm>. The data published in the referenced reports reflects information collected on many violations -- including corruption-related crimes -- that permit seizure, confiscation, and asset return.”²⁷⁷

²⁷⁶ US response to Question 25 of G20 Anti-Corruption Working Group Data-gathering questionnaire (2012).

²⁷⁷ US response to Question 24 of the G20 Anti-Corruption Working Group Data-gathering questionnaire (2012). See also, Office of Overseas Prosecutorial Development, Assistance and Training, <http://www.justice.gov/criminal/opdat/> (“OPDAT supports the United States and the Department's law enforcement objectives and priorities by preparing foreign counterparts to cooperate more fully and effectively

2) As a party to the OECD Convention against Foreign Bribery and Phase 3 review process, the U.S. publishes summaries of its enforcement actions in foreign bribery and related cases.²⁷⁸ The U.S. authorities issue press statements on individual asset recovery cases. U.S. federal (and some state) case related documents (pleadings, orders, etc.) are easily accessible online through the US federal PACER service (at nominal fee) or some state courts.

3) United States' sharing of information has been inferred from participation in networks listed under Principle 7. The United States has provided information on asset recovery case outcomes to the OECD and StAR in response to survey information requests. The United States has provided expert participation in the development of the forthcoming UNCAC

with the United States in combating terrorism, trafficking in persons, organized crime, corruption, financial crimes, and other transnational crime.”)

²⁷⁸ US Department of Justice, Criminal Division, Fraud Section: International Agreements Relating to the Bribery of Foreign Public Officials, Organisation for Economic Co-operation and Development, “Summaries of Foreign Corrupt Practices Act Enforcement Actions by the United States, January 1, 1998 – February 10, 2012,” <http://www.justice.gov/criminal/fraud/fcpa/docs/2012-02-29-steps-taken-oecd-anti-bribery-convention.pdf>.