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

Executive summary

Note by the Secretariat

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II. Executive summary

Lesotho

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

Lesotho signed the Convention on 16 September 2005 and ratified it on 16 September 2005. The Convention entered into force for Lesotho on 15 December 2005.

Lesotho is a Constitutional monarchy, with the King as Head of State and the executive power in the hands of the Government led by the Prime Minister. There is a dual legal system with traditional customary law and general law based on the Roman-Dutch system. Lesotho is also a member of the Commonwealth of Nations (British Commonwealth).

The legal framework against corruption includes provisions from the Constitution, the Prevention of Corruption and Economic Offences Act 1999, as amended (PCEO Act), the Penal Code, the Money Laundering and Proceeds of Crime Act 2008 (AML Act), the Criminal Procedure and Evidence Act 1981 (CPE Act), the Fugitive Offenders Act 1967, international treaties and the common law.

The institutions most relevant to the fight against corruption are the Directorate on Corruption and Economic Offences (DCEO), the Attorney General, the Director of Public Prosecutions, the Lesotho Mounted Police Service (LMPS) and the Financial Intelligence Unit (FIU) of the Central Bank. Other relevant stakeholders include the judiciary, parliamentarians, civil society, the private sector and the media.

Lesotho is a member of the Eastern and South African Anti Money Laundering Group (ESAAMLG), the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) and INTERPOL. Lesotho is also a member of the Southern African Development Community (SADC) and the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

As a general matter, it is recommended that Lesotho adopt a comprehensive definition of public officials in line with UNCAC article 2.

Bribery and trading in influence (articles 15, 16, 18, 21)

Both active and passive bribery of public officials are criminalized in the PCEO Act, sections 21 and 22. The indirect commission of the offence, omissions, and benefits to third parties are covered by common law and other statutory principles.

The bribery of foreign public officials and officials of public international organizations is not criminalized.

Section 21 of the PCEO Act incorporates trading in influence elements, but a comprehensive offence is not established. Missing elements are the impropriety of the offence, the actual exchange of benefits, indirect bribery, and omissions to act.

The bribery offences cited under UNCAC article 15 apply equally to the private sector by virtue of Section 31 A of the PCEO Amendment Act of 2006.

Money-laundering, concealment (articles 23, 24)

Not all UNCAC offences qualify as predicate offences for money-laundering, as section 25(1) of the AML Act is limited to predicate offences criminalized in Lesotho and/or subject to 2 years of imprisonment. Although accomplices are equally liable for attempts, counselling, procuring, aiding and abetting, and conspiracy to commit money-laundering, the penalties are lower than for principals.

Concealment is addressed in section 25(1), although the section does not specify that the perpetrator need not have participated in the act.

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

Section 13(3)(a) of the PCEO Amendment Act criminalizes the embezzlement, misappropriation or diversion of property, public or private funds, securities or any other thing of value. The provision does not explicitly refer to public officials or the mental element of intent.

Section 13(3)(b) of the PCEO Amendment Act criminalizes the intentional abuse of functions or position. The provision is not limited to public officials.

Section 31 of the PCEO Act does not formally criminalize illicit enrichment in a manner consistent with the Convention. An ongoing investigation is needed for DCEO to require a public official to explain his or her disproportionate wealth.

Embezzlement in the private sector is addressed through the application of section 13(3)(a) of the PCEO Amendment Act.

Obstruction of justice (article 25)

Section 87(4) to (6) of the Penal Code partially implements UNCAC article 25(a). The undue advantage to interfere in the giving of testimony and the use of force are not addressed, although Lesotho could apply the general bribery provision in Section 21 of the PCEO Act.

Section 12 of the PCEO Act makes it a crime for a person to resist or obstruct an officer of the DCEO in the execution of his or her duty. Judicial or law enforcement officers are covered under the very broad provisions in section 87(1) to (3) of the Penal Code.

Liability of legal persons (article 26)

The Interpretation Act defines the term “person” under Lesotho’s criminal laws to include entities or legal persons. Section 3 read together with Section 44 of the Interpretation Act deal with the liability of companies. Punishment includes fines and imprisonment according to Section 34 of the PCEO Amendment Act, Section 25(1) of the AML Act and Section 28(2) of the Penal Code.

Participation and attempt (article 27)

Accomplice liability is addressed in the Penal Code (sections 23, 24 and 26). The crime of attempt (section 21) applies only to acts of bribery and the preparation for an offence is not covered.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

A comprehensive range of penalties for corruption-related offences has been established. The gravity of the offence is considered at sentencing, although sentencing guidelines are rarely applied.

Only the King and his designee enjoy immunity under the Constitution, while members of Parliament and judicial officers enjoy functional immunity.

Under the Constitution, the discretion to prosecute vests in the DPP (Article 99). Prosecutorial powers have been delegated pursuant to the CPE Act (Section 5) to two prosecutors in DCEO. All DCEO cases are reviewed by the DPP before they are filed in court. Any decision not to prosecute is reviewable by the aggrieved party. No corruption cases have been refused for prosecution to date.

According to the Prisons Amendment Act, convicted persons are eligible for early release or parole after having served half their sentence. Parole is based on determining factors such as the gravity of the offence and the likelihood of recidivism.

Lesotho's Public Service Act (Section 15(10)) provides for the suspension of public officers, on full pay, pending disciplinary enquiries, though their removal or reassignment is not addressed. The disqualification of convicted persons from holding public office (including State-owned enterprises) would be covered in the PCEO bill.

There are no formal or comprehensive policies related to the reintegration of prisoners into society.

The PCEO Act provides incentives to informers, including anonymity in judicial proceedings and witness fees. There are no guidelines on plea bargaining or immunity from prosecution, which can be applied under the common law. Mitigated sentences have been given to cooperators, but not in corruption cases.

Protection of witnesses and reporting persons (articles 32, 33)

There are no comprehensive measures to protect witnesses, experts and victims, though evidentiary measures could be applied under the common law. Legal protections for victims are not specified.

The police and DCEO accept anonymous complaints and reports, although whistle-blower protections are not available.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

Confiscation, under Part IV of the AML Act, extends to "serious offences" punishable by at least two years imprisonment, including money-laundering. This threshold encompasses most UNCAC offences, but not offences under the Penal

Code which do not carry a statutory minimum prison term (bribery, obstructing justice). Confiscation measures are applied by DCEO in accordance with Section 11(2) of the AML Act, which currently establishes DCEO as the anti-money-laundering authority. The confiscation of property corresponding to the value of criminal proceeds is not applied in a manner that would allow for value-based confiscation. The FIU does not have administrative powers to freeze transactions temporarily.

The PCEO Act (Section 31) addresses unexplained wealth. The PCEO bill would allow DCEO to directly request a court order to seize, freeze or confiscate assets. The administration of frozen and confiscated assets is not comprehensively regulated.

Bank secrecy is not a ground for refusal to furnish information to DCEO under the PCEO Act. Bank records may also be obtained by court order under the Act, which provides for overcoming bank secrecy.

Statute of limitations; criminal record (articles 29, 41)

Lesotho has a 20-year statute of limitations for corruption-related crimes, as established in the CPE Act (Section 22). No corruption cases have been barred by reason of the prescription period.

Foreign criminal records are admissible under common law principles in court proceedings for related offences that occurred within a ten-year period.

Jurisdiction (article 42)

Jurisdiction is principally established in the PCEO Act (Section 51), the AML Act (Section 25(1)) and the Penal Code (Section 4). Observations relate to the passive and active personality principles, offences against the State and participatory acts outside Lesotho to money-laundering.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

Procurement regulations permit the annulment of contracts on the basis of corruption. There is no system of “blacklisting” companies or referring case outcomes to licensing authorities.

Limited measures are in place to allow aggrieved parties to initiate legal proceedings in corruption cases.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

Relevant institutions include DCEO, the DPP, LMPS and the FIU. The DCEO bill would strengthen the independence and budgetary resources of the agency, though training remains limited. A potential overlap of functions between the police and DCEO was observed, and interagency coordination could be strengthened. The large case load of LMPS was further noted. The FIU’s functions, independence and recruitment would be addressed in a pending enabling law.

Cooperation agreements are in place among law enforcement agencies and joint investigations are conducted as needed. A National Coordination Committee has been established, but coordination remains limited.

DCEO has a mandate to address corruption in both the public and private sector. The FIU coordinates cooperation with the private sector (mostly banks and financial institutions) and oversight of financial institutions.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The AML Act regulates the confiscation, identification and seizing of assets in a comprehensive manner, although some observations are noted under UNCAC article 31 (including with respect to value-based confiscation).
- The draft PCEO bill would cover conflicts of interest disclosures and provide for regular asset fillings.
- Converted, transformed and intermingled proceeds, as well as income and other benefits, are covered in the legislation and liable to be confiscated, seized or frozen if they constitute alleged proceeds of crime.
- The work of civil society in furtherance of the protection of witnesses and whistle-blowers, including a dedicated fund for vulnerable witnesses/whistle-blowers, was positively noted.
- The FIU is encouraged to continue its cooperation efforts with foreign counterparts through exchange/mentorship arrangements and membership in the Egmont Group. The FIU's awareness-raising efforts and training on anti-money-laundering should be continued.
- The exchange of personnel among law enforcement agencies potentially constitutes a good practice and should be encouraged.

2.3. Challenges in implementation, where applicable

The following steps could further strengthen existing anti-corruption measures:

- Ensure that all categories of public officials under UNCAC article 2 are covered.
- Supplement the bribery offences to incorporate the provisions of UNCAC article 15.
- Draft measures in relation to the bribery of foreign public officials and officials of public international organizations, taking into account UNCAC article 2.
- Continue efforts to ensure that an ad hoc provision on trading in influence is included in line with the Convention.
- Address the mental element of the embezzlement offence.
- Consider criminalizing illicit enrichment in line with UNCAC article 20.
- Establish specific procedures and a dedicated agency to verify asset declarations.
- Carefully consider the proposed changes to reorganize the mandate of law enforcement institutions under the PCEO bill.

- Consider removing the penalty requirement in the dual criminality provision of the AML Act.
- Consider amending the provision on accomplices and participation in money-laundering in line with the Convention.
- Address conspiracy and participatory acts outside Lesotho to commit money-laundering.
- Furnish a copy of the money-laundering laws to the United Nations.
- Amend the text on obstruction of justice to bring it more fully in line with the Convention.
- Consider whether the existing legal framework regarding the crime of attempt is adequate in view of UNCAC.
- Review the penalty provisions for corruption and money-laundering to ensure congruence and adequate deterrence for persons and legal entities.
- Monitor the imposition of sanctions and application of sentencing guidelines by the judiciary.
- Establish a specialized anti-corruption unit in the DPP with adequate capacity to handle corruption cases.
- Adopt a law regulating the DPP and a Prosecution Manual to ensure greater legal certainty in the prosecution of corruption and criminal cases.
- Consider adopting relevant measures to address the removal or reassignment of accused public officers, and the disqualification from holding public office of convicted officials, as proposed in pending legislation.
- Consider developing comprehensive policies on the rehabilitation and reintegration of prisoners into society.
- Amend the legislation to ensure that proceeds of all UNCAC offences can be confiscated, including by reason of their period of imprisonment.
- Adopt measures to permit value-based confiscation.
- A lack of human and technical capacity to trace, seize and confiscate criminal proceeds and limited resources were reported; the adoption of the PCEO bill, which would authorize DCEO to apply directly for a confiscation order, is encouraged, taking into account the need to ensure that confiscation powers in corruption cases handled by the DPP can be exercised by the DPP.
- Consider establishing a dedicated agency to administer confiscated assets and monitoring the application of relevant provisions in practice.
- Conduct training and capacity-building on pursuing illicit enrichment cases and review existing legislation involving a reversal of the burden of proof.
- Ensure that bona fide third party rights are adequately protected in confiscation cases.
- Limited resources, capacity and inadequate laws are constraints to the effective protection of witnesses, experts, victims, and whistle-blowers; measures should be adopted as a priority to provide appropriate protections.

- Establish a website for DCEO to encourage reporting, inform complainants of their rights and raise transparency of DCEO operations and awareness of anti-corruption efforts.
- Adopt and implement a whistle-blower law and appropriate structures to establish reporting procedures and provide effective protection on the ground.
- Establish a closer working relationship among investigative agencies to address consequences of corruption.
- Address the rights of victims to initiate legal proceedings in corruption cases.
- Clearly delineate responsibilities among law enforcement agencies and strengthen interagency coordination, especially among DCEO and LMPS.
- For DCEO, fill vacant positions. Ensure structured, comprehensive and regular capacity-building and training for criminal justice institutions. DCEO should be adequately resourced and clearer laws should address its operational and financial independence. The need for a case management system is a priority.
- Ensure adequate resources, manpower and investigative capacity of LMPS, also under the PCEO bill, and consider conducting integrity training for police officers. Operationalize an effective case management for relevant agencies.
- Consider establishing a dedicated unit and increased capacity for corruption matters in the DPP. Clearly define confiscation powers in corruption cases handled by DPP.
- For FIU, encourage the swift adoption of its enabling law and an appropriate legal and administrative structure to receive and transfer STRs. Steps to increase capacity and personnel are encouraged.
- Continue steps to establish specialized expertise in the judiciary to hear corruption cases and transfer knowledge.
- Strengthen measures to encourage the cooperation of participating offenders. A law on plea bargaining and policy for the recruitment of informers could be useful.
- Enhance coordination among relevant agencies and clarify mandates in light of competing priorities. Establish a consistent practice of sharing case-related information and cooperation on specific cases.
- Consider legal or administrative measures requiring public officials to report bona fide suspicions of corruption.
- Ensure the continued dedication of resources and capacity to address corruption in the private sector. Enhance public awareness-raising and outreach activities, especially in the regions. Continue to enhance partnerships with civil society.
- Consider adopting legal measures on admissibility of foreign criminal records.
- Consider establishing jurisdiction for offences described in UNCAC article 42(2).

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

The following forms of technical assistance could assist Lesotho in more fully implementing the Convention:

- Capacity-building and training for institutions in the criminal justice system based on a detailed assessment of technical assistance needs; this should be conducted in cooperation with existing partners and build upon existing measures.
- Assistance in developing an appropriate case management system for DCEO and other agencies; work is underway in this regard.
- Article 15: Capacity-building to strengthen the investigation and prosecution of corruption offences generally and the collection and updating of statistics.
- Articles 16 and 17: Good practices/lessons learned; legislative drafting.
- Article 19: Good practices/lessons learned.
- Article 20: Good practice/lessons learned; Development of an action plan for implementation as to procedures for asset and conflicts disclosures.
- Article 23: On-site assistance; Training and capacity-building for all law enforcement investigators, prosecutors and judges; Strengthening inter-agency coordination.
- Article 26: On-site assistance by an anti-corruption expert; Capacity-building and training on how to conduct financial investigations against companies and their principals.
- Article 31: Good practices/lessons learned; Training and capacity-building for all law enforcement and judicial officers on financial investigations and asset confiscation; Legislative drafting and on-site assistance on asset tracing, value-based confiscation and illicit enrichment.
- Articles 32 and 33: Model legislation; Capacity-building; On-site assistance; Model agreements/arrangements; also for article 33: Development of an implementation action plan.
- Articles 34 and 35: Good practices/lessons learned; On-site assistance; Development of an implementation action plan; also for article 34: Model legislation.
- Article 36: On-site assistance; Development of an implementation action plan; Capacity-building for law enforcement agencies.
- Article 37: Laws and measures to encourage the cooperation of offenders.
- Article 38: Good practices/lessons learned; Development of an action plan for implementation.
- Article 39: Good practices/lessons learned; Capacity-building.
- Article 41: Good practices/lessons learned; Model legislation.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Lesotho can apply its bilateral and multilateral treaties, including the Convention, to make and execute international cooperation requests. Lesotho has cooperated on the basis of reciprocity in the absence of a treaty in one case. Lesotho subscribes to the Commonwealth Schemes on Mutual Legal Assistance (Harare Scheme) and Extradition (London Scheme). The Attorney General is the central authority for international cooperation.

It was difficult to assess in detail Lesotho's practice of providing MLA and extradition in corruption cases, due to the small number of incoming requests, the absence of data on any requests refused, and the absence of a system for collecting data.

Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)

Extradition is addressed in international treaties and agreements to which Lesotho is party and the Fugitive Offenders Act of 1967. A treaty basis is required. Lesotho has entered into two extradition treaties (China, 2003 and South Africa, 2001), and the Convention could be considered as the legal basis for extradition.

Lesotho authorizes the extradition of its nationals if permitted under a treaty; otherwise Lesotho would ensure effective prosecution. Dual criminality is required under Section 5 of the Fugitive Offenders Act and Lesotho's extradition treaties. The Act takes a list-based approach to determining extraditable offences and requires that the offence be punishable by a minimum of one year imprisonment. Because not all corruption-related offences are criminalized or punishable by one year in Lesotho, in particular those under the Penal Code, not all UNCAC offences are extraditable in Lesotho.

Pursuant to Lesotho's treaties, corruption-related offences should not be treated as political offences, though this is not specified in the Fugitive Offenders Act. The Fugitive Offenders Act and treaties oblige Lesotho not to deny extradition requests related to fiscal matters.

According to the bilateral treaties and the Fugitive Offenders Act (section 6 (1)), Lesotho is bound to refuse a request for extradition that is based on a discriminatory purpose. The fundamental rights of persons in extradition proceedings are protected under Lesotho's legislation.

The extradition treaties do not provide for a duty of prior consultation with requesting States before extradition is refused.

There are no agreements or arrangements on the transfer of sentenced persons or the transfer of criminal proceedings, and there has been no experience in this regard.

Mutual legal assistance (article 46)

There is no stand-alone law on mutual legal assistance in criminal matters (MLA). Lesotho relies on its bilateral and multilateral treaties. One bilateral treaty with South Africa (2001) is in place. The adoption of an MLA law has been proposed.

Dual criminality is required for rendering MLA, though it is not specified in Lesotho's treaty with South Africa. Lesotho reportedly has not refused any incoming requests and none of its outgoing requests have been refused, though the majority have been pending for some time. Non-coercive assistance could be provided in the absence of dual criminality, though there have been no examples in practice.

Requests are executed in accordance with Lesotho's law and treaty, and where possible requested procedures, though no examples were provided.

Bank secrecy does not appear to pose a challenge to the provision of assistance, and assistance would not be refused for offences involving fiscal matters under Lesotho's bilateral treaty.

Requests to the central authority should be addressed through diplomatic channels or through INTERPOL. The time frame for responding to requests depends on the complexity of the matter, and delays are common.

There has been no experience in conducting video testimony in Lesotho, nor has there been experience with the transfer of prisoners to provide evidence or testimony.

Grounds for refusing and postponing assistance are specified in Lesotho's treaty with South Africa, though a requirement to consult before refusing or postponing assistance is not addressed.

Documents that are not publicly available cannot generally be provided pursuant to an MLA request.

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

Law enforcement authorities can cooperate through SARPCCO and INTERPOL. Lesotho is a member of ESAAMLG, SADC and ARINSA. DCEO is a member of the Southern African Forum against Corruption (SAFAC), International Association of Anti-Corruption Authorities (IAACA), and African Association of Anti-Corruption Authorities (AACAA). Neither LMPS nor DECO have cooperation agreements in place with other countries. There has been limited experience in the exchange of personnel, communication or direct cooperation to combat corruption-related offences.

Lesotho has not conducted joint investigations or special investigative techniques internationally. Evidence derived from such techniques would be admissible under common law principles.

3.3. Challenges in implementation, where applicable

The following steps could further strengthen existing anti-corruption measures:

- Amend the Fugitive Offenders Act of 1967 and bilateral treaties on extradition and MLA to ensure compliance with the Convention; ongoing consultations to adopt a new extradition law in line with the Convention are welcome.
- Adopt a system to collect data on the origin of MLA and extradition requests, the time frame for responding to requests, and the response provided, including any grounds for refusal.

- Consider whether amending the law to have the DPP serve as the central authority would enhance efficiency; also consider establishing a specialized unit to handle extradition and MLA cases.
- Ensure that all UNCAC-related offences, including those under the Penal Code, are extraditable by virtue of their minimum period of imprisonment.
- Consider whether a threshold (minimum penalty) approach to determining extraditable offences would give greater flexibility to the extradition process.
- Amend the Fugitive Offenders Act to more clearly address the political offence exception in line with article 44(4) of UNCAC.
- Inform the United Nations of the treaty requirement for extradition and that UNCAC could be considered the legal basis for extradition.
- Ensure an obligation to prosecute nationals where extradition is refused or allow for the extradition of nationals.
- Consider adopting a specific legal framework on extradition for enforcing a sentence (article 44(13) of UNCAC).
- Establish a duty of prior consultation before extradition is refused.
- Consider whether there is an adequate treaty basis for issuing and executing extradition requests.
- Adopt, as a matter of priority, a specific law on MLA, to provide greater legal certainty in making and executing requests; early steps in this direction are welcome.
- Consider whether one single bilateral MLA treaty provides a sufficient legal basis (in addition to multilateral treaties) to issue and execute MLA requests; amend the bilateral MLA treaty as specified, in line the Convention.
- Specify the requirements on MLA for offences involving legal persons, and the purposes for which MLA may be afforded.
- Formalize measures on spontaneous information sharing and cooperation involving bank and financial records.
- Formalize the measures in paragraph 9 of article 46 and adopt the referenced measures in practice, for example in the form of guidelines for authorities.
- Ensure that prisoners receive credit while abroad to provide testimony or evidence. Formalize the requirements on the transfer of prisoners and other persons for providing assistance (paras. 10-12 and 27 of article 46) in law and treaties.
- Notify the United Nations of the central authority for MLA and acceptable language for requests, and formally establish the mechanisms for transmission of requests in law and treaties.
- Formalize the content requirements for incoming requests, the applicable law and any required procedures to execute requests in law and treaties.

- Consider specifying in law and treaties any requirements for conducting video testimony in Lesotho for purposes of hearing witnesses and transmitting evidence.
- Specify the limitations on use of evidence received pursuant to MLA requests and any situations where exculpatory evidence must be disclosed; also specify confidentiality requirements.
- Formalize the grounds for refusing assistance in law and treaties.
- Specify that assistance would not be refused for offences involving fiscal matters, and any grounds for refusal or postponement, in law and treaties.
- Establish that requests shall be executed promptly in accordance with requested time frames and adopt procedures for authorities to respond to status inquiries for pending requests.
- Establish a requirement in law, treaties and practice to consult before refusing or postponing assistance.
- Address costs arrangements for MLA and the provision of public and non-public government documents.
- Reported challenges for MLA by Lesotho are: Inter-agency coordination; the absence of an MLA law, treaties and procedures; limited capacity, training and resources.
- Inadequate legal measures are reported challenges for the transfer of criminal proceedings.
- Enhance direct law enforcement cooperation in line with UNCAC article 48, in particular to facilitate communication, information exchange and direct cooperation in investigations; encourage learning, further training and staff exchange.
- Consider adopting legal measures to address special investigate techniques and the admissibility of evidence derived therefrom.

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

The following forms of technical assistance could assist Lesotho in more fully implementing the Convention:

- Article 44: Capacity-building programmes, training for judges; development of an extradition law and model treaties
- Article 46: Capacity-building; model legislation and treaties.
- Article 47: Legal advice; model legislation and treaties.
- Article 48: Good practices/lessons learned; technical support.
- Article 49: Good practices/lessons learned; model agreements; capacity-building.
- Article 50: Capacity-building; legal advice/model agreements.