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WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS  
TRANSACTIONS****ICELAND: PHASE 4 REPORT****8-11 December 2020**

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## EXECUTIVE SUMMARY

This Phase 4 report by the OECD Working Group on Bribery evaluates and makes recommendations on Iceland's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report tracks progress made by Iceland since the 2010 Phase 3 evaluation. It details Iceland's achievements and challenges, including on enforcement of its foreign bribery laws, corporate liability and detection of foreign bribery.

Since Phase 3, Iceland has commenced its first investigation of a foreign bribery case, which is ongoing at the time of this review. Accordingly, many of the issues raised in this report remain untested. However, this case will enable Iceland to demonstrate its commitment to implementing the Convention and related instruments.

The Working Group calls on Iceland to proactively detect foreign bribery and ensure that all credible allegations are duly considered. The Working Group is seriously concerned that, since the entry into force of the Convention in Iceland over 20 years ago, Iceland has yet to conclude a foreign bribery case and, where credible allegations of foreign bribery involving Icelandic nationals or companies have been reported, the allegations were not assessed and investigated. To this end, greater cross-agency training and awareness-raising could usefully enhance the detection and reporting of suspected bribery to relevant law enforcement agencies by the public sector, including those officials posted abroad. A more proactive use of MLA could also enhance the capacity of Icelandic law enforcement authorities to detect and investigate foreign bribery. Iceland should also raise further awareness of foreign bribery issues among the private sector.

The Working Group further notes that the practical application of the foreign bribery offence by investigators, prosecutors and judges is still to be tested, in particular, the legislative amendments to cover the bribery of officials of state owned enterprises and the interpretation of key elements within that offence.

The report also highlights good practices that have the potential to enhance Iceland's detection capacities, in particular the Working Group commends Iceland's recently enacted Whistleblower Protection Act. The Working Group also welcomes the changes to the investigation and prosecution of foreign bribery, which are now handled by one authority, the Office of the District Prosecutor; this integrated approach has the potential to be very effective in the investigation and prosecution of foreign bribery cases.

The report and its recommendations reflect the findings of experts from Denmark and Lithuania and were adopted by the Working Group on 10 December 2020. It is based on legislation, data and other materials provided by Iceland, as well as research conducted by the evaluation team. Information was also obtained during the virtual visit in June 2020, during which the evaluation team met virtually representatives of Iceland's public and private sectors, law enforcement, media, and civil society. Iceland will submit a written report in two years on the implementation of all recommendations and its enforcement efforts.

## INTRODUCTION

1. In December 2020, the Working Group on Bribery in International Business Transactions (Working Group or WGB) completed its fourth evaluation of Iceland's implementation of the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (Convention), the 2009 Recommendation of Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Recommendation), and related anti-bribery instruments.

### 1. Previous evaluations of Iceland by Working Group on Bribery

2. Monitoring implementation of the Convention, the 2009 Recommendation and related instruments is conducted through successive phases, according to agreed-upon principles and through a rigorous peer-review system. The monitoring process is compulsory for all Parties to the Convention, and on-site visits are mandatory in Phases 2, 3 and 4. However, due to the Covid-19 crisis, the Secretariat and lead examiners were not able to undertake an on-site visit, which involves meetings with the relevant law enforcement and government authorities, as well as civil society and the private sector. Under these special circumstances, Iceland and the Working Group exceptionally agreed that the on-site visit would be conducted virtually but include all the usual panels that an on-site visit would have convened.

3. The monitoring reports, which are systematically published on the OECD website, include recommendations to the evaluated country. These reports are adopted on a 'consensus minus one' basis, which means that the evaluated Party may voice its views and opinions but cannot block the adoption of the final report and recommendations.

4. The Phase 3 evaluation of Iceland took place in December 2010. By the end of the Phase 3 review cycle in 2013, Iceland had fully implemented 2 recommendations, partially implemented 2, and 13 were not implemented (see Figure 1 and Annex 1).

#### Box 1. Previous Working Group on Bribery Evaluations of Iceland

2018 [Additional Follow-up to Phase 3 Report \[DAF/WGB\(2018\)47\]](#)

2018 [Additional Follow-up to Phase 3 Report \[DAF/WGB\(2018\)9\]](#)

2015 [Public Statement](#)

2013 [Follow-up on Phase 3 Report](#)

2011 [Public Statement](#)

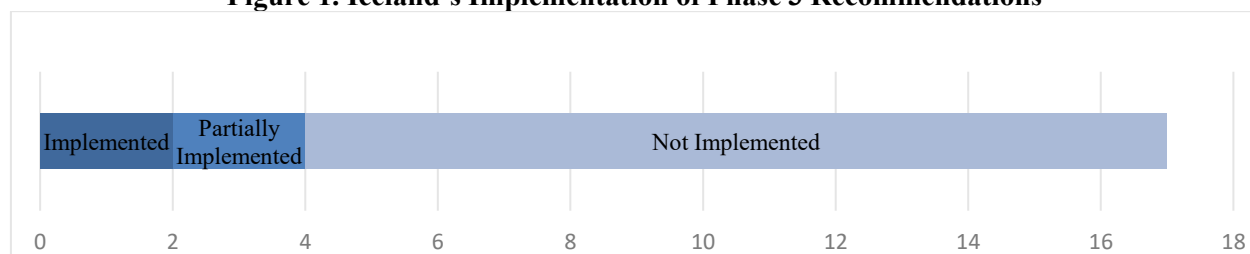
2010 [Phase 3 Report](#)

2006 [Phase 2 Written Follow-up Report](#)

2003 [Phase 2 Report](#)

1999 [Phase 1 Report](#)

**Figure 1. Iceland's Implementation of Phase 3 Recommendations**



(Phase 3 Two-Year Written Follow-Up Report - January 2013)

## 2. Phase 4 process and exceptional “virtual visit”

5. Phase 4 focuses on three cross-cutting themes – detection; enforcement of the evaluated Party’s foreign bribery offence; and corporate liability for the offence (liability of legal persons). Additionally, it addresses the Party’s progress on previously unimplemented Phase 3 recommendations, issues raised by changes to the Party’s legal and institutional frameworks for combating foreign bribery, as well as any new issues that come to the Working Group’s attention. Phase 4 considers each Party’s unique situation, resulting in a report and recommendations that address the specific challenges and achievements of each Party in a more targeted manner than previous Phases. This result is largely achieved by focusing first and foremost on the recommendations from Phase 3 that were not fully implemented by the end of that cycle. This means that issues that were not problematic or were resolved by the end of Phase 3 may not be reflected in the Phase 4 Report, while wholly new issues that have arisen since that time may appear in this report for the first time.

6. The Phase 4 evaluation team for Iceland was composed of lead examiners from Denmark and Lithuania, and members of the OECD Anti-Corruption Division.<sup>1</sup> Pursuant to the Phase 4 procedures,<sup>2</sup> after receiving Iceland’s responses to the Phase 4 questionnaire, which included supplementary country-specific questions, the evaluation team conducted its virtual visit between 8-16 June 2020 via videoconference. Sixteen panels were conducted to obtain a range of perspectives. In addition to opening and closing sessions with the Icelandic authorities, panels were held with the main Icelandic ministries and agencies responsible for implementing the Convention, including the Ministry of Justice (MOJ), the Prime Minister’s Office (PMO), Ministry of Industry and Innovation (MII), Ministry of Foreign Affairs (MOFA), the MOFA Directorate of International Affairs and Development Cooperation (DIADC), Office of the Director of Public Prosecutions (DPP), Office of the District Prosecutor (DPO), Ministry of Finance and Economic Affairs (MFEA), Iceland Revenue and Customs (IRC), Directorate of Tax Investigations (DTI) and the Icelandic Financial Intelligence Unit (ICEFIU). Panels were held with the following government agencies with frequent contact with the private sector: Islandsstofa (Promote Iceland) and Ríkiskaup (Central Public Procurement). Panels were also held with the following stakeholders from outside the Icelandic administration: civil society, journalists, academia, the accounting and auditing profession, legal and compliance professions and a range of representatives from other areas of the private sector.<sup>3</sup> Unfortunately a panel with judges was unable to take place due to their unavailability and a heavy caseload prior to the end of the legal term. However, through the MOJ, they answered a separate written questionnaire.

7. The lead examiners credit Iceland with a well-organised and well-attended virtual visit. All the panels were coordinated by the MOJ. Government representatives were generally open and forthcoming about the challenges they face in implementing the Convention. Panels with stakeholders from outside the government were well attended, constructive and provided significant insights into Iceland’s efforts and difficulties to enforce its foreign bribery offence and related obligations under the Convention, as well as the private sector’s level of awareness and concern about preventing foreign bribery through compliance

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<sup>1</sup> Denmark was represented by: **Andreas Laursen**, Senior Prosecutor of the International Department, State Prosecutor for Serious Economic and International Crime and **Frank Wagner**, Detective Inspector of the International Department, State Prosecutor for Serious Economic and International Crime. Lithuania was represented by: **Tomas Krušna**, Chief Prosecutor of the Criminal Prosecution Department, Prosecutor General’s Office and **Darius Mickevičius**, Head of International Cooperation Division, Special Investigation Service. The OECD Secretariat was represented by five colleagues from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs: **France Chain**, Senior Legal Analyst; **Lise Née**, Legal Analyst; **Paul Whittaker**, Legal Analyst; **Apostolos Zampounidis**, Legal Analyst and **Sofia Tirini**, Legal Analyst.

<sup>2</sup> The Phase 4 Procedures are provided in [OECD Anti-Bribery Convention: Phase 4 Monitoring Guide](#).

<sup>3</sup> Annex 3 for the List of Participants in the Phase 4 virtual visit.

measures and programmes. The evaluation team is grateful to the Icelandic authorities for their cooperation throughout the evaluation and the provision of additional information following the virtual visit.

8. However, the lead examiners note the lack of presence of high-level officials at the introductory session as well as the concluding session.<sup>4</sup> This lack of attendance, together with the minimal attendance by Iceland at the Working Group meetings and no attendance at the Working Group Informal Meetings of law enforcement officials (LEOs) since at least 2017, suggests that the Icelandic authorities are not fully engaged in relation to foreign bribery.

### 3. Iceland's Foreign Bribery Risk in light of its Economic Situation and Trade Profile

9. Iceland is the smallest economy among Working Group members in term of real gross domestic product (GDP) but is also one of the wealthiest OECD countries.<sup>5</sup> In 2019, Iceland had a GDP per capita of USD 60 180, one of the highest GDP per capita in the world.<sup>6</sup> Despite being a relatively small economy, in 2018 Iceland ranked as the 79<sup>th</sup> largest export economy in the world.<sup>7</sup> The same year, Iceland ranked last among Working Group members in terms of exports (at current prices), and outward foreign direct investment (FDI stock at current prices).<sup>8</sup>

10. Since the 2008 financial crisis, Iceland has achieved years of robust growth. However, Iceland's GDP growth rate has been decreasing since 2016 from 6.6% to an estimated 1.9% in 2019.<sup>9</sup> Despite this tendency, a moderate but fragile growth recovery was expected in 2020 with an estimated increase of 2.2%.<sup>10</sup> This estimate was, however, prior to the Covid-19 pandemic. In fact, Iceland's GDP contracted 9% in the first quarter of 2020 over the same quarter in the previous year.<sup>11</sup> It is the biggest contraction since the first quarter of 2009, mainly due to a decline in tourism after several countries imposed Covid-19 travel restrictions.<sup>12</sup>

11. The Icelandic economy is strongly domestically oriented and has diversified into manufacturing and service industries in the last decade, particularly within the fields of software production, biotechnology, and energy.<sup>13</sup> Tourism, aluminium smelting, and fishing are the three main pillars of the Icelandic economy.<sup>14</sup> Although tourism was the most important export sector, it was already declining before Covid-19 because of supply constraints following the insolvency of one of Iceland's main airline companies Wow.<sup>15</sup>

<sup>4</sup> Phase 4 Procedures para. 25.

<sup>5</sup> OECD (2019), [OECD Economic Surveys: Iceland 2019](#), OECD Publishing, Paris, p.10; and UNCTAD statistics.

<sup>6</sup> OECD DATA, [Gross domestic product \(GDP\)](#).

<sup>7</sup> OECD (2019), [2018 Enforcement of the Anti-Bribery Convention](#), Paris, p. 3. The data on world GDP and world exports were provided by the Investment Division within the OECD Directorate for Financial Affairs as well as the OECD Economics Department.

<sup>8</sup> UNCTAD statistics.

<sup>9</sup> Statistics Iceland (2019), [Gross domestic product](#).

<sup>10</sup> OECD (2019), [OECD Economic Surveys: Iceland 2019](#), op.cit., p.10.

<sup>11</sup> OECD Outlook 107, [2020 Projected change in GDP](#).

<sup>12</sup> Trading Economics, ["Iceland GDP Growth Rate"](#).

<sup>13</sup> Trading Economics, [Iceland](#).

<sup>14</sup> US Department of Commerce (2019); [Iceland Market Overview](#).

<sup>15</sup> OECD (2019), [OECD Economic Surveys: Iceland 2019](#), op.cit., p. 17; Vox (May 2019), ["Wow Air's collapse has seriously affected Iceland's economy"](#) (accessed on 23 September 2020).

12. Exports of goods and services accounted for 48% of Iceland's GDP in 2018.<sup>16</sup> Even though Iceland's economy has always depended heavily on the fishing industry, in 2018 revenues of foreign travellers accounted for 39.3% of exports of goods and services, followed by marine products (18.1%) and aluminium products (17.4%).<sup>17</sup> Iceland's top export destinations are the Netherlands,<sup>18</sup> the United Kingdom, Spain, the United States, France and Germany.<sup>19</sup> Iceland also exports to some jurisdictions at high risk of corruption.<sup>20</sup>

13. Although Iceland's FDI has substantially increased in the last 20 years and accounts for around 40% of GDP, this remains relatively low compared to other small countries.<sup>21</sup> The total value of Iceland's outward FDI stocks represented 20% of its GDP in 2018.<sup>22</sup> In turn, abundant geothermal and hydropower sources have attracted substantial foreign investment in the aluminium sector, and high-tech firms looking to establish data centres using cheap green energy.<sup>23</sup>

14. The Icelandic business sector is mainly comprised of small and medium sized enterprises (SMEs) which account for almost three quarters of employment.<sup>24</sup> Many of the largest companies in the country are subsidiaries of foreign companies. The latest figures show that Iceland has 35 state-owned enterprises (SOEs),<sup>25</sup> which account for around 2.5% of employment, close to the OECD average.<sup>26</sup>

*(a) Iceland's exposure to foreign bribery risks*

15. At the time of Phase 3, corruption and foreign bribery were not considered as a major risk area for Icelandic companies. Foreign bribery was not seen as an important problem in the absence of bribery allegations involving Icelandic nationals and/or companies.<sup>27</sup> Iceland has consistently ranked well in Transparency International's Corruption Perception Index, a measure of domestic corruption, where it has been among the top countries since Phase 3, ranking in 11<sup>th</sup> position out of 180 countries in 2019.<sup>28</sup> However, this can lead to complacency and a denial of a country's corruption risks, which contributes to perceptions that Icelandic individuals and companies do not engage in bribery and may, in fact, undermine detection and awareness-raising efforts.

16. Indeed, this was reflected in Phase 3, where the level of engagement and awareness of foreign bribery in the private sector was very low. At that time, the private sector expressed a lack of knowledge of the foreign bribery offence and was unaware that Icelandic companies could be punished for bribery of foreign public officials under Icelandic law.<sup>29</sup> At that time, no steps had been taken to raise awareness with companies, and, in particular, encourage and promote internal corporate compliance programmes for

<sup>16</sup> World Bank Data, Country Profile, [Iceland](#).

<sup>17</sup> OECD (2019), [OECD Economic Surveys: Iceland 2019](#), op.cit., Paris, p. 22.

<sup>18</sup> Exports through Dutch ports partly explain the large share for the Netherlands.

<sup>19</sup> OECD (2019), [OECD Economic Surveys: Iceland 2019](#), op.cit., p. 22.

<sup>20</sup> Trading Economics, [Iceland Exports by Country](#).

<sup>21</sup> OECD (2019), [OECD Economic Surveys: Iceland 2019](#), OECD Publishing, Paris, p. 21.

<sup>22</sup> OECD Data, [FDI Stocks](#).

<sup>23</sup> Forbes (2018), Best Countries for Business, [Iceland](#). <https://www.forbes.com/places/iceland/>

<sup>24</sup> [2016 SBA Fact Sheet Iceland](#) - European Commission.

<sup>25</sup> OECD (2017), [The Size and Sectoral Distribution of State-Owned Enterprises](#), OECD Publishing, Paris, p. 25.

<sup>26</sup> OECD (2019), [OECD Economic Surveys: Iceland 2019](#), op.cit., p. 39.

<sup>27</sup> Iceland [Phase 3 Report](#), para. 10.

<sup>28</sup> Transparency International (2020), [Corruption Perception Index 2019](#).

<sup>29</sup> Iceland [Phase 3 Report](#), para 69.

exporting companies or provide guidance on how to deal with bribe solicitation.<sup>30</sup> Since Phase 3, the situation has improved, encouraged in part by the private sector and the multinational companies operating in Iceland. However, according to some panellists from business associations, legal experts and civil society, many of the major companies have still not implemented anti-bribery compliance programmes. This is with the exception of some subsidiaries of foreign companies headquartered in Iceland, suggesting that awareness of foreign bribery in the private sector remains low.

17. Some Icelandic companies trade with high-risk jurisdictions and operate in sectors that are at risk, in particular the fishing and maritime industry and the energy (including hydropower and geothermal energy) and pharmaceutical sectors.

18. As mentioned above, the fishing industry remains a vital part of Iceland's economy. Iceland also recently became a leading country in the advancement of marine technology, fishing equipment, navigational techniques and fishing detection instruments, as well as maintaining a sophisticated seafood sector, exporting world-class produce.<sup>31</sup>

19. Foreign bribery risks can materialise in this sector in relation to the need to obtain licences and permits, the verification of landings or when dealing with port controls, smuggling of illegal catches, trafficking of contraband and workers, negotiation of agreements and the impunity of flags of convenience.<sup>32</sup> Bribery risks may also surface when dealing with institutions that govern marine fisheries and to influence observers who monitor unlawful practices at sea.<sup>33</sup> Bribery can occur throughout the value chain, which in the fishing sector, can be quite complex. This is potentially demonstrated by the recent allegations that one of Iceland's largest fishing conglomerates bribed government officials in Namibia and Angola to secure rights for fishing quotas.<sup>34</sup>

20. Iceland also has a comparative advantage in hydropower and renewable geothermal energy. There are growing opportunities for the Icelandic geothermal sector in developing geothermal technology and services abroad. The Icelandic geothermal sector has worked on numerous projects internationally and Icelandic geothermal companies are increasingly operating abroad. According to Promote Iceland, key markets for geothermal power development in the near future are expected to be Southeast Asia (Indonesia and the Philippines), Eastern Africa (Kenya and Ethiopia), Latin America (Mexico and Central American countries), the Caribbean and Turkey.<sup>35</sup>

21. Icelandic companies are also active in the pharmaceutical industry, which are developing rapidly but known to be at risk of bribery.

#### **(b) Allegations and Cases of Foreign Bribery in Iceland**

22. At the time of Phase 3, Iceland had not investigated any foreign bribery cases. Since then Iceland has commenced only one investigation, the *Namibia case*, which started in November 2019. This case has been widely reported in the Icelandic and international media and came to light after a whistleblower reported matters to the media and subsequently law enforcement. The allegations involve one of Iceland's

<sup>30</sup> Iceland [Phase 3 Report](#), para 68.

<sup>31</sup> Islandsstofa Promote Iceland, Trade & Invest, [Fisheries](#).

<sup>32</sup> WGB 2017, Presentation to the Working Group on Bribery in International Business Transactions, "A multi-pronged approach to fight illegal fishing", OECD.

<sup>33</sup> U4 "[Basic guide to corruption and anti-corruption efforts in renewable resource sectors](#)" (accessed on 23 September 2020).

<sup>34</sup> Iceland Review, (February 2020), "[In Focus: Samherji Scandal](#)" (accessed on 2 April 2020); and The Guardian, (November 2019), "[Bribery allegations over fishing rights rock Iceland and Namibia](#)" (accessed on 10 July 2020).

<sup>35</sup> Islandsstofa Promote Iceland (2016), "[Mapping the Icelandic Geothermal Energy Sector](#)".

largest fishing companies and that between 2011 and 2018 a senior official within the company authorised bribes to be paid to officials in Namibia to secure fishing rights. The company has denied any wrongdoing and engaged an external law firm to investigate (which has now concluded). The company has also announced it will fully cooperate with the investigation and it would implement a corporate governance and compliance system “...based on experience from the company’s operations in Namibia.”

23. In addition to this case, there have been three other allegations of foreign bribery that involved Icelandic companies or individuals but the authorities did not investigate.<sup>36</sup>

24. Two of these allegations involved the same Icelandic pharmaceutical company (*Pharmaceutical cases*) and bribes were allegedly paid to public officials in two non Party countries. One concerned bribes paid between 2007 and 2009 and the other concerning bribes paid in 2012. The non- Parties commenced investigations but Iceland did not open investigations into either matter on the basis that the available information at the time was not considered clear enough to justify opening a case in Iceland.

25. The third case involved an allegation that in 2012 an Icelandic national acted as an intermediary in relation to a corruptly obtained contract to supply helicopters to another Party to the Convention (*Helicopter case*). This case was brought to the attention of the Icelandic authorities through a mutual legal assistance (MLA) request from the Party. In April 2016, the Icelandic authorities provided assistance further to the MLA request and interviewed witnesses in Iceland. However, the Icelandic authorities did not open their own investigation and relied on the other Party to investigate the matter. In 2017, the authorities of the other Party closed the investigation without a prosecution due to a lack of evidence.

### **Commentary**

***The lead examiners are seriously concerned that, since the entry into force of the Convention in Iceland over 20 years ago, Iceland has yet to conclude a foreign bribery case and, where allegations of foreign bribery involving Icelandic nationals or companies have been reported, the allegations are not assessed and, if appropriate, investigated. The lead examiners recommend that Iceland ensure that all foreign bribery allegations (including those referred to Iceland by the Working Group) are properly assessed by the competent authorities and where appropriate, open investigations.***

***The lead examiners are also concerned at the lack of engagement of Iceland with the Working Group, noting a representative has not attended any Working Group meetings since June 2019 and there has been no attendance at the LEOs since at least 2017. The lead examiners encourage Iceland to participate in the Working Group meetings, and in particular the LEOs meetings, which could assist with their first ever investigation of a foreign bribery case. Whilst the lead examiners acknowledge that substantial resources were devoted to dealing with the aftermath of the 2008 financial crisis and, more recently, to improve Iceland’s anti-money laundering framework, Iceland must continue to abide by its international obligations in the fight against foreign bribery.***

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<sup>36</sup> Following prior Phase 4 reviews, the allegations used in this evaluation come from the Matrix, a collection of foreign bribery allegations prepared by the OECD Secretariat using public sources, such as the media. The inclusion of allegations in the Matrix does not prejudice the issue of whether the allegations are, in fact, an offence under any applicable law. The Matrix is provided by the Working Group to the MOJ which in turn distributes it to the DPO.

## A. DETECTION OF THE FOREIGN BRIBERY OFFENCE

26. In light of the lack of concluded foreign bribery cases as at the time of this report, it is not possible to properly assess the various detection sources for foreign bribery in Iceland. The only foreign bribery case to date investigated was detected through a whistleblower working in conjunction with investigative journalists and subsequent media reporting. Prior to the current case foreign bribery risks were not generally of concern in Iceland. Notably in Iceland's 2019 National Risk Assessment for money laundering, foreign bribery or corruption are not identified as risk areas. However, with the recent case the risks of foreign bribery have become all too apparent and the case appears to have shifted the perception of the risks involved and raised awareness more generally. Recent increases in the resources of the financial intelligence unit (FIU) and a new Whistleblower Act have the potential to increase detection of foreign bribery in Iceland.

27. Self-reporting (or voluntary disclosure) by companies is not a source of detection in Iceland and is not provided for under the law. Across the parties to the Convention, self-reporting accounts for approximately a quarter of all foreign bribery cases detected since the entry into force of the Convention, and has been recognised as an invaluable source of detection of foreign bribery.<sup>37</sup> Icelandic law does not contain provisions to reward self-reporting of criminal conduct by legal (or natural) persons, although self-reporting may be taken into account as a general mitigating factor in sentencing for any offence (article 70(9) of the General Penal Code (GPC)).

### 1. Iceland's capacity to detect foreign bribery through its anti-money laundering (AML) framework

28. Although a broad assessment of Iceland's AML framework is beyond the scope of this report, it focuses on aspects of the AML framework that relate to foreign bribery and outstanding Phase 3 recommendations. At the time of the virtual visit, Iceland was on the Financial Action Taskforce (FATF) 'grey list' following its 2018 FATF review. Since then, the FAFT has acknowledged that Iceland has worked to strengthen the effectiveness of its AML regime, and from October 2020, Iceland is no longer subject to the FATF's increased monitoring process.<sup>38</sup>

29. In Phase 3 the Working Group recommended that Iceland take all necessary measures to ensure that all stakeholders involved in fighting money laundering be adequately made aware that bribery of foreign public officials is a predicate offence to money laundering (recommendation 8). At the time of the written follow-up report, this recommendation was not implemented. The Phase 3 report further noted that the human resources (one staff member) of the then FIU, the Money Laundering Office of the National Commissioner of Police, did not seem appropriate for performing its functions. Finally, there had not been any training, guidelines or other type of information disseminated on foreign bribery as a predicate offence to money laundering.

30. The money laundering offence remains unchanged since Phase 3. Any offences, including foreign bribery, qualify as a predicate offence to money laundering. Legal persons can be held liable for any money laundering offence, including where foreign bribery is the predicate offence, in accordance with articles 264 and 19d GPC.

31. Under the AML Act, specific measures are also in place relating to customer due diligence which are important to potentially identify foreign bribery offences, concerning politically exposed persons

<sup>37</sup> OECD (2017), [The Detection of Foreign Bribery](#), Paris, p. 13.

<sup>38</sup> FATF, (23 October 2020) [Jurisdictions under Increased Monitoring](#).

(PEPs) and beneficial ownership. Article 3(6) of the AML Act defines PEPs and this includes members of the administration, management or supervisory bodies of SOEs (article 3(6)g). Article 17 of the AML Act prescribes the required measures and due diligence that reporting entities must perform and provides that reporting entities shall have in place appropriate systems, procedures and process to determine whether a domestic or foreign customer, or the beneficial owner, is a PEP. Iceland states that it has the capacity to detect bribe payments through money-laundering transactions involving PEPs who are foreign public officials. During the virtual visit, the financial institutions noted that they have automated screening systems in relation to foreign PEPs and perform checks against international PEP lists.

32. Under article 10 of the AML Act, as part of customer due diligence, all obliged entities are required to collect sufficient and reliable information related to the beneficial owner and verify that information independently prior to the establishment of a business relationship or prior to a business transaction. Enhanced due diligence is required in relation to customers in high-risk countries under article 14 which includes obtaining additional information on beneficial ownership. Reporting entities are obliged to identify whether beneficial owners are PEPs under article 17. In addition, Iceland recently established a beneficial ownership register under Act No. 82/2019 on the registration of beneficial ownership, which requires all legal persons that engage in business operations in Iceland to provide certain information on the beneficial owners. In relation to foreign beneficial owners, during the virtual visit, the financial institutions noted that almost 99% of their customers were resident in Iceland and the remaining were Icelanders living abroad, mainly in the European Economic Area. However, a very small fraction live in high risk jurisdictions.

33. Under article 20 of the AML Act, reporting entities are obliged to provide the ICEFIU with all the information it considers necessary without delay, including bank information. Reporting entities are also required, under article 21, to respond to requests from the ICEFIU for additional information related to reports and provide the ICEFIU with all the necessary information it requires in connection with reports (noting that the DPO require a court order to access financial information). Financial institutions reported during the virtual visit that they can generally produce information requested within 24 hours to the ICEFIU.

34. Since Phase 3, the ICEFIU has changed significantly. In July 2015, the ICEFIU moved as an independent unit to within the DPO. The co-location of the ICEFIU within the DPO has led to some increased cooperation between them which should be beneficial in the context of foreign bribery investigations. In addition, resources have improved significantly. Iceland reports that in 2019 and 2020, extra funding of over ISK 100 million (Icelandic kronur) (approx. EUR 620 000) was added to the budget of the DPO to enhance AML detection and enforcement, especially within the ICEFIU. An annual extra funding of ISK 90 million (approx. EUR 555 000) is expected in 2021. The funding has already been used to add five full time positions at the ICEFIU (it has now increased to eight staff members since Phase 3), which should assist also in terms of awareness-raising and detection of foreign bribery. Iceland maintains, that per capita, they now have the largest FIU in the world.

35. Part of the reason for these significant improvements in the AML framework in Iceland was the increased monitoring by the FATF and the 2018 review mentioned above. As part of these efforts, communication and information exchange with reporting entities have been significantly improved. Iceland indicates that since 2017, 24 guidance notes were issued on several issues. However, it does not appear that any of the outreach or guidance notes relate to foreign bribery.

36. In other changes to the AML framework, Iceland has now implemented a more rigorous oversight regime of the entities required to report suspicious transactions to the ICEFIU. In addition, Iceland published its second National Risk Assessment (NRA) in April 2019 (the first being in 2017). The NRA was drafted by the National Police Commissioner and the Steering Committee on AML/TF related issues. Foreign bribery or corruption are not identified as one of the money laundering risk areas in Iceland's 2019 NRA.

37. Since October 2018, there have been 36 analysis reports concerning economic crime provided by the ICEFIU to the DPO, all of which have resulted in investigations. However, none relate to foreign bribery and to date no foreign bribery cases have ever been detected by the ICEFIU, either as a result of information uncovered from suspicious transaction reports (STRs) or from information sent to the ICEFIU by a foreign FIU. This is of concern as entities required to report under the AML framework are broad in definition covering not only financial institutions but also lawyers, accountants and real estate agents. Panellists from the private banking sector commented that, whilst there had been a lot of recent changes and improved cooperation with the authorities, they would appreciate further guidance on foreign bribery and related typologies.

#### **Commentary**

*The lead examiners welcome the changes to the ICEFIU and the increase in resources and opportunities to coordinate closely with the DPO, which could increase the detection and subsequent investigation of foreign bribery allegations. As more foreign bribery allegations are investigated a better understanding of the methods and risks areas for foreign bribery will be developed.*

*The lead examiners also welcome efforts to reach out to stakeholders, and consider recommendation 8 partially implemented. They recommend that ICEFIU, commensurate with the increase in resources, raise awareness of foreign bribery risks and publish typologies on foreign bribery as a predicate offence to money laundering.*

## **2. Reports of foreign bribery by whistleblowers and the adequacy of Iceland's whistleblower protections**

38. In Phase 3, the Working Group expressed concerns that Iceland did not have in place appropriate measures to protect from discriminatory or disciplinary action public and private sector employees who report suspected acts of foreign bribery. It recommended that Iceland enact such measures in line with the 2009 Recommendation IX.(iii) and take steps to raise awareness (recommendation 7). At the time of Iceland's two-year written follow-up, the Working Group found that Iceland had not implemented the recommendation, and considered that all subsequent measures fell short of providing comprehensive protection to whistleblowers. In response, Iceland enacted Act 1405 on Whistleblowers Protection (Whistleblower Act) on 12 May 2020. The Whistleblower Act is due to enter into force on 1 January 2021.

39. This Phase 4 evaluation is the Working Group's first opportunity to examine the Whistleblower Act, which contains important elements that could arguably constitute good practice for the protection of whistleblowers. In particular, the Whistleblower Act:

- covers all employees in the public and private sectors, including former and temporary employees, interns, volunteers and independent contractors who have access to "information or data on the employer's activities as a result of their role" (article 1). During the virtual visit, representatives from the PMO submitted that it would also cover foreign-based employees.
- does not link the good faith requirement with the motive of the whistleblower. Protection is afforded to all those who had good reasons to believe that the reported information was true at the time of the reporting, it was in the public interest to disseminate it, and the whistleblower had no other option to prevent the misconduct (article 1).
- does not distinguish between internal (within the organisation) and external reporting (to public authorities, including law enforcement) (article 2). Public reporting (e.g. to media) is, however, possible only in exceptional circumstances: (a) when other forms of reporting did not result in a satisfactory response and the whistleblower has a good reason to believe that the conduct at hand is punishable by a prison sentence; or (b) it is urgent to protect the security or economically important interests of the state, human health or the environment (article 3).

- provides for a wide range of protections and guarantees for whistleblowers. These include protection of confidentiality both of the identity of the whistleblower and the content of their report (articles 2(4) and 3(3)), exemption from criminal or other liability in relation to making the report (article 4(1)), prohibition of any retaliation or unfair treatment, and reversal of the burden of proof on the employer to show that retaliation did not take place (article 4(2)). The law also provides that reporting does not constitute a breach of the duty of confidentiality of the whistleblower viz. the employer.
- requires companies or other workplaces with 50 or more employees to implement rules and procedures for whistleblowing and create channels for reporting (article 5).

40. Despite these positive elements, some elements of the Whistleblower Act require clarification. The commentary that accompanies the Whistleblower Act defines or elaborates some of these elements. During the virtual visit, MOJ and PMO representatives argued that, although not binding in nature, it is part of Iceland's legal tradition to use commentaries when interpreting legislation.<sup>39</sup> However, absent relevant case law and practice, the Working Group will need to follow up on these issues:

- Scope of application: on its face, this appears restrictive, as under article 1, reports by whistleblowers must concern misconduct "in their employers' activities". Accordingly, the law may not cover, for example, reports about foreign bribery committed by private individuals or companies, which an employee detects in the course of their work but the foreign bribery itself does not concern the employer. During the virtual visit, PMO representatives argued in favour of a broader interpretation of this provision to include any misconduct that the whistleblower may perceive in the context of their work. The commentary supports this broader interpretation.<sup>40</sup>
- Remedies for whistleblowers: the Whistleblower Act does not provide for remedies such as financial protection. Iceland explained that a whistleblower may seek protection, through civil court proceedings, from retaliation as stipulated in articles 4(1) and (2). In the event of a dispute in a court with the employer, the whistleblower shall not have to incur legal costs before the court (article 4(3)).
- Sanctions for those who retaliate against whistleblowers: A fine or imprisonment of up to two years may be imposed for those who retaliate against the whistleblower (article 7). However, this provision concerns only reports made to the Althingi Ombudsman,<sup>41</sup> the National Audit Office or the State Occupational Safety and Health Administration, which are unlikely to concern foreign bribery. It does not cover whistleblower reports within an organisation, or to other public and law enforcement authorities.
- Multiple competent authorities: various relevant authorities are responsible to define the rules and procedures of article 5, i.e. the MFEA is responsible to define the rules and procedures for public institutions and SOEs, local authorities the rules and procedures for municipal workplaces, and the State Occupational Safety and Health Administration for all other workplaces. The State

<sup>39</sup> The judges later confirmed that commentaries to laws are the "main interpretation tool" of national legislation. They added that "when national law is being interpreted, it is common that judges consider the interpretation of the same word or phrases in implemented international law."

<sup>40</sup> The relevant extracts of the commentary provide: "It is expected that the provision on conduct "in their employers' activities" will be broadly construed and that this will include any conduct that the employee becomes aware of in his work [...] It can be said that everything that employees do and become aware of in their work can be considered the activities of their employer in a broad sense."

<sup>41</sup> Althingi is the name of the Icelandic Parliament. Complaints may be lodged with the Althingi Ombudsman about decisions, procedures and conduct exercised by officials of ministries and government agencies and other bodies engaged in State administration.

Occupational Safety and Health Administration also acts as the oversight authority that monitors the implementation of these rules and procedures, and may impose fines for non-compliance. Without proper coordination at this early stage, this multiplicity and fragmentation of authorities may undermine coherence in implementation and effectiveness of the Whistleblower Act, and discourage potential whistleblowers from reporting foreign bribery.

41. Iceland has provided no information about efforts to raise awareness of the new Whistleblower Act. The Working Group recommended that Iceland raise awareness of its whistleblower protection mechanisms in Phase 3 and the recommendation was considered not implemented at the time of Iceland's two-year written follow-up. During the virtual visit, most panellists, including private sector representatives, were well aware of the Whistleblower Act. Panellists also noted that the law introduces far-reaching changes in Iceland's whistleblower framework, which were met with some opposition before its enactment. In light of this, as well as Iceland's relatively small size, which makes it more difficult to protect the whistleblower's identity and prevent retaliation, and prior negative perception of whistleblowing, it will be essential that Iceland undertake considerable efforts to ensure proper implementation and effectiveness of the Whistleblower Act.

#### **Commentary**

*The lead examiners commend Iceland for enacting comprehensive legislation on whistleblower protection, which partially implements Phase 3 recommendation 7. The legislation includes elements that constitute good practice for the protection of whistleblowers. The new law could also create a paradigm shift in the way whistleblowers report and are protected in Iceland, if accompanied by significant efforts to support implementation and raise awareness.*

*The lead examiners thus recommend that Iceland take steps to ensure the effectiveness of the new law in detecting foreign bribery, in particular:*

- a) Raise awareness in the public and private sectors, including SMEs, of the new Whistleblower Act, including the broad scope of the term "in their employers' activities" in the commentary and the protections available to whistleblowers under the new law;*
- b) Ensure that appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report suspected acts of foreign bribery, including within their own organisation and to law enforcement authorities.*

*The lead examiners further recommend that the Working Group follow up the implementation of the legislation to ensure, in particular, that (i) the application of the term "in their employers' activities" covers in practice all reports of foreign bribery by public and private sector employees, (ii) easily accessible reporting channels are available to whistleblowers in the public and private sectors, and (iii) there is proper coordination among competent authorities in defining the rules and procedures of article 5 of the new law and in monitoring its implementation.*

### **3. Other sources of foreign bribery allegations**

#### **(a) Detection and reporting by Icelandic public officials**

42. In Phase 3, the Working Group was concerned about the continued lack of clear and well-publicised mechanisms or guidance for public officials to report suspicions of foreign bribery. For that reason, in line with section IX (ii) of the 2009 Recommendation, the Working Group recommended that Iceland ensure that appropriate measures were in place to facilitate reporting by public officials, in particular those posted abroad, to law enforcement authorities of suspected acts of foreign bribery detected in the course of their work, and raise awareness of the existence of these reporting channels (recommendation 6(a)). At the time

of Phase 3, certain measures were in place but were not deemed adequate by the Working Group, which considered the recommendation to be not implemented.<sup>42</sup>

43. In previous evaluations, Icelandic authorities confirmed that no awareness-raising had been undertaken. Currently, Iceland relies on the 1996 Act on the Rights and Duties of Government Employees, specifically articles 13 and 14. However, these provisions do not oblige employees to report crimes; they only state that those who choose to report are protected from reprisals.

44. In Phase 3, Icelandic missions abroad, as well as agencies within the government that deal with Icelandic companies conducting business overseas, such as the Overseas Business Development Department, provided no specific channels or measures to facilitate the reporting of suspicions of foreign bribery to law enforcement authorities.<sup>43</sup> At the time, ODA was administered by the then Icelandic International Development Agency (ICEIDA), but is now administered by the DIADC. More information about the DIADC and the mechanisms developed to detect and report foreign bribery, and more generally implement the 2016 Recommendation for Development Co-operation Actors on Managing Risks of Corruption, are provided under Part D.12(c) below.

45. Since its two-year written follow-up, Iceland indicated that it has taken some measures to address this recommendation, for example, the amended Administrative Procedures Act, which now includes a chapter on the freedom of expression and the duty of confidentiality of public employees, and the amended Act on the Althingi Ombudsman, which now includes an article on the protection of those who report violations to the Ombudsman. However, these measures generally allow reports of misconduct, and protection if so reported, but do not go as far as imposing an obligation to report. In addition, these reports to the Althingi Ombudsman are unlikely to concern foreign bribery.

46. At the time of the virtual visit, there was no general duty on public officials to report suspected foreign bribery. As discussed in Section A.2, Iceland enacted a new Whistleblower Act, scheduled to enter into force in January 2021. Article 2(2) introduces an obligation for employees of state and municipal entities and employees of legal entities that are 51% or more state owned to “provide information and data in accordance with paragraph 1”, in other words, violations of law or other reprehensible conduct in their employers' activities. As noted above, if the broad interpretation of the term “in their employers' activities” in the commentary is accepted, it would cover also allegations of foreign bribery detected by a public official in the course of their work. This issue will be followed up by the Working Group, as mentioned in the commentary after paragraph 41 above.

47. To date, no foreign bribery case has been reported by a public official in Iceland. The lack of a clear obligation to report suspected cases of foreign bribery as well as guidelines, training and awareness-raising concerning foreign bribery are possibly among the reasons for no cases being reported and detected by public officials. If the view of the PMO is correct then public officials should be specifically forewarned of this obligation prior to the new Whistleblower Act coming into force.

### **Commentary**

***The lead examiners welcome the new Whistleblower Act, with the understanding set out above in paragraph 46 of an obligation for public officials to report violations of law, which should include foreign bribery. In view of the new Whistleblower Act, the lead examiners recommend that Iceland urgently raise awareness and provide clear guidance to public officials, especially those engaging with Icelandic companies operating overseas, concerning their obligation to report suspected foreign bribery.***

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<sup>42</sup> Iceland [Phase 3 Report](#), paras 70 – 71,

<sup>43</sup> Iceland [Phase 3 Report](#), para 72.

**(b) Tax authorities**

48. Whilst the tax authorities are active in pursuing tax related crimes, to date, they have not detected any cases of foreign bribery. This is an area that can be improved and is discussed further under Part D.11 below.

**(c) ODA agency**

49. ODA in Iceland is administered by DIADC. No instance of foreign bribery has ever been reported by DIADC to law enforcement authorities. Mechanisms developed by the agency to detect and report foreign bribery, and more generally implement the 2016 Recommendation for Development Co-operation Actors on Managing Risks of Corruption, are reviewed under Part D.12(c) below.

**(d) Media and investigative journalism**

50. The Working Group has recognised media reporting as an essential source of detection in foreign bribery cases, as well as an important tool for public awareness-raising on corruption.<sup>44</sup>

51. Iceland ranked 15 out of 180 countries in the 2020 World Press Freedom Index,<sup>45</sup> and appears to have a strong body of investigative journalists. However, Reporters Without Borders noted that “though the Constitution guarantees ‘absolute’ freedom of expression the situation of journalists has worsened since 2012 because relations between politicians and the media had soured” and one journalist on the panel commented about the difficulties accessing official information. As noted above, the Working Group has long recognised the importance of the media and investigative journalism in uncovering foreign bribery allegations and Iceland is no exception. During the virtual visit, the panel session for civil society and journalists was well attended and provided some forthright views on many issues relevant to this report. Several panellists pointed out that in Iceland people were relatively “blue-eyed” or “naïve” when it came to corruption and that the authorities were not looking for corruption (and consequently did not find it).

52. The only foreign bribery case to date to be investigated in Iceland is as a result of media articles, following a whistleblower report. In November 2019, Icelandic and international media published articles alleging that one of Iceland’s main fishing companies had engaged in bribery of officials in Namibia. This was the result of a joint investigation by Al Jazeera’s Investigative Unit, RUV (the Icelandic state broadcaster) and Stundin (an Icelandic magazine) based on leaked documents from WikiLeaks. The leaked documents, known as the “Fishrot” archive, are from a database of more than 30 000 documents provided by a former employee.<sup>46</sup> As mentioned earlier in this report, the matter is now under investigation by the Icelandic authorities.

53. Iceland confirmed that an investigation could be commenced on the basis of a media article. However, there are cases reported in the media that were not investigated by the Icelandic authorities because they stated that the information collected was insufficient to initiate an investigation.

54. Several panellists from the public sector panels told the evaluation team during the virtual visit that they relied on the media to be informed of allegations of misconduct by individuals or companies. Whilst this is a reflection of a free and open press it also shows a reliance on an informal information source as opposed to the use of formal checks and records and proactive intelligence-gathering.

**Commentary**

<sup>44</sup> OECD (2017), [The Detection of Foreign Bribery](#), Paris, Chapter 4.

<sup>45</sup> Reporters Without Borders, [2020 World Press Freedom Index](#). <https://rsf.org/en/ranking>

<sup>46</sup> Stundin (12 November 2019): “[An Icelandic fishing company bribed officials in Namibia and used Norway's largest bank to transfer 70 million dollars to a tax haven](#)” and Al Jazeera (14 November 2019): “[Fish company CEO 'steps aside' following Al Jazeera investigation](#)”.

*The lead examiners welcome the commencement of the investigation by the Icelandic authorities following the reports in the media concerning the allegations in the Namibia case and note the critical role that investigative journalists have played in the case. However, the lead examiners are concerned about the insufficient proactivity by the Icelandic authorities in cases that were reported in the media and that the allegations in those cases were not sufficiently examined or investigated. Therefore, the lead examiners recommend that future reported cases are properly assessed and investigated as appropriate.*

*(e) Accountants and auditors*

55. External auditors in Iceland are required to report material misstatements due to fraud and non-compliance with laws, including foreign bribery, to the company's management (article 92 of Act on Financial Undertakings; article 102 of Act on Annual Accounts). Due to the lack of information provided by Iceland, the Working Group cannot assess whether Iceland encourages companies that receive reports of suspected acts of bribery of foreign public officials from external auditors to respond actively and effectively to such reports. External auditors in Iceland are not required, in principle, to report foreign bribery to competent authorities independent of the company. Exceptions apply to financial audits of public-interest entities (article 42 of Act on Auditors and Auditing) and entities regulated by the Act on Financial Undertakings (article 92) for which external auditors have the duty to report violations of the law to the competent supervising authorities, in addition to the company's management. During the virtual visit, some external auditors referred to their firm's policies to report misconduct internally to consider whether the firm should then report the matter to law enforcement. This has happened on occasions but not in relation to foreign bribery.

56. A breach of the duty to report by an external auditor may lead to the imposition of fines or imprisonment (articles 122 and 124 of Act on Annual Accounts; articles 51 and 52 of Act on Auditors and Auditing; articles 112(b) and (c) of Act on Financial Undertakings). Moreover, not reporting by external auditors who are members of the Institute of State Authorised Public Accountants (ISAPA) may amount to a breach of the Code of Ethics, and may lead to disciplinary sanctions, including fines and suspension of membership. However, according to the external auditors during the virtual visit, sanctions are rarely imposed for a breach of the Code of Ethics in practice.

57. In Phase 3, the Working Group recommended that Iceland increase the awareness of its external auditors with regard to reporting obligations and sanctions for failure to report, and promptly provide training on red flags to detect foreign bribery (recommendation 5(c)). The Phase 3 two-year written follow-up report found that Iceland had not taken sufficient measures to address the recommendation. At the time of the Phase 3 additional follow-up report (October 2015), Iceland provided that ISAPA's continuing educational courses started covering foreign bribery. Based on the information provided by Iceland, the evaluation team could not verify this information during the virtual visit. After the virtual visit, Iceland reported that, in November 2016, the MII and MOJ organised, in cooperation with ISAPA, a course focusing on foreign bribery, auditors' reporting obligations and sanctions for failure to report, and red flags to detect foreign bribery with the participation of 56 external auditors. No further training on foreign bribery has been organised since 2016. Iceland also provides that in 2018-2020, ISAPA and other relevant organisations organised five seminars on non-financial information that also covered foreign bribery and corruption but did not address specifically auditors' reporting obligations, sanctions for failure to report, and red flags to detect foreign bribery.

58. Discussions with external auditors during the virtual visit reveal the need for Iceland to conduct further awareness raising and training. Representatives of the major international accounting firms were well aware of their duty to report foreign bribery to the company's management. However, they were less trained in identifying red flags of foreign bribery. For example, they stated that they have procedures and indicators to detect violations of law when conducting financial audits, but none of the red flags that they described was specific to foreign bribery. In addition, the auditors stated that the awareness raising and

training activities that they had participated in were organised by the firms themselves and were focused on detecting fraud and money laundering, not foreign bribery. Other external auditors were less aware of their duty to report foreign bribery and less trained in identifying red flags of foreign bribery.

**Commentary**

***The lead examiners consider Phase 3 recommendation 5(c) partially implemented and therefore the Working Group recommends that Iceland undertake further awareness-raising measures with regard to the reporting obligations of auditors and sanctions for failure to report, and promptly provide training on red flags to detect foreign bribery.***

## B. ENFORCEMENT OF THE FOREIGN BRIBERY OFFENCE

### 1. The foreign bribery offence

59. Iceland criminalises bribery of foreign public officials under article 109 GPC.<sup>47</sup> Bribery of officials of foreign SOEs is criminalised separately under article 264a GPC.

#### **Article 109 GPC**

*[Imprisonment of up to 5 years, or fine if there are extenuating circumstances] shall apply to any person who [gives, promises or offers] a foreign public official, a foreign jury member, a foreign arbitrator, a member of a foreign congress of elected members with administrative duties, an official of an international organisation, a member of the assembly of such an organisation or the public legislative assembly of a foreign state, a judge who is a member of an international court, or an employee of such a court, [a gift or other undue gain, for the official himself or other persons] in order to have them act or refrain from acting in connection with their official duties.*

#### **Article 264a GPC**

*Any person who gives, promises or offers a person who directs a domestic or foreign enterprise in business operations, including an enterprise that is partly or wholly publicly owned, or does work on its behalf, a gift or other gain to which that person is not entitled, to the advantage of that person or that of other persons, in order to have that person do something or not do something, this being at variance with that person's professional duties, shall be imprisoned for up to 5 years or fined if there are extenuating circumstances.*

#### **(a) Definition and coverage of bribery of foreign SOE officials**

60. In Phase 3, the Working Group expressed concern that Iceland's foreign bribery offence did not cover explicitly the bribery of officials of foreign SOEs. It repeated these concerns at each of Iceland's regular and additional Phase 3 follow-up reports. In response, in February 2013, Iceland amended article 264a GPC, which dealt originally only with private sector bribery, to cover the bribery of officials of SOEs. In June 2018, Iceland further amended article 264a GPC to expressly cover bribery of officials of "domestic and foreign" enterprises, including those that are partly or wholly state-owned (Act 66/2018). This Phase 4 evaluation is the Working Group's first opportunity to examine whether article 264a GPC complies with the requirements of Article 1 of the Convention.

#### **(i) Officials of state-owned and state-controlled enterprises**

61. The Working Group in Phase 3 recommended that the foreign bribery offence should cover bribery of officials of state-owned and state-controlled enterprises (recommendation 1). The two-year written follow-up report found that Iceland had not implemented the recommendation. As drafted, article 264a appears to cover only state-owned enterprises. Commentary 14 to the Convention recognises that a government may exercise dominant influence over an enterprise through various ways, including by holding the majority of subscribed capital or by controlling the majority of votes attaching to shares issued. Iceland indicates that an earlier version of the draft amendment to article 264a GPC referred explicitly to

<sup>47</sup> As noted in previous evaluations, article 109 GPC does not provide a definition for "public officials". The commentary to article 109 GPC notes that "a well-understood understanding of the term Icelandic public servant is assumed." The GPC defines public officials in article 141a with respect to other offences, including passive domestic and foreign bribery, but not to active foreign bribery.

officials of both state-owned and state-controlled enterprises but the wording was not retained in the adopted text. During the virtual visit, MOJ and DPO representatives promoted a broad interpretation of article 264a GPC and submitted that it would cover officials of both state-owned and state-controlled enterprises because, inter alia, the word “including” indicates a non-exhaustive list of enterprises. In addition, the commentary to article 264a GPC, which uses interchangeably the words “ownership” and “control”, seems to support this broader interpretation on the basis that the courts will refer to the commentary when interpreting legislative provisions. However, without any decided cases interpreting article 264a it is not possible to conclude that the provision meets the requirements of the Convention with respect to state-controlled enterprises.

**(ii) Officials of SOEs performing a public function**

62. Article 264a GPC also fails to criminalise the bribery of SOE officials performing a public function because it focuses on private-to-private bribery and its scope of application is limited to an enterprise’s “business operations”. Commentaries 12 and 15 to the Convention define “public function” and further provides that “an official of a public enterprise shall be deemed to perform a public function, unless the enterprise operates on a normal commercial basis in the relevant market”. However, as article 264a GPC originally criminalised only private sector bribery, it does not refer to the exercise of “public functions” but instead to an enterprise’s “business operations”. The commentary to article 264a GPC promotes a broad understanding of the words “business operation” to extend it to any business activity but only with regard to private sector bribery.

63. During the virtual visit, MOJ and DPO representatives argued that the intent of the legislator was to cover officials of all SOEs, including those performing a public function. Private sector lawyers also consider that “in business operations” would encompass all types of economic activity of an SOE. MOJ and DPO representatives were, however, less clear when asked about bribery of officials of an SOE that provides a public service (e.g. water and sanitation) and whether this would satisfy the “business operations” requirement. In those circumstances, they argued that they would probably use article 109 GPC. However, article 109 GPC does not cover bribery of SOE officials whether or not the SOE provides a public service. The judges confirmed that the words “in business operations” in article 264a of the GPC have not been interpreted by the courts. The Working Group is therefore concerned that despite the amendments to article 264a GPC, it still does not criminalise the bribery of SOE officials performing a public function.

**(iii) Persons who direct or work on behalf of an SOE**

64. Article 264a GPC criminalises bribery of a person who directs or works on behalf of a foreign SOE. The commentary to article 264a GPC expands the scope of application to bribery of board members or managers, employees or persons who have undertaken to do specific work, such as an attorney, lawyer, accountant or financial adviser. It excludes, however, bribery of shareholders. During the virtual visit, panellists argued in favour of this broad interpretation. In this respect, article 264a GPC appears to comply with the requirements of the Convention.

**(iv) Coverage of bribes to induce an act or omission in relation to the performance of official duties**

65. Under article 264a GPC, the bribe should be given to induce an act or omission “at variance with that person’s *professional duties*”. Article 1 of the Convention requires criminalisation of foreign bribery “in order that the official act or refrain from acting *in relation to the performance of official duties*”. The wording of article 264a GPC thus raises two additional concerns for the Working Group.

66. First, by requiring that the act or omission be at variance with the professional duties, article 264a GPC would only criminalise situations where the SOE official acted in breach of their professional duties. During the virtual visit, MOJ and DPO representatives agreed that a statutory interpretation of the provision alone might lead to the conclusion that article 264a GPC does not comply with the requirements of Article

1 of the Convention, which covers any use of the official's position, whether or not within the official's authorised competence.

67. Second, unlike Article 1 of the Convention and article 109 GPC, which both refer to "official duties", article 264a GPC refers to "professional duties". This discrepancy in terminology is explained in part by the fact that 264a GPC originally criminalised only private sector bribery. Indeed, as the GPC commentary explains the "professional duty is related to the interests that the provision is intended to protect, i.e. the general confidentiality and honesty that [the employees] must show in their work towards the company". MOJ and DPO representatives argued that the term "professional duties" is broader in scope and it would encompass the SOE official's "official duties". The judges confirmed that there is no case law available interpreting the words "professional duties" under article 264a GPC or "official duties" under Article 109 GPC. The Working Group cannot therefore conclude that the term "professional duties" will be applied in accordance with the requirements of Article 1 of the Convention.

### **Commentary**

*The lead examiners welcome Iceland's efforts to respond to Phase 3 recommendation 1, and clarify by way of an amendment that the penal code covers explicitly bribery of officials of foreign SOEs. However, the lead examiners consider the recommendation partially implemented; they note that the amended article 264a GPC creates uncertainties in interpretation and possible non-compliance with the requirements of Article 1 of the Convention when applied to the bribery of foreign public officials. The lead examiners further note that, in the absence of relevant case law and practice, key elements of the amended article 264a remain untested.*

*For this reason, the lead examiners recommend that Iceland take all necessary steps to clarify that article 264a GPC covers i) bribery of all foreign SOE officials, including those who perform public function, and ii) all acts or omissions in relation to the performance of the SOE official's duties, including any use of the official's position, whether or not within the official's authorised competence.*

*The lead examiners also recommend that the Working Group follow up, as case law and practice develop, to ensure that (i) article 264a GPC covers bribery of officials of both state-owned and state-controlled enterprises, and (ii) the term "professional duties" is applied in accordance with the requirements of Article 1 of the Convention.*

### **(b) Coverage of bribes paid through intermediaries and pecuniary and non-pecuniary advantages**

68. In Phase 3, the Working Group was encouraged by the general understanding among panellists that the Icelandic law covers bribery through intermediaries, and that a bribe would include both pecuniary and non-pecuniary advantages. However, absent case law and practice, the Working Group decided to follow up on both issues in future evaluations. In Phase 4, the situation remains unchanged. Panellists continued to maintain that article 109 GPC covers bribery through intermediaries in view of the GPC provisions on aiding and abetting (articles 22-23 GPC). They also explained that a bribe would include both pecuniary and non-pecuniary advantages. The commentary to article 109 GPC supports this interpretation.

### **Commentary**

*The lead examiners recommend that the Working Group continue to follow up whether Iceland can hold in practice natural persons liable for bribery committed through intermediaries, and that a bribe in Iceland's penal code covers both pecuniary and non-pecuniary advantages.*

## **2. Sanctions against natural persons for foreign bribery**

69. This part of the report addresses criminal penalties and confiscation imposed upon conviction against natural persons. Sanctions for legal persons are addressed under Part C.

*(a) Imprisonment*

70. In Phase 3, the Working Group expressed concerns that criminal sanctions against natural persons for bribery of foreign public officials were not effective, proportionate and dissuasive. At the time, active foreign bribery was subject to a maximum penalty of three years' imprisonment. The Working Group recommended that Iceland increase the statutory maximum of the foreign bribery offence to meet the requirements of Article 3(1) of the Convention (recommendation 2(a)). The two-year written follow-up report found that Iceland had not implemented the recommendation.

71. Iceland first amended article 109 GPC in February 2013 to increase the maximum prison sentence for active bribery from three to four years. It further amended both articles 109 and 264a GPC in June 2018 to increase the maximum prison sentence for active (foreign and domestic) bribery to five years. The maximum prison sentence for passive bribery remains six years. While the gap between the maximum sentences for active and passive bribery has been reduced, concerns remain that there is still no equivalence between them. The statutory maximum sentence for active foreign bribery is also lower than the ones for false accounting, fraud, embezzlement and money laundering, which all carry a maximum sentence of six years. In its responses to the Phase 4 questionnaire, Iceland considers that the increased prison sentences against natural persons for foreign bribery are adequate. During the virtual visit, MOJ representatives defended the 2018 amendment because, according to Iceland's legislature, passive bribery is a more serious crime and should thus carry a heavier penalty.

72. A maximum penalty of five years' imprisonment for active foreign bribery may also limit the Icelandic authorities' ability to confiscate the proceeds of foreign bribery. Value confiscation, i.e. the confiscation of property the value of which corresponds to that of such proceeds, or for monetary sanctions of comparable effect, is not available in foreign bribery cases because the maximum prison sentence is less than the six years required by article 69b GPC.

73. In calculating the length of the prison sentence, a court will consider the factors of article 70 GPC, including the extent of the damage or loss caused, the accused's motive and former conduct, and self-reporting or co-operation with the authorities. In the absence of foreign bribery convictions, it is not possible to determine how prison sentences against natural persons for foreign bribery will be calculated in practice and whether Iceland does impose effective, proportionate and dissuasive sentences against natural persons.<sup>48</sup> The assessment becomes more difficult in the absence of a clear sentence suspension policy. Iceland provides that courts will decide on the suspension of a prison sentence on a case-by-case basis taking into account *inter alia* the gravity of the offence. During the virtual visit, DPO representatives claimed that courts would generally not suspend sentences in economic fraud cases. However, there has been one case where the court suspended a four year prison sentence for tax fraud.<sup>49</sup>

*(b) Monetary fines*

74. The framework for the imposition of monetary fines against natural persons for foreign bribery remains unchanged since Phase 3. Iceland may impose a fine *instead* of imprisonment in case of extenuating circumstances (article 109 and 264a GPC); however, Iceland indicated that this would not apply in foreign bribery cases. It may also impose a fine *in addition* to imprisonment when the natural person obtained a financial advantage as a result of the bribe (article 49 GPC). In this latter case, the prosecution would need

<sup>48</sup> In the last 20 years, there has only been one case of domestic bribery leading to conviction, i.e. Case No. 393/2002 where the Chairman of the National Theatre Construction Committee (who was also a Member of Parliament) was found guilty *inter alia* of passive bribery for demanding and accepting ISK 650 000 (approx. EUR 40 000). He was initially sentenced to 15 months' imprisonment by the District Court of Reykjavík, which was increased to 2 years after appeal to the Supreme Court.

<sup>49</sup> Icelandic Review (April 2017), "[Eight Convicted in Seven-Year Tax Fraud Case](#)".

to establish that a financial advantage was obtained (or at least sought) by the natural person. During the virtual visit, DPO representatives stated that they would propose monetary fines against natural persons for foreign bribery only in exceptional circumstances.

75. The GPC does not provide for statutory minimum and maximum fines.<sup>50</sup> In assessing the amount of the fine, a court will also consider the factors under article 70 GPC and that punishment is proportionate to the gravity of the offence and the degree of responsibility of the offender, as it would do with the calculation of sentences of imprisonment. As for imprisonment sentences, the calculation of fines is not covered by sentencing guidelines or policies. For reference, Iceland states that it imposed fines against natural person for tax fraud averaging ISK 64.5 million (approx. EUR 400 000) in 2019, and ISK 104 million (approx. EUR 640 000) in the first half of 2020. However, in the absence of concluded foreign bribery cases, the Working Group cannot assess whether Iceland does impose effective, proportionate and dissuasive fines against natural persons in practice.

### (c) *Additional sanctions*

76. Natural persons may also be subject to deprivation of “rights acquired to engage in an activity for which an official licence, authorisation in law, appointment or the passing of an examination is required” (article 68 GPC). In Phase 3, Iceland explained that, in practice, this could amount to a natural person being prohibited from acting on the board of a company or losing their lawyer licence. These measures are not mandatory and may be imposed by the sentencing court for a period of up to five years or for life. Iceland provided no information about the imposition of these additional sanctions in practice.

#### *Commentary*

*The lead examiners welcome the amendment to articles 109 and 264a GPC to increase the maximum prison sentence for active bribery of foreign public officials to five years. They note, however, that the maximum prison sentences are still not equivalent to the ones for passive bribery, false accounting, fraud, embezzlement and money laundering, which all carry a maximum prison sentence of six years. A maximum prison sentence of five years for active bribery may also limit Iceland’s ability to confiscate the proceeds of foreign bribery through value confiscation. In the absence of concluded foreign bribery cases, the lead examiners cannot assess whether sanctions, including imprisonment and monetary fines, imposed in practice against natural persons for foreign bribery are effective, proportionate and dissuasive.*

*They therefore consider that the Phase 3 recommendation 2(a) is partially implemented, and recommend that Iceland take all necessary steps, including through guidance and training to the judiciary, to ensure that any sanctions imposed against natural persons for foreign bribery are effective, proportionate and dissuasive in practice.*

### (d) *Confiscation of the bribe and the proceeds of foreign bribery*

77. Iceland’s confiscation regime is foreseen in articles 69a-g GPC. It provides both for confiscation of the bribe and the proceeds of bribery. Confiscation is possible for the proceeds of crime that have been mixed with assets lawfully acquired and for proceeds later acquired by a third party, if that third party was aware of their origin or was grossly negligent in this respect. Iceland does not allow, however, for value confiscation in foreign bribery cases, i.e. the confiscation of property the value of which corresponds to that of such proceeds, or for monetary sanctions of comparable effect because the maximum prison penalty is less than six years. Confiscation would be thwarted if the proceeds of foreign bribery have been spent, lost or destroyed, for example. Confiscation can be imposed by the court upon request by the prosecution (article 152(1)e Code of Criminal Procedure (CCP)).

<sup>50</sup> Other legislation may specify statutory minimum and maximum fines e.g. 109 of the Income Tax Act.

78. In Phase 3, the Working Group was concerned that, due to recent changes in Iceland's confiscation regime, prosecutors had little experience with imposing relevant measures. The Working Group therefore recommended that Iceland provide training to prosecutors, and take steps to encourage them to request confiscation in foreign bribery cases (recommendation 3). The two-year written follow-up report found that Iceland had partially implemented the recommendation. Since Phase 3, Iceland has organised three trainings for prosecutors on confiscation. In its responses to the Phase 4 questionnaire, Iceland indicated that confiscation may have been addressed in other trainings for prosecutors without, however, providing specific information on these trainings. Iceland further provides that in 2017-2019 it confiscated assets of equivalent value of ISK 351 million (approx. EUR 2.2 million) for economic crimes. In the absence of concluded foreign bribery cases, the Working Group will, however, need to continue monitoring whether Icelandic prosecutors are now better equipped to seek confiscation in foreign bribery cases.

#### **Commentary**

*The Working Group deems that Phase 3 recommendation 3 remains partially implemented. It therefore recommends that Iceland continue to train its prosecutors on confiscation measures and draw their attention to the importance of routinely seeking confiscation against natural persons in foreign bribery cases.*

*The lead examiners also recommend that Iceland amend its legislation to provide for confiscation of property the value of which corresponds to that of such proceeds, or for monetary sanctions of comparable effect.*

### **3. Investigative and prosecutorial framework**

#### **(a) Overview of investigative and prosecutorial authorities in charge of foreign bribery enforcement**

79. In Phase 3, the Working Group recommended that Iceland promptly and seriously proceed with its ongoing reflection on the structure, resource allocation and coordination of law enforcement authorities fighting economic and financial crime in Iceland (recommendation 4(a)). In June 2011, the former Economic Crime Unit (ECU) within the National Commissioner of Police, which was responsible for investigating and prosecuting serious economic and environmental crimes, was merged with the Office of Special Prosecutor (OSP). The OSP had been established to handle all crimes connected with the 2008 banking crisis but was not divided into divisions and hence there was no special unit responsible for foreign bribery. At the time of the two-year written follow-up report, the Working Group considered this recommendation to be fully implemented.

80. However, since then Iceland has made further welcome changes and, in January 2016, the Office of the District Public Prosecutor (DPO) took over the investigation and prosecution of economic crimes, as a result of a new law no. 47/2015 (and the OSP was abolished). The DPO is now the competent authority to investigate and prosecute foreign bribery offences, and although there are no finalised foreign bribery investigations or prosecutions, the benefits of an integrated approach allowing investigators and prosecutors to work closely together and share expertise in complex cases should be welcomed. This integrated approach has proven very effective in some other Working Group countries.

81. Within the DPO, foreign bribery cases are assigned to the Economic Crimes Department (ECD) (article 22(2) CCP) which is headed by a chief prosecutor and investigates and prosecutes all offences against articles 109 (active bribery), 128 (passive bribery) and 264a GPC, according to article 23b CCP.

82. Iceland indicates that it has developed a high competence and broad range of resources for investigating and prosecuting financial crimes following the banking crisis of 2008. The investigators and prosecutors developed a method to work in multidisciplinary investigation teams, which they still use with good results. Iceland further indicates that many of the experienced financial investigators and prosecutors

were transferred to the Metropolitan Police and the DPO, and that their expertise can be used within these authorities regarding the investigation and prosecution of complex economic crimes.

83. The FATF noted that between 2008 and 2015, Iceland focused its investigative and prosecutorial resources almost exclusively on the financial crimes that contributed to the 2008 banking collapse. In addition, the FATF noted that the dedication of resources to this issue had led to a backlog of other cases.<sup>51</sup> This may be one of the reasons why Iceland has failed to independently detect and investigate any foreign bribery cases to date, except the *Namibia case*.

*(b) Coordination between relevant agencies and attribution of cases*

84. As the DPO is now the competent authority to investigate and prosecute foreign bribery offences, this integrated approach results in good coordination between the investigators and prosecutors in the ECD. During the virtual visit panellists from other government agencies (including DTI) generally agreed that they had good coordination with the DPO when required, although only the ICEFIU had yet done so in relation to a foreign bribery case. The changes to the ICEFIU, being co-located within the DPO's offices, should lead to increased coordination due to the proximity of staff and the ability to meet on a regular basis and this important relationship should be developed further.

*(c) Resources, training and guidance*

85. At the time of Phase 3, the Working Group was concerned that the then ECU had very limited resources (15 staff including 1 prosecutor, 4 police attorneys and 5 investigators) and recommended that Iceland ensure that there were sufficient resources for the different law enforcement agencies (recommendation 4(a)). Human resources have increased since Phase 3 and at the time of the written follow-up report the Working Group considered this part of the recommendation to be fully implemented. The new ECD currently has in total 35 staff (including 25 investigators and 8 prosecutors), which appears to be adequate. The DPO has qualified staff in forensic accounting. In addition, the Metropolitan Police has qualified staff in forensic information technology.

86. In Phase 3, the Working Group was concerned that specialised training on investigating and prosecuting foreign bribery had never been provided to law enforcement authorities (and the judiciary – see Section B.5 below). Accordingly, a recommendation was made to promptly provide specialised training to these bodies but at the time of Iceland's two-year written follow-up report the recommendation was not implemented (recommendation 4(b)). Since then a course on foreign bribery investigations and prosecutions for police and prosecutors was held in November 2015 and another training course in January 2016 also covered investigation and prosecution of foreign bribery. No additional specialised training on foreign bribery has been conducted since and Iceland has not attended an LEOs meeting since June 2017. Iceland does not indicate whether permanent training courses have been set-up but reports that the DPP and DPO are currently organising a specific seminar concerning foreign bribery to be held later in 2020.

**Commentary**

***The lead examiners welcome the further structural changes, including the increase in resources, made by Iceland and the integrated approach of the investigation and prosecution of foreign bribery cases within the DPO's Economic Crimes Department, which is a positive achievement. However, whether these changes translate into an increased capability to detect, investigate and prosecute foreign bribery and related offences remains to be seen. The lead examiners therefore recommend that the Working Group follow up on these changes as practice develops.***

<sup>51</sup> FATF (2018), *Anti-money laundering and counter-terrorist financing measures – Iceland*, Fourth Round Mutual Evaluation Report, FATF, Paris - para. 34.

***The lead examiners are concerned at the continuing lack of training provided to law enforcement authorities in relation to foreign bribery and reiterate the Phase 3 recommendation 4b), which remains not implemented, to promptly provide specialised training in this regard.***

#### **4. Conducting a foreign bribery investigation and prosecution**

##### ***(a) Initiating an investigation***

87. Iceland reports that there is no specific evidentiary threshold that must be satisfied to launch an investigation. Part 2 of the CCP deals with investigations and Section VII (articles 52-57) covers the general rules on investigations. According to article 52(2) CCP, the police shall, whenever this is necessary, begin an investigation on the basis of knowledge, or suspicion, that a criminal offence has been committed, irrespective of whether or not they have received any complaint. The DPP may order the police to initiate an investigation (article 21(3) CCP). Iceland further indicates that the threshold to start an investigation can be met, “even in the case of no response to an outgoing MLA request, granted that a suspicion of a criminal offence can be established”.

88. In practice and, as mentioned above, Icelandic authorities have only opened one foreign bribery case, which is the on-going investigation in the *Namibia case*. The investigation was initiated on the basis of a whistleblower report to both Icelandic and foreign media. The whistleblower then came forward and presented the same information to Icelandic law enforcement.

89. Iceland reports that no cases have been initiated solely on the basis of media reports. However, there are no apparent obstacles within either the legal or institutional framework that should prevent formal investigations being initiated on the basis of such media reports. No foreign bribery case was initiated on the basis of information received through incoming MLA requests. In the *Helicopter case*, Iceland had received an MLA request from a Party in a case where an Icelandic national was alleged to have intermediated the payment of bribes to the Party’s officials, but the Icelandic authorities declined to initiate an investigation in this case due to the lack of available information. In addition, no foreign bribery cases have been initiated on the basis of allegations reported in the media.

##### ***Commentary***

***Although the lead examiners welcome the recently initiated foreign bribery investigation, they are concerned by the lack of proactive steps taken to initiate investigations where there are credible reports of alleged foreign bribery, for instance from the media, or through incoming MLA requests. The lead examiners recommend that Iceland increase the use of proactive steps to gather information from diverse sources at the pre-investigative and investigative stages both to increase the sources of allegations and enhance investigations.***

##### ***(b) Establishing jurisdiction***

90. Iceland may exercise universal jurisdiction over natural and legal persons in foreign bribery cases pursuant to article 6(10) GPC. This covers all conduct that falls under the scope of the Convention, including the newly criminalised bribery of foreign SOE officials under article 264a GPC.

91. The Working Group last assessed Iceland’s universal jurisdiction in Phase 2, but in the absence of foreign bribery cases, it could not determine how it would work in practice. At that time, the Icelandic authorities took a rather narrow view of their universal jurisdiction. They indicated that they would only prosecute an offender found in Iceland. They further noted that if the offender was a non-national, they would prefer to extradite them. In Phase 4, Iceland maintains that universal jurisdiction would apply to all foreign bribery cases. In support, it indicated in its responses to the Phase 4 questionnaire that it has indicted a foreign subsidiary for crimes committed abroad without, however, clarifying whether the case concerned

foreign bribery. It is not yet clear how the Icelandic authorities have exercised jurisdiction over the natural and legal person involved in the *Namibia case*.

*(c) Statute of limitations*

92. Chapter IX of the GPC imposes time limits for criminal liability for natural and legal persons (limitation periods). Article 81 provides for a range of limitation periods against natural persons depending on the period of imprisonment prescribed for the particular offence. The current periods of imprisonment for foreign bribery (i.e. articles 109 and 264a GPC) mean that the limitation period is ten years for natural persons, as opposed to five years at the time of Phase 3. This means that for foreign bribery offences committed after June 2018 the limitation period is ten years but before that date the limitation period is five years. Where offending occurs over a period before and after June 2018 then potentially significantly different limitation periods could apply, and Iceland should be cognisant of this issue.

93. Article 81 GPC provides that the limitation period for a legal person is five years irrespective of the offence being investigated. Therefore there are currently different limitation periods for natural and legal persons in relation to foreign bribery. In the context of foreign bribery investigations, the five year limitation period for legal persons could be problematic as it may not allow enough time for an investigation to be completed against a legal person. In addition, the differences in limitation periods for natural and legal persons could also lead to some unfortunate outcomes in that a prosecution for foreign bribery offences against a legal person is time barred but not against the natural person.

94. Article 82 GPC provides that the limitation period runs from the date on which the punishable action (or failure to act) ended but is suspended when a criminal investigator commences an investigation against a suspected person. During the virtual visit, DPO prosecutors stated that for the purposes of this article the investigation commences only when the suspected person is formally interviewed.

95. It is unclear whether the limitation periods under the GPC are suspended as a consequence of an outgoing MLA request. Iceland indicates that there is no specific provision on the effects of an MLA on the suspension of limitation periods and that it would therefore be a matter of interpretation. Pursuant to article 82(5) GPC, “if the investigation is suspended for an indefinite period, this shall not suspend the limitation period”. Whether an MLA request would constitute a suspension of the investigation for “an indefinite period” is unclear. Iceland indicates that “in general, if an MLA is processed within a reasonable timeframe, it should not influence the suspension of the limitation period”. During the virtual visit, the DPO said that the limitation period is suspended from the first formal interview and that there is no other possibility to trigger the suspension. If there has been no investigation action for long time then limitation period resumes. However, this is still not clear since there has been no case in practice.

96. Iceland states that no investigations have been impacted by the expiry of limitation periods although it would appear that the foreign bribery allegations mentioned at the beginning of this report, which Iceland decided not to investigate, are, in any event, now time barred under these provisions. Limitation periods are yet to be tested in the ongoing *Namibia case* where, at the time of the virtual visit, there had been no formal interviews conducted.

*(d) Investigative techniques*

97. As mentioned above, investigations are covered in Part 2 of the CCP. Sections VIII, IX, X and XII deal with general investigative tools, being questioning (Section VIII), seizure of items (Section IX), searches and physical examinations (Section X) and miscellaneous investigative measures (Section XII). Miscellaneous investigative measures oblige the DPO to consult experts where necessary and this includes forensic accountants.

98. Articles 80-82 CCP provide for certain special investigative techniques such as telephone tapping and other comparable measures e.g. recording conversations, taking photographs or videos of people

without their knowledge, and the use of monitoring devices. The conditions for their use are governed in articles 83 and 84 CCP which provide that the investigation in which the use of the special investigative techniques is requested must be directed towards an offence that may entail six years' imprisonment. A court order (issued by the District Court) is required authorising special investigative techniques. Law enforcement also require a court order to obtain bank information from financial institutions.

99. In Phase 3, the Working Group was concerned that a broad range of special investigative techniques, such as interception of communications, video surveillance and undercover operations were not available in foreign bribery investigations and recommended that they should be made available (recommended 4(c)). At the time of the two-year written follow-up report, this recommendation was not implemented. In a welcome development since Phase 3, Iceland has amended article 83 CCP to broaden the offences eligible where the use special investigative techniques is available and this specifically includes the foreign bribery offences, despite them not having a penalty of six years' imprisonment.

100. Article 89 CCP provides that the Minister may set rules on special police methods in the investigation of criminal cases which are not provided for under the CCP. Rules no. 516-2011 on Specific Police Procedure and Action apply to specific police procedures and actions in criminal investigations in accordance with article 89 CCP. These rules allow for a variety of special police procedures including undercover agents and surveillance for various prescribed serious offences (article 3 of the Rules) and came into force in May 2011. Iceland has confirmed that these rules were amended on 13 July 2020, after the virtual visit, to include the foreign bribery offences.

101. In previous monitoring phases, because there had been no investigations of foreign bribery, Iceland was unable to provide information on the investigative techniques used and what hurdles were being faced. Iceland states that as of March 2020 and since Phase 3, no applications have been made to court to authorise the use of special investigative techniques in a foreign bribery case. This could be partly explained by the fact that special investigative techniques have not been available in these types of cases until at least the beginning of 2017 and also that Iceland has not investigated any foreign bribery cases until recently.

*(e) Independence of foreign bribery investigations and prosecutions and compliance with Article 5 of the Convention*

102. The legal framework for the prosecution is set out in Section III (articles 18-26) CCP and remains unchanged since Phase 3. The DPP is the highest holder of prosecution authority and is permanently appointed by the Minister of Justice (article 20 CCP). The District Prosecutor and Deputy District Prosecutor are appointed on a permanent basis by the Minister (article 22 CCP). Other prosecutors are appointed on five year terms, which are automatically renewed if they are not given the requisite notice (six months prior to expiry) that the post will be advertised. The Minister, in consultation with the DPP, decides on the number of prosecutors (article 22 CCP). In 2013, GRECO recommended that Iceland take measures to ensure the security of tenure for all prosecutors.<sup>52</sup>

103. In Iceland, the executive branch of government cannot issue specific instructions to prosecute or not to prosecute cases. Prosecutors are subject only to instructions and supervision from the DPP in the performance of their prosecution and investigation powers, and may not take orders from any other authority (article 21(3) CCP).<sup>53</sup>

104. During the virtual visit, the DPO pointed out that, although they are independent, the Parliament determines the overall funding of the office together with any requests for ad hoc funding (some of which have been denied). In general civil society, media and legal panellists during the virtual visit were of the view that the DPO was sufficiently independent. However, some of the civil society and media panellists

<sup>52</sup> GRECO (2013), "[Fourth Round Evaluation: Iceland](#)".

<sup>53</sup> Iceland [Phase 3 Report](#), para.46.

thought that the DPO investigators might be reluctant to investigate certain allegations due to the small population size of the country.

### **Commentary**

*The lead examiners recommend that the Working Group continue to follow up, as case law and practice develop, how Iceland exercise its jurisdiction in practice over cases of bribery of foreign public officials, notably regarding those committed in whole or part abroad.*

*The lead examiners note the significant different limitation periods for natural and legal persons for the foreign bribery offences. The lead examiners recommend that Iceland amend article 81 GPC so that the limitation periods for legal persons are the same as they currently are for natural persons.*

*The lead examiners also recommend that the Working Group continue to follow up, as case law and practice develop, (i) how limitation periods impact, if at all, foreign bribery investigation; and (ii) how requests for MLA impact the suspension of limitation periods.*

*The lead examiners welcome the amendments to article 83 CCP and the availability of special investigative techniques in foreign bribery cases and consider the recommendation on the availability of the use of special investigative techniques as fully implemented (recommendation 4(c)). The lead examiners recommend that the Working Group follow up on which investigative techniques are used in foreign bribery cases.*

*The lead examiners also recommend that the Working Group follow up that Iceland ensure that the funding arrangements for the DPO are sufficient and transparent in order for the DPO to function appropriately to investigate and prosecute foreign bribery allegations.*

## **5. Concluding a foreign bribery case**

### **(a) Judicial awareness, training and specialisation**

105. In Phase 3, the Working Group was concerned that specialised training on investigating and prosecuting foreign bribery had never been provided to the judiciary and that this should be promptly provided (recommendation 4(b)). At the time of the two-year written follow-up report, this recommendation was not implemented.

106. Representatives from the judiciary were unfortunately not available to meet with the evaluation team during the virtual visit due to end of legal term commitments. However, they responded to questions put in writing after the virtual visit.

107. In response to the evaluation team's questions the judges confirmed that in the last 18 years only 4 cases have been brought before the courts regarding article 109 GPC and none related to foreign bribery. In addition, no cases have been brought before the courts regarding article 264a GPC. Accordingly, the judiciary has no experience in dealing with foreign bribery cases and there is no training available for the judiciary on the foreign bribery offences and the Convention.

108. Foreign bribery cases fall under the jurisdiction of the District Courts, the Court of Appeal and the Supreme Court. If considered necessary, article 3(3) CCP allows judges to summon a co-judge who possesses special knowledge if there is a dispute over facts and the judge considers that such specialist knowledge is needed in the court to resolve the issue. Since the financial crisis in Iceland in 2008, numerous complex economic crime cases have been brought to court against natural persons, many of which concern complex financial instruments, share transactions, insider trading and market manipulation taking place in the Icelandic banks before the banking collapse in 2008. The Icelandic judicial system has faced some issues with certain complex economic cases relating to conflicts of interest of judges with two cases coming

before the European Court of Human Rights,<sup>54</sup> with one of these cases being re-opened in Iceland and a retrial before the Supreme Court.

### *Commentary*

*The lead examiners are concerned that no training has been provided to judges in relation to foreign bribery and reiterate that Iceland should provide such training promptly in this regard to the judiciary (see Phase 3 recommendation 4(b)) noting that key elements of the offence in 264a GPC have not yet been interpreted by the courts.*

#### *(b) Grounds for terminating a case*

109. Under article 57 CCP an investigation can be terminated “if the case materials are not considered sufficient as the basis for an indictment”. The investigation cannot be reopened unless new material has come to light or is likely to come to light. If a prosecution is dropped, the prosecutor shall inform the accused and, as appropriate, the injured party (if their identity is known). The decision to drop charges can be appealed to the DPP within a month of the decision by any person who does not accept the decision. The DPP is required to make a decision within three months (and can set aside the previous decision). There is provision for non-court resolutions under the GPC with natural persons for minor criminal offences, but this is not applicable for the foreign bribery offences. At the time of this report, there are no legislative initiatives to introduce non-trial resolutions. No foreign bribery cases have been terminated by Icelandic authorities since Phase 3.

## 6. Mutual legal assistance and extradition in foreign bribery cases

### *(a) Mutual legal assistance (MLA)*

#### *(i) Legal and institutional framework for MLA*

110. Iceland’s institutional framework for MLA remains unchanged since Phase 3. The central authority for MLA is the MOJ, which uses a case management system for handling requests. The Act No. 13/1984 on Extradition of Criminal Offenders and Other Legal Assistance in Criminal Matters (the Extradition Act) governs the execution of MLA requests.

111. MLA can be sought and provided on the basis of treaties to which Iceland is a Party, including the Convention. In September 2010, Iceland ratified the UN Convention Against Corruption (UNCAC), which can now also serve as a basis for international cooperation. As part of the European Convention on Mutual Legal Assistance in Criminal Matters, Icelandic authorities state that they frequently base their cooperation on the principal of reciprocity. Iceland also allows direct communication and simplified procedures between competent authorities in Nordic countries in various areas. If a request involves an urgent need to freeze assets, Icelandic procedure allows immediate action to be taken by the DPO. Iceland indicates that a large portion of MLA requests are sought and received through direct cooperation between competent authorities.

112. In Phase 1,<sup>55</sup> Iceland indicated that it can execute MLA requests in non-criminal proceedings against legal persons within the scope of the Convention, on the basis of the Lugano Convention of 1988. However, in its responses to the Phase 4 questionnaire Iceland indicates that “no specific legal basis exists for MLAs in non-criminal proceedings” and that it did not receive and provide MLA in non-criminal proceedings (civil or administrative proceedings) against legal persons for foreign bribery.

113. During the virtual visit, the MOJ and DPO raised the issue of a court ruling in March 2020 that prevented an incoming MLA request being executed due to the role of the MOJ in deciding whether to

<sup>54</sup> [Sigridur Elin Sigfusdottir v. Iceland](#) [2020] and the case of [Sigurdur Einarsson and Others v. Iceland](#) [2019]

<sup>55</sup> Iceland [Phase 1 report](#), para 16.

grant the MLA request. The MOJ's role did not conform to the general principle of the CCP which provides for the DPP to be independent from the executive branch and exercise prosecutorial authority. This ruling changed the practice that had been in place for many years. The MOJ has already begun to prepare a Bill that will be presented to the Parliament to deal with this issue of removing the MOJ from the MLA process. According to Iceland, the proposed change in the legislation will be presented to the Parliament in November 2020 and is expected to be passed and enter into force before the end of 2020.

**(ii) Incoming and outgoing MLA requests**

114. In its previous evaluations of Iceland, the Working Group was unable to assess the enforcement of international cooperation obligations under the Convention in the absence of both foreign bribery cases in Iceland as well as MLA requests relating to foreign bribery cases.<sup>56</sup> The Working Group therefore decided to re-assess this as practice develops but since then, Iceland has only received MLA requests in relation to two foreign bribery matters. Iceland has provided general statistics on the number of MLA requests sought and received in economic crimes and money laundering cases since Phase 3. The number of MLA requests received between 2016 and 2020 is 43, with no more than 10 MLAs in any one year. The average time taken to execute MLA requests is around three months, according to Iceland. Taking these numbers into account, it raises concerns that the MLA request in the *Namibia case* took more than double the time to be answered.

115. Iceland has made seven outgoing MLA requests since 2018 (the date from which they have provided information) with two more in the process of being finalised. As there are still no outgoing MLA requests relating to foreign bribery, the Working Group will need to continue to follow up on this issue.

116. Three member countries of the Working Group confirmed receiving MLA requests from Iceland but none in relation to foreign bribery. The countries indicated that in general, they did not experience any major problems with Iceland's interaction. However, the limited extent of information provided does not allow the Working Group to form an assessment of Iceland's practice.

**(iii) Detection of foreign bribery through incoming MLA requests**

117. An avenue to detect potential foreign bribery cases is through incoming MLA requests. In particular, evidence of foreign bribery can be detected both in the MLA request itself as well as from the documentation sent in support of the request.<sup>57</sup>

118. To date, no case has been opened in Iceland on the basis of an incoming MLA request. Since Phase 3, Iceland has received MLA requests in relation to two foreign bribery matters in the *Helicopter case* and in the *Namibia case*.

119. In 2016, an MLA was received from a Party's law enforcement authorities in the *Helicopter case* to interrogate three witnesses located in Iceland. Iceland executed the request within six months. Investigators from the Party came to Iceland in April 2016 and interrogated the witnesses. Icelandic authorities did not open an investigation in this case, despite the alleged intermediation of an Icelandic national in the bribery scheme. The DPP stated, during the virtual visit, that Iceland approached the Party authorities but they could not identify a link to trigger an investigation in Iceland. Ultimately, Iceland indicated that the Party's law enforcement did not consider individuals in Iceland as suspects, and terminated their investigation for lack of evidence. Icelandic authorities had concluded earlier that the case did not warrant a separate investigation in Iceland based on the available information at that time.

<sup>56</sup> Iceland [Phase 3 Report](#), commentary after para. 66

<sup>57</sup> OECD (2017), "[The detection of Foreign Bribery](#)", Paris, p. 138.

120. It raises concerns that Iceland did not initiate its own investigation in relation to the *Helicopter case* and closer assessment may be necessary in the future for all incoming MLA requests concerning foreign bribery for any Icelandic connections and assertion of jurisdiction.

121. In the *Namibia case*, during the virtual visit, the Icelandic authorities mentioned that MLA requests have been received from Namibian and Norwegian authorities and cooperation is on-going. One of these requests was received prior to the DPO commencing its investigation in this matter but was not the trigger for commencing the investigation. The MLA from Namibia concerns legal persons and Iceland indicates there are no obstacles to executing the request.

122. In foreign bribery investigations it is important to consider the need to make MLA requests (together with any informal cooperation requests) at an early stage of the investigation, particularly bearing in mind the short limitation period for offences against legal persons in Iceland. The regular presence and engagement of law enforcement officials in the LEOs meetings could assist with this process to ensure coordination and cooperation between Iceland and other countries.

**(b) Extradition**

123. The only change to the extradition framework since Phase 3 has been the introduction of the European Arrest Warrant. It came into effect in Iceland on November 2019, through the Act no. 51/2016,<sup>58</sup> on the arrest and transfer of persons to and from Iceland on the grounds of an arrest warrant. The law also covers the transfer of persons on the basis of a Nordic arrest warrant. To date, Iceland has not extradited any of its citizens and no such request has been made.

**Commentary**

***Pursuant to Article 9 of the Convention, it is incumbent on Iceland to ensure that it can provide a broad range of MLA to Parties for non-criminal proceedings against legal persons that fall within the scope of the Convention. The lead examiners therefore recommend that the Working Group follow up whether Iceland can provide a broad range of MLA to Parties to the Convention that apply civil or administrative (and not criminal) liability to legal persons for foreign bribery.***

***The lead examiners note the small number of MLA requests relating to foreign bribery cases sent and received by Iceland which makes it difficult in practice to assess the enforcement of international cooperation obligations under the Convention.***

***Nevertheless, the lead examiners note that one incoming MLA request contained allegations of an Icelandic national being involved in foreign bribery but no investigation was opened. They therefore recommend that Iceland carefully consider incoming MLA requests and where appropriate investigate credible allegations of foreign bribery.***

***With respect to outgoing MLA requests, the lead examiners are concerned that Iceland has not requested MLA in their ongoing foreign bribery investigation, despite several incoming requests from foreign jurisdictions. They recommend that Iceland use outgoing MLA requests proactively to progress any foreign bribery investigation in a timely manner.***

<sup>58</sup> [EU Arrest Warrant Act \(51/2016\)](#) - not available in English.

## C. RESPONSIBILITY OF LEGAL PERSONS

### 1. Scope of corporate liability for foreign bribery and related offences

#### (a) *Offences covered by Iceland’s corporate liability legislation*

124. Iceland’s corporate liability framework remains unchanged since Phase 3. Liability of legal persons for foreign bribery is criminal in nature and is foreseen in article 19c GPC and article 1 of Act 144/1998 on Criminal Responsibility of Legal Persons.

##### **Article 19c GPC**

*Unless other provisions are made in law, the criminal liability of a legal person is subject to the condition that a person in charge of the legal person, or its employee or another person under its auspices has, in a criminal manner, committed a criminal and unlawful act in the operations of the legal person. Punishment shall be imposed on the legal person even though it cannot be established which of these parties was involved.*

##### **Article 1 of Act 144/1998**

*A legal person may be fined if in the course of its operations a violation of articles 109 or 264a GPC is committed. This also applies if in the course of its operations there is committed a violation on article 264 and the predicate offence, that the proceeds come from, regards article 109 or first paragraph of article 264a GPC.*

125. Iceland provides liability for legal persons for money laundering for any offences under the GPC or other statutes, including where predicated on foreign bribery, in articles 19c and 264 GPC. Legal persons can also be held liable for accounting and auditing offences under article 124(4) of the Annual Accounts Act and article 40 of the Accounting Act.

#### (b) *Standard of liability of legal persons*

126. Iceland’s corporate liability regime appears to be in line with the requirements of Article 2 of the Convention and Annex I.B(a) of the 2009 Recommendation (i.e. the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons). Under article 19c GPC, liability of the legal person can be triggered by a “person in charge of the legal person, or its employee or another person under its auspices”.<sup>59</sup> The standard of liability thus seems flexible and adequately broad to cover the wide variety of decision-making systems in legal persons. However, as in Phase 3, in the absence of relevant case law and practice, the Working Group cannot assess how the standard of liability applies in practice.

#### (c) *Elements of liability of legal persons requiring follow-up*

##### (i) *Autonomous liability of legal persons*

127. Under Annex I.B of the 2009 Recommendation, corporate liability should not be restricted to cases where the natural person(s) who perpetrated the offence are prosecuted or convicted. In Phase 3, the

<sup>59</sup> Iceland explains that the term “under its auspices” would include anyone acting on behalf of the legal persons. In the commentary accompanying the law, such persons can for example be legal professionals, external auditors as well as any other person who is formally authorised to act on the legal person’s behalf.

Working Group could not determine whether Iceland could hold a legal person liable for foreign bribery in practice without prior prosecution or conviction of a natural person.

128. Article 19c GPC provides that “punishment shall be imposed on the legal person even though it cannot be established which of these [natural persons] was involved”. On its face, the provision seems to allow Iceland to impose liability on legal persons autonomously. However, in Phase 4, the situation continues to remain unclear. Iceland’s responses to the Phase 4 questionnaire suggest that, in practice, it would be at least necessary to identify a natural person, which may prove difficult for the prosecution when investigating complex and decentralised corporate structures with diffused decision-making processes. DPO prosecutors took the same view during the virtual visit. They further noted that, in practice, no legal person has ever been prosecuted or convicted in Iceland for any offence in the absence of a prior prosecution or conviction of a natural person.

**(ii) Liability for acts of related legal persons and intermediaries**

129. In Phase 3, the Working Group was concerned that Iceland’s legislation does not expressly provide for liability for acts of related legal persons (e.g. subsidiaries) and intermediaries.<sup>60</sup> It decided to follow-up on the issue in future evaluations.

130. During the virtual visit, panellists expressed the belief, albeit without supporting case law, that corporate liability under article 19c GPC and article 1 of Act 144/1998 would include contraventions of articles 109 and 264a GPC through related legal persons and intermediaries. The DPO’s view is that the nationality and location of the related legal person or intermediary is immaterial and, therefore, it would also cover contraventions of foreign related legal persons and intermediaries. As to whether it would be possible to prosecute and convict a related legal person or an intermediary without first prosecuting or convicting the parent company, DPO representatives indicated that this is possible in law but may pose difficulties in practice.

131. In the absence of relevant jurisprudence interpreting when a person is acting “on behalf” of a legal person, the Working Group cannot yet assess the exact scope of corporate liability when foreign bribery is committed by related legal persons and intermediaries. It is also difficult to determine the elements that the prosecution has to prove in order to establish a connection between the legal person and the related legal persons or intermediaries.

**(iii) Successor liability**

132. Iceland’s legislation does not expressly provide for successor liability. Iceland’s position is that the liability of a culpable legal person could only survive if the prosecution proves that its economic activity continues through a successor legal person. In other words, Iceland cannot apply successor liability where the culpable legal person dissolves or merges with another legal person. A legal person could thus potentially avoid liability by a corporate reorganisation. In case of a conviction, Iceland provides that the same sanctions that would apply to the culpable legal person could also apply to the successor. Such position is, however, uncertain in the absence of successor liability in the Icelandic law.

**Commentary**

***The lead examiners note that, in the absence of relevant case law and practice, several element of Iceland’s corporate liability legislation remain untested. For this reason, they recommend that the Working Group continue to follow up whether Iceland can hold in practice a legal person liable for foreign bribery (i) without prior prosecution or conviction of a natural person, and (ii) for acts of related legal persons and intermediaries. The Working Group should also follow up as case law and practice***

<sup>60</sup> Iceland [Phase 3 Report](#), para. 20.

*develop whether the lack of successor liability in Icelandic law may hamper the effective enforcement of the foreign bribery offence against legal persons.*

## 2. Enforcement of corporate liability for foreign bribery and related offences

133. Iceland's enforcement of corporate liability is limited. To date, Iceland has never prosecuted a legal person for foreign or domestic bribery and there are, therefore, no convictions of a legal person for foreign bribery. However Iceland reports that the ongoing investigation for foreign bribery in the *Namibia case* includes legal persons involved. Iceland did not open any investigations against the legal persons involved in the *Pharmaceutical cases* because, according to Iceland, the available information at the time was not sufficient to justify the opening of a case.

134. Since Phase 2, the Working Group has expressed concerns about the low number of prosecutions for economic crimes involving legal persons and agreed to follow up in future evaluations.<sup>61</sup> At Phase 2, corporate liability had already existed in Iceland for over 30 years and was essentially enforced only in respect of tax and fisheries offences. In Phase 4, prosecutions against legal persons continue to lag significantly.

135. Iceland has yet to prosecute a legal person for money laundering predicated on foreign bribery or another economic crime. It has convicted, however, legal persons for money laundering predicated on other offences, most commonly drug related offences. Iceland has also prosecuted several legal persons for accounting offences. In most of these cases, the legal person will also be prosecuted, according to Iceland, for tax related offences.

136. The DPO appears to have limited experience in engaging with the private sector and does not play an active role in Iceland's foreign bribery awareness-raising efforts with it (see Section B.3 above). Despite this limited engagement with the private sector, DPO prosecutors consider that they have sufficient expertise to investigate and prosecute legal persons. Civil society representatives at the virtual visit were, however, more critical of the DPO's role and capacity to enforce foreign bribery against legal persons, including with regard to the *Namibia case*. This is supported by the fact that Iceland has not convicted any legal persons for major economic crimes since Phase 3.

### *Commentary*

*The lead examiners are concerned that Iceland has yet to initiate a prosecution against a legal person for foreign bribery and related offences but welcome the ongoing first foreign bribery investigation into a legal person. They also note that the DPO has limited experience in engaging with the private sector and in conducting corporate proceedings. For this reason, the lead examiners recommend that Iceland (i) draw the attention of prosecutors to the importance of applying effectively the criminal liability of legal persons in foreign bribery cases, including by strengthening training programmes on corporate proceedings, and (ii) proactively pursue criminal proceedings against legal persons, where appropriate, for foreign bribery and related offences.*

## 3. Sanctions available for legal persons for foreign bribery

### (a) *Fines for legal persons*

137. Sanctions against legal persons remain unchanged since Phase 3. A legal person may be fined for violation of articles 109 or 264a GPC. Icelandic law does not provide for statutory minimum and maximum fines. In assessing the amount of a fine, a court will consider the factors in article 51(1) GPC, including the accused's income and assets, financial standing, obligations towards dependents, and the financial gain that

<sup>61</sup> [Iceland Phase 2 Report](#), para. 27; Iceland [Phase 3 Report](#), paras 21-22.

resulted or sought from the offence. Private sector representatives during the virtual visit expressed uncertainty about how fines would be calculated in a foreign bribery case. In the absence of a concluded foreign bribery case against a legal person, the Working Group cannot assess whether Iceland does impose effective, proportionate and dissuasive sanctions against legal persons in practice. Fines imposed against legal persons for other economic crimes are very low and concern, according to Iceland, only minor offences (e.g. inaccurate custom declarations).

**(b) Additional sanctions, including debarment**

138. Since Phase 3 Iceland has amended article 68(2) GPC to provide for the deprivation of certain rights from the legal person, including revocation of licences and permits, or other benefits and entitlements. These measures are not mandatory and may be imposed by the sentencing court for a period of up to five years or permanently for gross violations. By amending article 68(2) GPC at the time of the two-year written follow-up report, Iceland fully implemented Phase 3 recommendation 2(b) to consider the imposition of additional sanctions, which were previously available only for natural persons, also to legal persons. Iceland has not yet applied article 68(2) GPC in practice.

139. Legal persons convicted for corruption are prohibited from participating in public contracts through mandatory administrative debarment (article 68 of Act on Public Procurement). Administrative debarment is possible only for offences that took place before the entry into force of the contract (See Section D.2 (b)).

**(c) Confiscation**

140. Due to the absence of a concluded foreign bribery case, Iceland has never applied confiscation measures against a legal person in relation to foreign bribery. During the virtual visit, DPO prosecutors nevertheless indicated that they would routinely seek confiscation measures against legal persons. For reference, Iceland provides that in 2017-2019 it confiscated assets of equivalent value of ISK 351 million (approx. EUR 2.2 million) for other economic crimes.

**Commentary**

*The lead examiners note that in the absence of concluded foreign bribery cases against legal persons, it is not possible to assess whether Iceland imposes in practice effective, proportionate and dissuasive sanctions against legal persons, in line with Article 3 of the Convention. For this reason, the lead examiners recommend that the Working Group follow up as case law and practice develop to ensure that sanctions against legal persons are effective, proportionate and dissuasive and that confiscation measures are routinely sought in foreign bribery cases.*

## 4. Engagement with the private sector and anti-corruption controls

**(a) Awareness-raising**

141. During Phase 3 the Working Group made a recommendation on awareness-raising activities for the private sector and information on the steps to be taken by Icelandic companies confronted with bribe solicitation and clear instructions on the authorities to whom suspicions of foreign bribery should be reported (recommendation 5(a)). In addition Iceland was recommended to promote the Good Practice Guidance on Internal Controls, Ethics and Compliance to companies and business organisations (Annex II to the 2009 Recommendation) (recommendation 5(b)). This was due to particular concerns about the absence of direct engagement by the public administration with the private sector, with the result that Icelandic companies at the time were not fully aware of the legal consequences under Icelandic law of engaging in foreign bribery. At the time of the two-year written follow-up report, this recommendation was not implemented.

142. Since Phase 3, Promote Iceland<sup>62</sup> published an information sheet on foreign bribery, which was disseminated to several Icelandic business associations in February 2015. The information sheet raises awareness for companies of the responsibilities that the country has under the Convention and the legislation enacted in Iceland to comply with it. The information sheet also provides links to websites to support companies in obtaining information about corruption and foreign bribery. Apart from this information sheet, which is now out of date due to legislative changes, it does not appear that the Icelandic authorities have assisted Icelandic companies regarding bribe solicitation or to whom to report allegations of foreign bribery. The government has organised only one specific event with the business community to raise awareness about foreign bribery in October 2015. In addition, there have been two private sector led awareness-raising events and seminars coordinated and promoted by local business associations. These events were, however, focussed on general fraud and corruption problems and not specifically addressing foreign bribery.

143. Awareness of foreign bribery has changed somewhat for Phase 4 and according to panellists from academia, civil society, the legal profession and private sector, this is largely due to reporting of the current *Namibia case*, but not because of any awareness-raising by the Icelandic authorities.

144. Despite the recent increase in awareness in the private sector, many of the major Icelandic companies in the country do not appear to have implemented anti-bribery compliance programmes, suggesting that the risk of foreign bribery in the private sector is still perceived as low, possibly because the majority of Icelandic companies are SMEs operating domestically and not internationally. Despite this, the level of concern seems to be slowly changing due to reporting on the *Namibia case* and could evolve further if additional foreign bribery investigations are opened.

#### *(b) Corporate governance and compliance*

145. The level of engagement and awareness of the private sector regarding compliance and integrity issues has a direct effect on anti-corruption policy implementation. Most of the bribery risks that companies face when doing business can be addressed with a robust compliance programme.

146. Business organisation panellists mentioned that the compliance and anti-corruption agenda has been pushed by big international companies rather than by the Icelandic government. From the public sector there has been one main initiative to raise awareness in this regard, which took place in 2014. That year, the MII sent a communication to business organisations and professional organisations as well as the Register of Annual Accounts about the Convention and 2009 Recommendation together with the relevant provisions of the GPC.

147. In 2016, Iceland amended the Act on Annual Accounts, to impose new obligations on public interest entities and large companies (as well as parent companies of large groups of undertakings) to disclose in the companies' annual financial statement the policies and actions that they take to prevent corruption and bribery.<sup>63</sup>

148. However, larger international companies stated that their main focus is on complying with foreign laws such as the US Foreign Corrupt Practices Act or the UK Bribery Act. Subsidiaries of multinational enterprises operating in Iceland already have robust anti-corruption compliance programmes implemented as part of the global compliance standards of their parent companies. In addition, a few major Icelandic companies are also starting to implement compliance programmes, with the main reason mentioned for doing this the necessity to comply with foreign laws in order to be able to do business abroad.

<sup>62</sup> Promote Iceland is a public-private partnership established to lead the promotion and marketing of Iceland in foreign markets and stimulate economic growth through increased export. For more information, visit [Promote Iceland Website](#).

<sup>63</sup> Article 66d of Act on Annual Accounts.

149. Some of the law firms and legal experts also mentioned that some clients had started to enquire about compliance issues and legal liability since the *Namibia case*. Icelandic companies, in particular SMEs, generally do not yet appear to prioritise anti-corruption compliance. Legal experts and companies confirmed that request for advice on these issues is almost non-existent among the SMEs.

150. The Iceland Chamber of Commerce, Nasdaq Iceland and the Confederation of Icelandic Enterprises have published joint guidelines on good corporate governance first issued in 2004. Since Phase 3, the 5<sup>th</sup> edition of the Guidelines was issued in May 2015 and addresses corporate social responsibility and ethics, but not foreign bribery and compliance issues. The 6<sup>th</sup> edition of the guidelines is under preparation and it is expected to be published in January 2021.<sup>64</sup> The evaluation team sees the new edition of the guidelines as a good opportunity to address foreign bribery and anti-corruption.

#### **Commentary**

*The lead examiners welcome the amendment to the Act on Annual Accounts, which imposes an obligation on some entities to disclose in their annual financial statement the policies and actions that the company takes to prevent corruption and bribery.*

*The lead examiners also welcome the increased level of foreign bribery awareness in the private sector, which is slowly becoming more widespread thanks to initiatives led mainly by business associations, such as the publication of guidelines.*

*Nevertheless, the lead examiners consider that the Icelandic authorities need to improve awareness raising with the private sector regarding foreign bribery and, for these reasons, the lead examiners consider that recommendations 5a) and 5b) remain partially implemented. They reiterate that Iceland should step up its awareness-raising activities with regard to the private sector and promote, including among SMEs, the Good Practice Guidance on Internal Controls, Ethics and Compliance.*

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<sup>64</sup> Guidelines in [Icelandic](#).

## D. OTHER ISSUES

### 1. Tax measures for combating foreign bribery

#### *(a) Non-tax deductibility of bribes and enforcement*

151. The Icelandic Directorate of Internal Revenue (DIR) is responsible for determining tax assessments and conducting tax audits. On 1 January 2020 the DIR and the Directorate of Customs merged and are now known as Icelandic Revenue and Customs (IRC). The Directorate of Tax Investigations (DTI) is an independent agency under the MFEA and separate from the IRC. The DTI is responsible for investigating cases where there are suspicions of tax fraud.<sup>65</sup>

152. The non-tax deductibility of bribe payments remains unchanged since Phase 3. Iceland expressly prohibits the deductibility of such payments for tax purposes under article 50(6) of the Act on Income Tax (90/2003) (Income Tax Act) but only in relation to an offence under article 109 GPC.<sup>66</sup> However, as mentioned above, Iceland's foreign bribery offences are now contained in both articles 109 and 264a GPC. Although article 50(6) Income Tax Act does not specifically refer to article 264a GPC, Iceland submits that article 50(2) Income Tax Act, which provides that costs, in any form, from acquiring illegal confiscated profits or profits linked to punishable offences, cannot be deducted from taxable income and this would include any bribes paid to SOE officials.

153. During the virtual visit, the tax authorities confirmed that a taxpayer bears the burden of proving that deductions claimed are incurred in relation to the activities of the company, including having the necessary documentation. However, the tax authorities confirmed that if there is a conviction for foreign bribery there is no standard procedure to re-examine tax returns to see if the bribe payments have been claimed as deductions. Nevertheless, they would be able to re-examine the tax return if they suspect or know there has been bribery although they do not receive automatic notifications of convictions. The tax authorities stated that they would generally know about any convictions from the media and also have access to court rulings to be able to check. Since the virtual visit, the tax authorities have confirmed that if a case is not tied to a tax matter, the IRC will not proactively follow the case and will not receive information on convictions from the courts. The tax authorities, however, indicate that they have close cooperation with the prosecutors and could launch their own independent investigation if required.

154. Iceland has a six-year limitation period on examining tax returns unless it is an offshore company in which case the limitation period is ten years. The limitation period starts from the relevant filing year, therefore, as of the time of this report, tax returns from before 2013 are not able to be re-examined (unless it is an offshore company in which case it would be 2010). This is of concern as allegations of foreign bribery can take many years to surface and span long periods of time. For example, the recent foreign bribery investigation concerns allegations dating back to 2011 therefore limitation periods already apply and prevent re-examination of tax returns for some years.

#### *(b) Detection and sharing of information*

155. In Phase 3, the Working Group was concerned that Icelandic tax authorities have provided no guidance or awareness-raising to taxpayers or tax authorities on the foreign bribery offence. Accordingly, the Working Group recommended that Iceland proceed with its intention to disseminate and provide

<sup>65</sup> OECD (2017), "[Effective Inter-Agency Co-Operation in Fighting Tax Crime and Other Financial crimes](#)" Third Edition, p. 308.

<sup>66</sup> Iceland [Phase 3 Report](#) para. 58.

training on the then OECD Bribery Awareness Handbook for Tax Examiners to tax inspectors, and extend such dissemination to relevant taxpayers (recommendation 9). At the time of Iceland's two-year written follow-up report, recommendation 9 was deemed partially implemented because the only training initiative had been the dissemination of the OECD Bribery Awareness Handbook for Tax Examiners to all staff at the IRC and the DTI.

156. The tax authorities during the virtual visit confirmed that foreign bribery is not included in their standard operating plan for their assessment work. However, staff are encouraged to be aware of foreign bribery and seek guidance from handbooks and supervisors if necessary. For example, if staff see invoices that are suspicious, for instance payments with no services rendered, they would ask for clarification from the taxpayer. Staff have access to and are familiar with the new and updated OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors.

157. The tax authorities have not conducted any specialised training for staff although awareness raising is done through internal materials, including guidelines and handbooks. In addition the tax authorities have not conducted any specific training for taxpayers although written instructions for filing of tax returns are provided on the website, including reference to legislation and article 50(6) of the Income Tax Act. Oral advice can be provided if requested.

158. In Phase 3, the Working Group was concerned that there was no express reporting obligation for tax authorities to report any suspicion of foreign bribery to law enforcement authorities, including designated reporting channels, nor were there sanctions for non-reporting. Accordingly, the Working Group recommended that Iceland establish clearer guidelines for tax inspectors concerning their obligation to report cases of suspected foreign bribery to law enforcement authorities (recommendation 6(b)). At the time of the two year written follow-up report, this recommendation was not implemented.

159. Since Phase 3, guidelines have been prepared by the MFEA in collaboration with the tax authorities, which are now part of the handbook for tax auditors. The guidelines state that article 50(6) of the Income Tax Act prohibits the tax deduction of bribes, and a tax official who suspects domestic or foreign bribery shall report it to an appropriate superior. Although the obligation appears mandatory, under the guidelines, there is no sanction on a tax official for failing to report a suspicion.<sup>67</sup> If the superior finds that there is a 'reasonable suspicion', they will forward the matter to law enforcement. At the virtual visit, the tax authorities stated that 'reasonable suspicion' means any suspicion but confirmed that, as of the time of this report, there have been no such reports to superiors (and accordingly no reports to law enforcement).

160. In relation to tax investigations, generally, the DTI stated that once they have concluded their investigation they would send the file to IRC for re-assessment of the tax and, if there are suspicions of criminal offences, also to the DPO to consider a prosecution. Where a case is handed over to the DPO the investigation file of the DTI can be provided. In a positive development, the tax authorities have confirmed that they have current investigations concerning income tax and corporate structures running in parallel with DPO corruption investigations. Although the investigations are separate the tax authorities state, there is good cooperation with the DPO

161. In terms of international exchange of information, since Phase 3, Iceland has incorporated the language of Article 26(2) of the OECD Model Tax Convention in all the bilateral tax treaties that entered into force. This provides for the possibility for tax authorities to share information with foreign law enforcement authorities for use in high priority non-tax matters (such as corruption investigations). The receiving State is required to specify to the supplying State the non-tax use of the information and confirm

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<sup>67</sup> It is possible that a breach of the obligation in the guidelines could lead to punitive administrative measures being taken in accordance with Act No. 70/1996, on the Rights and Duties of Public Employees. In addition, in extreme cases, article 141 GPC could be relevant, as it states that a public official who commits gross or repeated negligence or carelessness in his or her work shall be fined or imprisoned for up to 1 year.

that such use is permissible under its laws. Iceland is also a Party to the Multilateral Convention on Mutual Administrative Assistance in Tax Measures, which provides for the possibility to use information received for tax purposes for non-tax purposes, provided certain conditions are met (Article 22.4). During the virtual visit the IRC confirmed that it can share tax information with overseas counterparts under the various bilateral tax treaties in place. In addition, the IRC can share information with foreign tax authorities on suspicious payments likely to be foreign bribery transactions but this will also depend on the particular case. To date, as in previous evaluations, there has been no such information sharing

**(c) Tax treatment of sanctions and confiscation imposed on legal persons**

162. In its responses to the Phase 4 questionnaire, Iceland refers to article 50(6) of the Income Tax Act on the non-tax deductibility of bribes and indicates that the monetary penalties or other sanctions, resulting from the commission of the offence, are not tax deductible. Iceland has also confirmed, following the virtual visit, that sanctions and confiscated assets may not be deducted from the tax base for corporations as per article 50(2) of the Income Tax Act.

**Commentary**

*The lead examiners note that that IRC and DTI staff have been provided with the new and updated OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors but that training has not been provided, so recommendation 9 remains partially implemented.*

*The lead examiners welcome the guidelines prepared by the MFEA, and Phase 3 recommendation 6b) to establish clearer guidelines for tax inspectors concerning their obligation to report cases of suspected foreign bribery to law enforcement authorities is now fully implemented.*

*Regarding the non-tax deductibility of bribes, the lead examiners note that article 50(6) of the Income Tax Act does not cover article 264a GPC, which has been amended since Phase 3 to cover the bribery of SOE officials. Iceland has confirmed that article 50(2) of the Income Tax Act would cover bribes paid to SOE officials under article 264. The lead examiners recommend that the guidelines prepared by the MFEA be amended to clarify that bribes paid to SOE officials are non-tax deductible.*

*The lead examiners recommend that Iceland provide awareness-raising and training for tax officials on (i) the guidelines prepared by the MFEA; (ii) the new and updated OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors; and (iii) foreign bribery risks and the techniques used more generally.*

*The lead examiners are concerned as to whether the six year limitation period to re-examine tax returns is sufficient bearing in mind the time it can take to detect and prosecute foreign bribery offences. Accordingly, they recommend that Iceland (i) ensure that the limitation period is sufficient to allow for an effective period to re-examine tax returns by aligning it with the limitation periods for natural persons of ten years as per the foreign bribery offences under articles 109 and 264a GPC and (ii) ensure the DPO systematically and promptly share information with the tax authorities in relation to foreign bribery investigations and convictions, so that the tax authorities can investigate and effectively enforce non-deductibility of bribes.*

## **2. Public advantages**

163. This section addresses the prevention, detection and reporting of foreign bribery by agencies responsible for export credit, public procurement and official development assistance (ODA).

**(a) Export Credit**

164. In Phase 3, the Working Group noted that the provision of export credits by Iceland's Export Credit Guarantee Department (within the New Business Venture Fund), “*Tryggingardeild Utflutnings*” (TRU), was very limited. It nevertheless encouraged the TRU to take steps to adhere to the OECD Council Recommendation on Bribery and Officially Supported Export Credits (follow-up issue 12e)). Since Phase 3 Iceland has adhered to the new 2019 Recommendation of the Council on Bribery and Officially Supported Export Credits. However, Iceland is not a member of the Working Party on Export Credits and Credit Guarantees (ECG) because Iceland does not provide any official export credits support on behalf of its government that would fall within the scope of the 2019 Recommendation.

165. Iceland has confirmed that the TRU has not granted any export credits since Phase 3 and that the system of export credit in Iceland has been under review for several years which is likely to result in the abolishment of the TRU. At the time of Phase 4, a Bill amending the legislation on the New Business Venture Fund and the TRU will be introduced to Parliament in December 2020.

**Commentary**

***The lead examiners note that the TRU has not provided any export credits since Phase 3 and the proposal to abolish the TRU. The lead examiners recommend that the Working Group follow up on the proposed new legislation once the legislation is available.***

**(b) Public procurement**

166. Ríkiskaup, under the auspices of the MFEA, is the central public procurement body responsible for administering public procurement contracts in Iceland.<sup>68</sup> In Phase 3 the Working Group recommended that, in relation to public procurement, Iceland develop measures to raise awareness and provide notification to applicants on the foreign bribery offence and the legal consequences under Icelandic law (recommendation 11(i)). In addition, the Working Group recommended that Iceland, where international business transactions are concerned, and as appropriate, take into consideration applicant companies' internal controls, ethics and compliance programmes or measures (recommendation 11(ii)). At the time of the two year written follow-up, recommendation 11 was assessed not implemented.

**(i) Awareness raising and training**

167. Since Phase 3, the MFEA has published guidelines and best practices for public procurement officials.<sup>69</sup> A translation of the guidelines was not provided to the evaluation team and as a consequence, their relevance and content could not be assessed. In addition, Ríkiskaup states it has raised awareness with the incorporation of new information on their website through a section on transparency and integrity of the procurement procedures. There is also a reference to the active and passive bribery offences under the GPC (noting the period of imprisonment for article 109 requires updating) and the Convention. Ríkiskaup representatives reported during the virtual visit that its officials have only attended one foreign bribery seminar and spoken at a conference on Public Procurement (in October 2015 and November 2015 respectively). No further training has been organised to raise awareness of foreign bribery since 2015.

**(ii) Prevention of foreign bribery in public procurement**

168. Applicants need to disclose any previous misconduct in terms of corruption. It is not clear how Ríkiskaup check this as they confirmed there is no central register or database with information on convictions and that the main source of information about a company committing bribery is the media. However, there are no specific and systematic processes to review media cases (local and international).

<sup>68</sup> Ríkiskaup official website, [Central Public Procurement](#).

<sup>69</sup> [Guidelines](#) in Icelandic.

Iceland relies on the small size of the country when detecting any relevant information that could affect the procurement processes. According to Ríkiskaup officials, Icelandic companies that have committed bribery or other misconduct know they cannot get a contract with Ríkiskaup. This is obviously difficult to assess and no empirical evidence has been provided to confirm this statement.

169. Natural and legal persons convicted for corruption are excluded from participating in public contracts through automatic administrative debarment for a period of five years after the date of conviction.<sup>70</sup> However, a legal person may demonstrate measures they have taken, for example through effective cooperation with the authorities, compensation of damages caused or effective technical and organisational measures, in order not to be excluded from public procurement. Courts do not have power to debar natural or legal persons from public procurement contracts following a criminal conviction. During the virtual visit, Iceland confirmed that no company has been excluded or suspended from public procurement processes since Phase 3.

170. While the Ríkiskaup does not maintain a list of companies debarred from participating in a public contract, it is working on a tool to obtain the beneficial ownership information of companies in order to build a “black list” and exclude inappropriate companies from their public contracts. This tool has yet to be launched and there is no specific date for implementing it.

**(iii) Consideration of anti-corruption internal controls and compliance programmes**

171. As mentioned above the Working Group recommended that Iceland take into consideration applicant companies’ internal controls, ethics and compliance programmes or measures (recommendation 11(ii)). At the time of the two-year written follow-up report, the Working Group considered the recommendation 11(ii) not implemented. Iceland reported that Ríkiskaup has now incorporated anti-corruption clauses in their procurement documents and require bidding companies to declare that they have an ethical framework prohibiting bribery.<sup>71</sup> In 2018, Ríkiskaup added a clause to the terms of agreement on the grounds for excluding tenderers where the contracting authority/buyer would have to take into account whether an economic operator has sufficient measures to prevent and detect foreign bribery committed by the company when deciding whether to award a public procurement contract to that economic operator. Although this is a positive step, it is not clear how Ríkiskaup will ensure compliance with these provisions in practice.

**Commentary**

*The lead examiners welcome the changes made by the Icelandic authorities, in particular the inclusion of the anti-corruption clause in the Ríkiskaup terms of agreement and the inclusion of reference to bribery on the Ríkiskaup website. Nevertheless, the lead examiners are concerned that only one specific seminar on foreign bribery has been provided since Phase 3. They consider that recommendation 11 is partially implemented and re-iterate that Iceland should continue to develop measures to raise awareness on the foreign bribery offence.*

*The lead examiners note Ríkiskaup does not maintain a list of companies barred from participating in a public contract and relies on a declaration from applicants and on public sources such as media, which is not routinely monitored. The lead examiners recommend that Iceland through Ríkiskaup maintain a list of companies convicted in Iceland for corruption offences and routinely check the debarment lists of multilateral financial institutions.*

<sup>70</sup> Article 68 of [Act No. 120/2016 on Public Procurement](#).

<sup>71</sup> [Act No. 120/2016 on Public Procurement](#).

(c) *Official development assistance*

172. This Phase 4 evaluation is the first time Iceland’s ODA system is reviewed in light of the 2016 Recommendation for Development Co-operation Actors on Managing Risks of Corruption (2016 ODA Recommendation), and in particular sections 6-8 and 10 which more directly relate to foreign bribery.

173. In Phase 3, ODA was administered by the ICEIDA. Since Phase 3 Iceland has joined the OECD Development Assistance Committee (DAC) and ICEIDA was integrated within the MOFA to strengthen its institutional framework and operational capacity for development cooperation.<sup>72</sup> As mentioned above, the DIADC has now replaced the ICEIDA, and is now responsible for managing Iceland’s bilateral development cooperation policy formulation, planning administration, evaluation and co-ordination.

174. In 2019 Iceland was DAC’s smallest member in terms of aid volume.<sup>73</sup> However, Iceland has been recognised as a committed donor supporting the poorest countries and using its expertise in areas like renewable energy, land restoration and gender equality. Despite its size and a small aid budget, its aid to gross national income (GNI) ratio ranked it the 15<sup>th</sup> largest among DAC members in 2019.<sup>74</sup> Iceland has committed to achieve the target of allocating 0.7% of GNI to ODA and aims to reach a 0.35% ODA/GNI ratio by 2022.<sup>75</sup>

175. In 2018, Iceland provided the largest proportion of its ODA bilaterally (82%) and the remainder as core contributions to multilateral organisations, mainly the United Nations and the World Bank Group.<sup>76</sup> Nearly half of its bilateral ODA was channelled through multilateral organisations while only 1.4% was channelled through the private sector.

176. In 2018, most of Iceland’s bilateral ODA was allocated to social infrastructure and services, with a focus on support to water supply and sanitation and fishing and forestry.<sup>77</sup> Iceland has focused its bilateral ODA on Africa, with spending concentrated in three least developed countries (LDCs): Uganda, Malawi and Mozambique (Figure 2). In 2018, LDCs received 42.6% of Iceland’s gross bilateral ODA which is above the DAC country average of 23.8%.

<sup>72</sup> OECD (2020), “[Development Co-operation Profiles – Iceland](#)”, p.14.

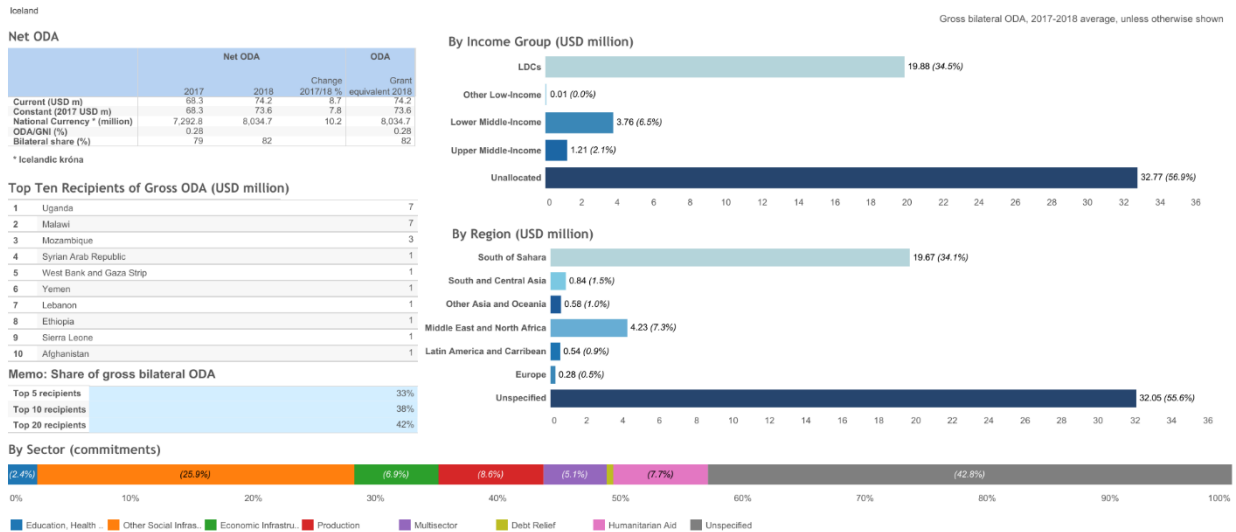
<sup>73</sup> OECD (2020), Press Release “[Aid by DAC members increases in 2019 with more aid to the poorest countries](#)” (accessed on 20 September 2020)

<sup>74</sup> OECD (2020), “[Development Co-operation Profiles – Iceland](#)”, p. 2.

<sup>75</sup> *Ibid*, p. 2.

<sup>76</sup> *Ibid*, p. 4.

<sup>77</sup> *Ibid*, p.10.



177. In Phase 3, the Working Group made a two-pronged recommendation that Iceland’s ODA agency (i) systematically require anti-corruption provisions in bilateral aid-funded procurement that include both preventive and punitive measures (such as termination of contracts or other civil or criminal actions, where applicable), and (ii) where international business transactions are concerned, and as appropriate, take into consideration applicant companies’ internal controls, ethics and compliance programmes or measures (recommendation 10). At the time of the two-year written follow-up report, the Working Group considered the recommendation not implemented. Since Phase 3, Iceland has made some positive changes in relation to this recommendation.

178. In terms of measures to prevent and detect corruption in ODA (section 6, 2016 ODA Recommendation), the MOFA has introduced measures including the implementation of anti-corruption clauses in all ODA contracts, the requirement of applicants to disclose prior corruption convictions and to describe the measures they have taken to avoid and detect corruption. The MOFA relies on various sources to check for convictions or debarments, including the World Bank and Nordic Development Fund debarment lists and the media. However, the MOFA does not systematically monitor the media and relies on the small size of Iceland to know about reports of international corruption. Internal and external financial audits are conducted on ODA projects but they do not consider the bribery risks associated with the projects.

179. Section 7 of the 2016 ODA Recommendation addresses reporting mechanisms and whistleblower protection. There have been no cases of foreign bribery detected by the MOFA and they have not taken any specific measures to detect foreign bribery. In Phase 3, concern was raised that Icelandic public officials did not have an obligation to report suspicions of foreign bribery to law enforcement officials and this is discussed further in Section A.3(a) above. At that time, ICEIDA’s Code on Conduct required employees who became aware of corruption or illegal or inappropriate conduct to report it internally to designated persons but there was no corresponding obligation on them to report to law enforcement authorities and this remains unchanged. At the same time, there is a whistleblowing mechanism within the MOFA but it only relates to breaches committed by employees disbursing ODA and not foreign bribery. Iceland recently passed the Whistleblower Act, which is due to come into force in January 2021, and this is discussed in Section A.2 above.

180. Section 8 of the 2016 ODA Recommendation asks that ODA contracts provide for termination, suspension or reimbursement clauses when the information provided by applicants to ODA was false, or when the implementing partner subsequently engaged in corruption during the course of the contract. In the Partnership Agreement, there is a clause on MOFA’s right to withhold disbursements or cancel the

agreement in case of corrupt or fraudulent practices by contracting parties or by a beneficiary of ODA funds during procurement or execution of the Agreement. A false declaration regarding previous convictions would imply a breach of the contract and a reason to terminate it. Iceland provided an example of an instance in 2017 where funding was suspended because of suspicions of fraud and corruption in an ODA-funded contract in Malawi. However, funding resumed in August 2017 because the Malawi Anti-Corruption Bureau's investigation confirmed that the corruption case was confined to the Local Development Fund and had no connection with Icelandic ODA funds or foreign bribery.

181. Section 10 of the 2016 ODA Recommendation considers the risks of the environment of operation and, as noted above, Iceland gives over 80% of its ODA to some of the least developed countries. MOFA has not provided any anti-corruption training to staff in charge of ODA although, during the virtual visit, the MOFA stated they were setting up an internal taskforce with the aim of improving procedures and this might include developing short training on anti-corruption. However, as this taskforce was still being established at the time of this evaluation, it was not possible to assess its effectiveness.

### **Commentary**

*The lead examiners welcome the changes made by Iceland to address Phase 3 recommendation 10, such as the implementation of anti-corruption clauses in the ODA contracts and the requirement to companies to disclose prior corruption convictions and their measures to prevent corruption. For these reasons, recommendation 10 is considered fully implemented. Nevertheless, the lead examiners consider that there is room for improvement because the requirements do not apply to disclosing convictions of sub-contractors or third parties. They therefore recommend Iceland take the necessary steps to ensure that the anti-corruption clauses also apply to sub-contractors and third parties.*

*The lead examiners are also concerned at the lack of awareness raising and training for the MOFA staff and recommend that Iceland provide regular training and guidance on foreign bribery red flags. Regarding the reporting of suspicions of foreign bribery, the lead examiners recommend that these are covered by internal MOFA guidelines, which include compliance with the new Whistleblower Act.*

## CONCLUSION

182. The Working Group considers that one of Iceland's main issues has been the perception that Icelandic individuals and companies do not engage in foreign bribery, which may undermine detection and awareness-raising efforts. The current investigation in relation to allegations of foreign bribery by a major Icelandic company and individuals has shattered this perception. Accordingly, it is important that Iceland provides adequate resources to ensure that it seriously investigates, and if appropriate, prosecutes the case to demonstrate its commitment to implement the Convention and the 2009 Recommendation. Enforcement in this case could also clarify various issues raised in this report, such as the interpretation of article 264a GPC, limitation periods and the use of special investigative techniques. The Working Group is also concerned about the limited proactivity of law enforcement, with just one ongoing foreign bribery investigation out of four allegations of foreign bribery that involved Icelandic companies or individuals. Therefore, Iceland should take the necessary steps to more proactively detect and enforce its anti-bribery legislation. Furthermore, Iceland needs to address key elements of its legislative framework and increase training and the level of awareness of foreign bribery in the public and private sectors.

183. The Phase 3 recommendations that the Working Group considered not or only partially implemented after the 2013 written follow-up report continue to be outstanding: recommendations 4(b) (investigation and prosecution) and 6(a) (reporting by public officials) are still not implemented. Recommendations 1 (foreign bribery offence), 2(a) (sanctions), 3 (confiscation), 4(c) (investigation), 5(a)-(c) (raising awareness), 7 (whistleblower protection), 8 (detection through anti money laundering systems), 9 (tax measures) and 11 (public procurement) remain partially implemented. These partially and unimplemented Phase 3 recommendations are reflected below in the Phase 4 recommendations to Iceland.

184. In conclusion, based on the findings in this report, the Working Group acknowledges the good practices and positive achievements set out in Part 1 below and makes the recommendations set out in Part 2. The Working Group will also follow up on the issues identified in Part 3. The Working Group invites Iceland to submit a written report on the implementation of Phase 4 recommendations and issues for follow-up in two years (i.e. in December 2022), including detailed information on its foreign-bribery enforcement actions.

### Good practices and positive achievements

185. This report has identified several good practices and positive achievements by Iceland regarding implementation of the Convention and related instruments. Although there are currently no concluded foreign bribery cases, in terms of enforcement, the integrated approach that the country has taken by reorganising the DPO responsible for investigating and prosecuting foreign bribery offences is welcomed. This change should allow investigators and prosecutors to work closely together and share expertise in complex cases. In addition, the Working Group welcomes the changes to the ICEFIU and the increase in resources and opportunities to coordinate closely with the DPO. Furthermore, the amendment to article 83 CCP has broadened the offences eligible for the use of special investigative techniques, including foreign bribery, and the range of special investigative techniques has widened to include undercover agents and surveillance. The Working Group also welcomes the implementation of anti-corruption clauses in the ODA contracts and the requirement for companies to disclose prior corruption convictions and their measures to prevent corruption.

186. The Working Group also welcomes important legislative changes, including the amendment to articles 109 and 264a GPC to increase the maximum prison sentence for active bribery of foreign public officials from three to five years. In addition, the report highlights the enactment of the new Whistleblower

Act, which contains important elements that could arguably constitute good practice for the protection of whistleblowers. Since the law will enter into force in January 2021, the Working Group cannot yet assess its effectiveness, but expects that it will increase the detection of foreign bribery in Iceland. Nevertheless, dedicated measures for its implementation in practice should be taken to ensure that it adequately protects private and public sector employees.

187. However, in the context of no concluded cases, it is difficult to determine whether some of these initiatives and areas of progress represent good practices and positive achievements in combating foreign bribery and enhancing enforcement. For this reason, the Working Group encourage Iceland to work on these areas to ensure their effectivity in fighting foreign bribery in the short and long term.

## Recommendations of the Working Group

### *Recommendations for ensuring effective prevention and detection of foreign bribery*

1. Regarding **detection of foreign bribery through anti-money laundering mechanisms**, the Working Group recommends that ICEFIU, commensurate with the increase in resources, raise awareness of foreign bribery risks and publish typologies on foreign bribery as a predicate offence to money laundering [Convention Article 7; 2009 Recommendation III(i); Phase 3 recommendation 8]
2. Regarding **whistleblower protection**, the Working Group recommends that Iceland:
  - (a) Raise awareness in the public and private sectors, including SMEs, of the new Whistleblower Act, including the broad scope of the term “in their employers’ activities” in the commentary and the protections available to whistleblowers under the new law [2009 Recommendation III(i) and (iv), and IX(iii)];
  - (b) Ensure that appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report suspected acts of foreign bribery, including within their own organisation and to law enforcement authorities [2009 Recommendation III(iv) and IX(iii); Phase 3 recommendation 7].
3. Regarding **reporting of foreign bribery**, the Working Group recommends that Iceland urgently raise awareness and provide clear guidance to public officials, especially those engaging with Icelandic companies operating overseas, concerning their obligation to report suspected foreign bribery [2009 Recommendation III(i), IX(ii) and Annex I.A; Phase 3 recommendation 6(a)]:
4. Regarding **detection of foreign bribery through accounting and auditing**, the Working group recommends that Iceland undertake further awareness-raising measures with regard to the reporting obligations of auditors and sanctions for failure to report, and promptly provide training on red flags to detect foreign bribery [2009 Recommendation III(i) and X.B(iii) and (v); Phase 3 recommendation 5(c)].

### *Recommendations for ensuring effective enforcement of the foreign bribery and related offences*

5. Regarding the **foreign bribery offence**, the Working Group recommends that Iceland take all necessary steps to clarify that article 264a GPC covers (i) bribery of all foreign SOE officials, including those who perform a public function, and (ii) all acts or omissions in relation to the performance of the SOE official’s duties, including any use of the official’s position, whether or not within the official’s authorised competence [Convention Article 1 and Commentaries 12, 14 and 15; Phase 3 recommendation 1].
6. Regarding **sanctions, including confiscation, against natural persons** for foreign bribery, the Working Group recommends that Iceland:

- (a) take all necessary steps, including through guidance and training to the judiciary, to ensure that any sanctions imposed against natural persons for foreign bribery are effective, proportionate and dissuasive in practice [Convention Articles 3 and 5; 2009 Recommendation III(i)];
  - (b) continue to train its prosecutors on confiscation measures and draw their attention to the importance of routinely seeking confiscation against natural persons in foreign bribery cases [Convention Article 3; 2009 Recommendation III(i); Phase 3 recommendation 3];
  - (c) amend its legislation to provide for confiscation of property the value of which corresponds to the bribe and the proceeds of the bribery of a foreign public official, or for monetary sanctions of comparable effect [Convention Article 3].
7. Regarding the **investigation and prosecution** of foreign bribery, the Working Group recommends that Iceland:
  - (a) increase the use of proactive steps to gather information from diverse sources at the pre-investigative and investigative stages both to increase the sources of allegations and enhance investigations [Convention Article 5 and Commentary 27; 2009 Recommendation III, V and Annex I.];
  - (b) ensures that all credible allegations of foreign bribery are properly and thoroughly assessed, and investigated as appropriate [Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D];
  - (c) participate in the Working Group meetings, and in particular the LEOs meetings, which could assist with their first investigation of a foreign bribery case [Convention Article 12; 2009 Recommendation XIV(iv) and XV];
  - (d) provide specialised training to law enforcement authorities, including investigators, prosecutors and judges, on the investigation and prosecution of foreign bribery, including key elements of the offence in 264a GPC [2009 Recommendation III(ii) and V; Phase 3 recommendation 4b)];
  - (e) amend article 81 GPC so that the limitation periods for legal persons are the same as they currently are for natural persons [Convention Articles 2 and 6].
8. Regarding **mutual legal assistance (MLA) and extradition** in foreign bribery cases, the Working Group recommends that Iceland:
  - (a) carefully consider incoming MLA requests, and where appropriate investigate credible allegations of foreign bribery [Convention Article 9; 2009 Recommendation III(ix) and XIII(ii)];
  - (b) use outgoing MLA requests proactively to progress foreign bribery investigations in a timely manner [Convention Article 9; 2009 Recommendation III(ix) and XIII].
9. Regarding **responsibility of legal persons**, the Working Group recommends that Iceland:
  - (a) draw the attention of prosecutors to the importance of applying effectively the criminal liability of legal persons in foreign bribery cases, including by strengthening training programmes on corporate proceedings [Convention Articles 2 and 3; 2009 Recommendation III(ii) and Annex I.B];
  - (b) proactively pursue criminal proceedings against legal persons, where appropriate, for foreign bribery and related offences [Convention Articles 2 and 5, and Commentary 27; 2009 Recommendation V and Annex I.D and Annex I.B]; Convention]

- (c) step up its awareness-raising activities with regard to the private sector and promote, including to SMEs, the Good Practice Guidance on Internal Controls, Ethics and Compliance [2009 Recommendation III(i) and Annex II; Phase 3 recommendation 5b)].

***Recommendations regarding other measures affecting implementation of the Convention:***

10. Regarding **tax measures for combatting foreign bribery**, the Working Group recommends that Iceland:
  - (a) amend the guidelines prepared by the MFEA for tax officials to clarify that bribes paid to SOE officials are non-tax deductible [2009 Recommendation VIII(i); 2009 Tax Recommendation I(i)];
  - (b) provide awareness-raising and training for tax officials on (i) the guidelines prepared by the MFEA; (ii) the new and updated OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors; and (iii) foreign bribery risks and the techniques used more generally [2009 Recommendation III(iii) and VIII(i); Phase 3 recommendation 9];
  - (c) ensure that the limitation period to re-examine tax returns is sufficient by aligning it with the limitation periods for criminal liability of natural persons of ten years as per the foreign bribery offences under articles 109 and 264a GPC [2009 Recommendation III(iii) and VIII(i), Tax Recommendation II];
  - (d) ensure the DPO systematically and promptly share information with the tax authorities in relation to foreign bribery investigations and convictions, so that the tax authorities can investigate and enforce non-deductibility of bribes [2009 Recommendation III(iii) and VIII(i)].
11. Regarding **public procurement**, the Working Group recommends that Iceland:
  - (a) develop measures to raise awareness and provide notification to applicants on the foreign bribery offence and the legal consequences under Icelandic law [2009 Recommendation X.C(vi) and XI(i); Phase 3 recommendation 11(i)];
  - (b) through Ríkiskaup maintain a list of companies convicted in Iceland for corruption offences and routinely check the debarment lists of multilateral financial institutions [2009 Recommendation XI(i)].
12. Regarding **official development assistance (ODA)**, the Working Group recommends that Iceland:
  - (a) ensure that the anti-corruption clauses in all ODA contracts also apply to sub-contractors and third parties [2016 ODA Recommendation III.6(v)];
  - (b) provide regular training and guidance to MOFA staff on foreign bribery red flags [2009 Recommendation III(i) and Annex I.A];
  - (c) ensure that the reporting of suspicions of foreign bribery by MOFA staff is covered in internal MOFA guidelines, which include compliance with the new Whistleblower Act [2009 Recommendation III(i), IX(ii) and Annex I.A; 2016 Recommendation III.7].

**Follow-up by the Working Group**

13. The Working Group will follow up on the issues below as case law, practice, and legislation develops:
  - (a) whether the application of the term “in their employers’ activities” covers in practice all reports of foreign bribery by public and private sector employees [2009 Recommendation IX(ii)];

- (b) whether easily accessible reporting channels are available to whistleblowers in the public and private sectors [2009 Recommendation III(iv), and IX(i)];
- (c) whether there is proper coordination among competent authorities in defining the rules and procedures of article 5 of the Whistleblower Act and in monitoring its implementation [2009 Recommendation III(iv) and IX(iii)];
- (d) whether article 264a GPC covers bribery of officials of both state-owned and state-controlled enterprises [Convention Article 1; Phase 3 recommendation 1];
- (e) whether the term “professional duties” is applied in accordance with the requirements of Article 1 of the Convention [Convention Article 1, and Commentaries 12 and 15];
- (f) whether Iceland can hold in practice natural persons liable for bribery committed through intermediaries, and that a bribe in Iceland’s penal code covers both pecuniary and non-pecuniary advantages [Convention Article 1 and Commentary 6];
- (g) whether the structural changes to the DPO’s Economic Crimes Department and the integrated approach of the investigation and prosecution of foreign bribery cases result in an increased capability to detect, investigate and prosecute foreign bribery and related offences [Convention Article 5];
- (h) how Iceland exercise its jurisdiction in practice over cases of bribery of foreign public officials, notably regarding those committed in whole or part abroad [Convention Articles 4 and 5];
- (i) how limitation periods impact, if at all, foreign bribery investigation [Convention Articles 5 and 6];
- (j) how requests for MLA impact the suspension of limitation periods [Convention Articles 6 and 9];
- (k) which investigative techniques have been used in foreign bribery cases [Convention Article 5];
- (l) whether the funding arrangements for the DPO are sufficient and transparent in order for the DPO to function appropriately to investigate and prosecute foreign bribery allegations [Convention Article 5; 2019 Recommendation Annex I.D];
- (m) whether Iceland can provide a broad range of MLA to Parties to the Convention that apply civil or administrative (and not criminal) liability to legal persons for foreign bribery [Convention Article 9];
- (n) whether Iceland can hold in practice a legal person liable for foreign bribery (i) without prior prosecution or conviction of a natural person, and (ii) for acts of related legal persons and intermediaries [Convention Articles 2 and 3; 2019 Recommendation Annex I.B];
- (o) whether the lack of successor liability in Icelandic law may hamper the effective enforcement of the foreign bribery offence against legal persons [Convention Article 2; 2009 Recommendation III(ii) and Annex I.B];
- (p) whether sanctions against legal persons are effective, proportionate and dissuasive and that confiscation measures are routinely sought in foreign bribery cases [Convention Articles 2, 3 and 5];
- (q) the proposed new legislation amending the legislation on the New Business Venture Fund and the TRU once the legislation is available [2009 Recommendation XII and 2019 Export Credit Recommendation].

## ANNEX 1: PHASE 3 RECOMMENDATIONS TO ICELAND (2010) AND ASSESSMENT OF IMPLEMENTATION BY THE WORKING GROUP ON BRIBERY IN 2013

RECOMMENDATIONS		WRITTEN FOLLOW-UP
<i>Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery</i>		
1.	Regarding the <u>foreign bribery offence</u> , the Working Group recommends that Iceland explicitly cover bribery of officials employed by state-owned and state-controlled companies, and specifically consider this recommendation in drafting its new Bill amending the foreign bribery offence in Iceland's General Penal Code (GPC) [Convention, Article 1; Phase 2 Report, recommendation 9].	<i>Not implemented</i>
2.	Regarding <u>sanctions</u> for foreign bribery, the Working Group recommends that Iceland:	
	a) Raise imprisonment sanctions against natural persons for foreign bribery, as provided under section 109 of the GPC, to ensure that they are effective, proportionate and dissuasive [Convention, Article 3.1];	<i>Not implemented</i>
	b) Consider the imposition of additional administrative sanctions for legal persons, similar to those applicable to individuals [Convention, Article 3.4].	<i>Fully implemented</i>
3.	Regarding <u>confiscation of the bribe and proceeds of foreign bribery</u> , the Working Group recommends that Iceland provide training to its prosecutors on the new confiscation regime introduced in 2009, and encourage them to request confiscation in foreign bribery cases, where appropriate [Convention, Article 3.2; 2009 Recommendation III.(i)].	<i>Partially implemented</i>
4.	Regarding the <u>investigation and prosecution of foreign bribery cases</u> , the Working Group recommends that Iceland:	Working Group
	a) Promptly and seriously proceed with its ongoing reflection on the structure and resource allocation for fighting economic and financial crime in Iceland, to ensure that there are sufficient resources for and effective coordination of the different law enforcement authorities for the investigation and prosecution of economic and financial crimes, including foreign bribery [2009 Recommendation III.(ii) and V.];	<i>Fully implemented</i>
	b) Promptly provide specialised training to law enforcement authorities, including the police, prosecutors and judges, on the investigation and prosecution of foreign bribery [2009 Recommendation III.(ii) and V.];	<i>Not implemented</i>

	c) Make available, where appropriate, special investigative means, such as interception of communications, video surveillance and undercover operations, in foreign bribery investigations [2009 Recommendation III.(ii) and V].	<i>Not implemented</i>
<b><i>Recommendations for ensuring effective prevention and detection of foreign bribery</i></b>		
5.	Regarding <u>raising of awareness</u> the Working Group recommends that Iceland:	
	a) Seriously step up its awareness-raising activities with regard to the private sector, in particular through its Overseas Business Development Department within the Ministry of Foreign Affairs and through Icelandic missions abroad. These should include information on steps to be taken by Icelandic companies confronted with bribe solicitation, and clear instructions on the authorities to whom suspicions of foreign bribery should be reported [2009 Recommendation III.(i)];	<i>Not implemented</i>
	b) Promote the Good Practice Guidance on Internal Controls, Ethics and Compliance, set out in Annex II to the 2009 Anti-Bribery Recommendation, to Icelandic companies, business organisations and professional associations [2009 Recommendation III.(i) and Annex II]; and	<i>Not implemented</i>
	c) Concerning auditors, undertake awareness-raising measures with regard to, and promptly provide training on, (i) their reporting obligations to the management of the company, and to law enforcement authorities; (ii) the sanctions for failure to report; and (iii) red flags to detect foreign bribery [2009 Recommendation III.(i) and X.B.(iii) and (v); Phase 2 Report, recommendation 7].	<i>Not implemented</i>
6.	Regarding detection and reporting of foreign bribery, the Working Group recommends that Iceland:	
	a) Ensure that appropriate measures are in place to facilitate reporting by public officials, in particular those posted abroad, to law enforcement authorities of suspected acts of foreign bribery detected in the course of their work, and raise awareness of the existence of these reporting channels [2009 Recommendation IX.(ii)];	<i>Not implemented</i>
	b) Establish clearer guidelines for tax inspectors concerning their obligation to report cases of suspected foreign bribery to law enforcement authorities [2009 Tax Recommendation; Phase 2 Report, recommendation 2].	<i>Not implemented</i>
7.	Regarding whistleblower protection, the Working Group recommends that Iceland ensure that appropriate measures are in place to protect from discriminatory or disciplinary action both public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery, and take steps to raise awareness of these mechanisms [2009 Recommendation IX.(iii)].	<i>Not implemented</i>
8.	Regarding <u>detection through anti money laundering systems</u> , the Working Group recommends that Iceland take all necessary measures to ensure that all stakeholders involved in fighting money laundering be adequately made aware that bribery of foreign public officials is a predicate offence to money laundering [Convention, Article 7; 2009 Recommendation III.(i)].	<i>Not implemented</i>
9.	Regarding <u>tax measures for combating foreign bribery</u> , the Working Group recommends that Iceland proceed with its intention to disseminate and provide training on the OECD Bribery Awareness Handbook for Tax Examiners to tax	<i>Partially implemented</i>

	inspectors, and extend such dissemination to relevant taxpayers [2009 Recommendation III.(i); 2009 Tax Recommendation].	
10.	Regarding official development assistance, the Working Group recommends that Iceland's official development agency (i) systematically require anti-corruption provisions in bilateral aid funded procurement that include both preventive and punitive measures (such as termination of contracts or other civil or criminal actions, where applicable), and (ii) where international business transactions are concerned, and as appropriate, take into consideration applicant companies' internal controls, ethics and compliance programmes or measures [2009 Recommendation X.C.(vi) and XI.(ii); 1996 DAC Recommendation].	<i>Not implemented</i>
11.	Regarding public procurement, the Working Group recommends that Iceland (i) develop measures to raise awareness and provide notification to applicants on the foreign bribery offence and the legal consequences under Icelandic law; and (ii) where international business transactions are concerned, and as appropriate, take into consideration applicant companies' internal controls, ethics and compliance programmes or measures [2009 Recommendation X.C.(vi) and XI.(i)].	<i>Not implemented</i>

### PHASE 3 ISSUES FOR FOLLOW UP BY THE WORKING GROUP

12	a) The interpretation of the foreign bribery offence under Icelandic law, to ensure that it covers bribery through intermediaries, and the offering, promising or giving of both pecuniary and non-pecuniary advantages;	<i>Continue to follow-up</i>
	b) The application in practice of the corporate liability regime for foreign bribery, notably to ensure that a legal person cannot avoid responsibility for foreign bribery by using intermediaries, including related legal persons;	<i>Continue to follow-up</i>
	c) Whether sanctions for foreign bribery are sufficiently effective, proportionate and dissuasive in practice;	<i>Continue to follow-up</i>
	d) The application in practice of the recently amended anti money laundering legislation and its effect on enforcement of money laundering offences predicated on economic crime; and	<i>Continue to follow-up</i>
	e) Whether Iceland's Export Credit Guarantee Department, "Tryggingardeild Utflutnings" (TRU), if and when its practice develops in the granting of officially supported export credits, takes steps to adhere to the OECD Council Recommendation on Bribery and Officially Supported Export Credits.	<i>Continue to follow-up</i>

## ANNEX 2: LEGISLATIVE EXTRACTS

### Income Tax Act

#### Chapter III

##### Article 50

The following cannot be counted with operating expense in accordance with Article 31 or in any way as deduction from taxable income: [...]

2. Monetary penalties or other sanctions, in any form, because of a taxable entity's punishable deeds, including the value of confiscated assets or payments there instead. Furthermore cost, in any form, from acquiring illegal confiscated profits or profits linked to punishable offences.

6. Cost because of payments, gifts or other illegal objects in accordance with Article 109 of the Penal Code, 19/1940, to persons that are hired or elected for government employment in the fields of legislation, judgment or public administration, whether in Iceland or other states or with international organisations and institutions that nations, governments or international institutions are members of.

### General Penal Code

##### Article 109

Any person who gives, promises or offers a public official, member of parliament or arbitrator a gift or other undue gain, for the official himself or other persons, in order to have him act or refrain from acting in connection with his official duties, shall be imprisoned for up to 5 years or fined if there are extenuating circumstances.

The same punishment shall apply to any person who adopts such conduct towards a foreign public official, a foreign jury member, a foreign arbitrator, a member of a foreign congress of elected members with administrative duties, an official of an international organisation, a member of the assembly of such an organisation or the public legislative assembly of a foreign state, a judge who is a member of an international court, or an employee of such a court, in order to have them act or refrain from acting in connection with their official duties.

The same punishment shall furthermore apply to any person who adopts such conduct towards a person who asserts or confirms that he or she is able to exert an improper influence on the decision-making of any person referred to in the first or second paragraph of this Article, with the intention of having him or her exert such influence.

Furthermore, the same punishment shall apply to any person who asserts or confirms that he is able to exert an improper influence on the decision-making of any person referred to in the first or second paragraph of this Article and who demands, accepts, or accepts the promise of, a gift or other undue gain, for himself or others, irrespective of whether the influence is exerted and whether it leads to the intended result.

**Article 264a**

Any person who gives, promises or offers a person who directs a domestic or foreign enterprise in business operations, including an enterprise that is partly or wholly publicly owned, or does work on its behalf a gift or other gain to which that person is not entitled, to the advantage of that person or that of other persons, in order to have that person do something or not do something, this being at variance with that person's professional duties, shall be imprisoned for up to 5 years, or fined if there are extenuating circumstances. If a person who directs a domestic or foreign enterprise in business operations, including an enterprise that is partly or wholly publicly owned, or does work on its behalf, demands, accepts or solicits the promise of gains to which he or she is not entitled, to his or her advantage or that of other persons, and as a consequence does something or does not do something, this being at variance with his or her professional duties, shall be imprisoned for up to 6 years, or fined if there are extenuating circumstances.

**Extradition of Criminals and Other Assistance in Criminal Proceedings – Act No. 13, 17th April 1984****CHAPTER IV****Other Assistance in Connection with Criminal Proceedings****Article 22**

In order to gather evidence for use in criminal proceedings in another state, it may be decided, in response to a request, that the provisions of the Code of Criminal Procedure shall be applied in the same manner as in comparable proceedings in Iceland.

In the event that a request for assistance is submitted on the basis of the European Convention on Mutual Assistance in Criminal Matters from 29 May 2000 and the protocol thereto from 16 October 2001, the legal proceedings specified by the state submitting the request shall apply provided that such proceedings do not violate Icelandic law. Requests for the questioning of witnesses or experts by telephone or teleconferencing shall be granted as far as possible. Questioning by telephone shall only be permitted if the witness or expert in question so consents.

Requests shall be sent to the Ministry of Justice unless other arrangements are decided in an agreement with another state. A request shall contain information on the type of offence and where and when it was committed. Requests may only be granted if it is demonstrated that a decision has been taken on coercive measures which are in conformity with the legislation of the state involved.

A request may not be granted if the act which it concerns, or a comparable act, is not punishable under Icelandic law or if, under the provisions of Articles 5-7, it cannot constitute grounds for extradition. The second condition contained in the first sentence does not apply to states participating in the Schengen co-operation. With respect to requests from Denmark, Finland, Norway or Sweden, the first condition of the first sentence applies only with respect to political offences.

The Ministry of Justice shall immediately reject the request if the conditions of the third paragraph are not met, or if it is clear that the request cannot be granted. If a request is not rejected pursuant to this paragraph, the case shall be sent to the Director of Public Prosecutions for further treatment, and he shall take steps to have the necessary investigation carried out immediately.

When the investigation has been completed, the Director of Public Prosecutions shall send all the evidence in the case to the Ministry of Justice, together with a report on it. The ministry shall then decide on whether

to grant the request. Provision may be made in an agreement with a foreign state to have the case dealt with by an authority other than the ministry.

If it is likely that a person residing in Iceland, who is not suspected in connection with the case, has legally acquired an item which is to be seized, then the condition for yielding him to the authorities of another state shall be that he will be returned, free of charge, when the conduct of the case is completed.

### **Law 1405 on the Protection of Whistleblowers**

*(Entry into force 1 January 2021)*

#### **Article 1. Scope and objectives**

This Act applies to employees who disclose information or disseminate data in good faith about violations of law or other reprehensible conduct in their employers' activities, whether working in the public or private sector. By good faith, we mean that an employee has good reason to believe the data or information being conveyed is accurate, it is in the public interest to disseminate it and that he has no other option to prevent the offenses or conduct involved. Reprehensible conduct means conduct that endangers public interests, e.g. conduct that threatens the health or safety of people or the environment, without it being an apparent violation of any law or regulation.

An employee within the meaning of this Act is the person who has access to information or data on the employer's activities as a result of his or her role, including: hired, hired, appointed, self-employed contractor, board member, intern, temporary worker and volunteer. An employee shall be protected under the provisions of this Act after the termination of his or her duties.

The purpose of this Act is to promote information about offenses and other reprehensible conduct and thereby reduce such conduct.

External whistleblowing, cf. Article 3, is generally not permitted unless internal whistleblowing measures have been exhausted without any success.

#### **Article 4. Protection of whistleblowers**

Disclosure of information or data under the conditions of Article 2 or 3 does not constitute a breach of the duty of confidentiality or confidentiality to which the employee is bound by law or otherwise. Such disclosure does not impose any criminal penalty or pecuniary liability on the person concerned and cannot lead to administrative penalties or any adverse employment measures.

An employee who has provided information or data under the conditions of Article 2 or 3 cannot be subjected to any unfair treatment. Such treatment includes, e.g., the reduction of employment benefits, adverse material changes to employment duties, termination of employment contract, or any other punitive measures towards the person who has disclosed data or information. In the event of such measures being taken, the opposite party shall demonstrate that the relevant measure was taken on grounds other than those relating to the disclosure of information or data shared. If this is not proven, the other party shall pay the relevant person compensation for the damage resulting from the unfair treatment, both pecuniary and non-pecuniary damages.

In the event of a dispute in court concerning the status of an employee with regard to paragraphs 1 or 2, the employee shall not have to incur legal costs before the District, National and Supreme Court. That does not

apply, however, if it is proven in court that an employee was not in good faith when the information was shared.

## **Act No 94/2019 on Auditors and Auditing**

*(Entry into force 1 January 2021)*

### **Chapter X Sanctions**

#### **Article 51. Fines and imprisonment of up to two years**

Violation of the following provisions of this Act and rules grounded in this Act is subject to fines or imprisonment for up to two years, unless more severe penalties apply under other legislation

1. Paragraph 1 of Article 6 on the use of the terms auditor or auditing in a professional title or corporate name and the ban on giving the impression that a person is an auditor if he or she is not;
2. Article 14 on the obligation of auditors to perform their work in accordance with generally accepted auditing standards and auditors' code of ethics;
3. Article 16 on the report on audited financial statements;
4. Article 18 on the duty of audit firms and auditors to maintain a formal quality assurance system and work in accordance with the system;
5. Article 22 on the responsibility of a group auditor for the auditing of consolidated financial statements;
6. Article 23 on the duty of auditors and audit firms to be independent from clients;
7. Article 25, prohibiting auditors and audit firms from trading in financial instruments that are issued, guaranteed or otherwise supported by the entity being audited;
8. Article 30 on confidentiality;
9. Article 31 on the obligation of auditors and audit firms to undergo a quality assurance review, provide necessary assistance and access to information in the course of the conduct of the review and comply with recommendations laid down in the results of the quality assurance review.

#### **Article 52. Criminal liability**

Violations of this Act are subject to fines or imprisonment whether committed wilfully or negligently. Attempted violations or participation in violations pursuant to this Act are punishable under the provisions of the General Penal Code.

A fine may be imposed on a legal person for violation of this Act and regulations grounded in this Act irrespective of whether the guilt of a specific agent of the legal person, its employee or other person in its employ can be established. If the agent of a legal person, its employee or another person in its employ has violated this Act or rules grounded in this Act in a criminal manner in the course of the business activities of the person, such person may be subjected to penalties in addition to the imposition of a fine on the legal person.

Direct or indirect profit gained by a violation of the provisions of this Act which is subject to fines or imprisonment may be confiscated by a court order.

### ANNEX 3: LIST OF PARTICIPANTS IN THE VIRTUAL VISIT

#### From the Icelandic government, ministries, and other bodies:

<ul style="list-style-type: none"> <li>• Directorate of Tax Investigations (Ministry of Finance and Economic Affairs)</li> </ul>	<ul style="list-style-type: none"> <li>• Financial Intelligence Unit</li> </ul>
<ul style="list-style-type: none"> <li>• Directorate of International Affairs and Development Cooperation</li> </ul>	<ul style="list-style-type: none"> <li>• Islandsstofa (Promote Iceland)</li> </ul>
<ul style="list-style-type: none"> <li>• Ministry of Foreign Affairs</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Industry and Innovation</li> </ul>
<ul style="list-style-type: none"> <li>• Ministry of Justice</li> </ul>	<ul style="list-style-type: none"> <li>• Office of the Director of Public Prosecutions</li> </ul>
<ul style="list-style-type: none"> <li>• Office of the District Prosecutor</li> </ul>	<ul style="list-style-type: none"> <li>• Parliamentarians</li> </ul>
<ul style="list-style-type: none"> <li>• Prime Minister's Office</li> </ul>	<ul style="list-style-type: none"> <li>• Ríkiskaup (Central Public Procurement)</li> </ul>
<ul style="list-style-type: none"> <li>• Iceland Revenue and Customs (Ministry of Finance and Economic Affairs)</li> </ul>	

#### From the private sector and business associations:

<ul style="list-style-type: none"> <li>• Alvotech Iceland</li> </ul>	<ul style="list-style-type: none"> <li>• Arion Bank</li> </ul>
<ul style="list-style-type: none"> <li>• Brim</li> </ul>	<ul style="list-style-type: none"> <li>• Confederation of Icelandic Enterprise</li> </ul>
<ul style="list-style-type: none"> <li>• Eimskip</li> </ul>	<ul style="list-style-type: none"> <li>• FESTA</li> </ul>
<ul style="list-style-type: none"> <li>• Iceland Chamber of Commerce</li> </ul>	<ul style="list-style-type: none"> <li>• Islandsbanki</li> </ul>
<ul style="list-style-type: none"> <li>• Landsbankinn</li> </ul>	<ul style="list-style-type: none"> <li>• Landsvirkjun</li> </ul>
<ul style="list-style-type: none"> <li>• Marel</li> </ul>	<ul style="list-style-type: none"> <li>• Nordural</li> </ul>
<ul style="list-style-type: none"> <li>• Reykjavik Geothermal</li> </ul>	<ul style="list-style-type: none"> <li>• Rio Tinto Alcan Iceland</li> </ul>
<ul style="list-style-type: none"> <li>• SA – Business Iceland</li> </ul>	<ul style="list-style-type: none"> <li>• Teva Pharmaceuticals</li> </ul>

#### From civil society, legal practitioners, compliance, tax and auditing professionals:

<ul style="list-style-type: none"> <li>• Association of Book-keepers</li> </ul>	<ul style="list-style-type: none"> <li>• Association of Certified Book-keepers</li> </ul>
<ul style="list-style-type: none"> <li>• Auditor Council (The official supervisory authority)</li> </ul>	<ul style="list-style-type: none"> <li>• Deloitte</li> </ul>
<ul style="list-style-type: none"> <li>• Ernst &amp; Young</li> </ul>	<ul style="list-style-type: none"> <li>• Iceland Review</li> </ul>
<ul style="list-style-type: none"> <li>• Icelandic Bar Association</li> </ul>	<ul style="list-style-type: none"> <li>• Icelandic Lawyer's Association</li> </ul>
<ul style="list-style-type: none"> <li>• International Modern Media Institute</li> </ul>	<ul style="list-style-type: none"> <li>• Jonsson &amp; Hall</li> </ul>
<ul style="list-style-type: none"> <li>• Kjarninn</li> </ul>	<ul style="list-style-type: none"> <li>• KPMG</li> </ul>
<ul style="list-style-type: none"> <li>• Kveikur/RUV</li> </ul>	<ul style="list-style-type: none"> <li>• Lex Law</li> </ul>
<ul style="list-style-type: none"> <li>• Logos Legal</li> </ul>	<ul style="list-style-type: none"> <li>• PwC Iceland</li> </ul>
<ul style="list-style-type: none"> <li>• Reykjavik University</li> </ul>	<ul style="list-style-type: none"> <li>• Reykjavik University School of Law</li> </ul>
<ul style="list-style-type: none"> <li>• Reykjavik University School of Social Sciences</li> </ul>	<ul style="list-style-type: none"> <li>• Stundin</li> </ul>
<ul style="list-style-type: none"> <li>• The Institute of State Authorised Public Accountants</li> </ul>	<ul style="list-style-type: none"> <li>• Transparency International Iceland</li> </ul>

## ANNEX 4: LIST OF ABBREVIATIONS, TERMS AND ACRONYMS

AML	Anti-Money Laundering
CCP	Code of Criminal Procedure
DIADC	Directorate of International Affairs and Development Cooperation
DPA	Deferred Prosecution Agreement
DPO	Office of the District Prosecutor
DPP	Director of Public Prosecutions
ECD	Economic Crimes Department within the DPO (previously the ECU at Phase 3 before merger)
ECG	Working Party on Export Credits and Credit Guarantees
EUR	Euro (currency)
FATF	Financial Action Tax Force
FDI	Foreign Direct Investment
FIU	Financial Intelligence Unit
GDP	Gross Domestic Product
GNI	Gross National Income
GPC	General Penal Code
ICEFIU	Icelandic Financial Intelligence Unit
IRC	Icelandic Revenue and Customs
ISAPA	Institute of State Authorised Public Accountants
ISK	Icelandic Kronur (currency)
LDCs	Least Developed Countries
MFEA	Ministry of Finance and Economic Affairs
MII	Ministry of Industry and Innovation
MLA	Mutual Legal Assistance
MOFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice
NGO	Non-Governmental Organisation
NRA	National Risk Assessment
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OSP	Office of the Special Prosecutor
PEP	Politically Exposed Person
PMO	Prime Minister's Office
SME	Small and Medium Sized Enterprise
SOEs	State-Owned Enterprises
STR	Suspicious Transaction Report
UN	United Nations
UNCAC	UN Convention Against Corruption
USD	United States Dollar (currency)
WGB or Working Group	Working Group on Bribery in International Business Transactions