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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

LATVIA: PHASE 2 - FINAL REPORT

**REPORT ON THE IMPLEMENTATION AND APPLICATION OF THE CONVENTION ON
COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS
TRANSACTIONS AND THE 2009 RECOMMENDATION ON FURTHER COMBATING BRIBERY**

The Working Group adopted this report on 14 October 2015.

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EXECUTIVE SUMMARY

The Phase 2 Report on Latvia by the OECD Working Group on Bribery evaluates and makes recommendations to Latvia on its implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The Working Group commends Latvia for the significant legislative steps it has taken to fight foreign bribery both before and after its accession to the Convention in May 2014. However, other implementation efforts remain at a reasonably early stage. There are particular concerns about Latvia's criminal enforcement capacity, the laundering of proceeds of corruption from overseas, and several remaining legislative deficiencies.

The report identifies serious concerns about the operation of KNAB, Latvia's anti-corruption law enforcement agency. The Latvian government should continue to refrain from comments that risk creating a perception of political interference in the agency's work. The legislation concerning the KNAB Director's dismissal should be further improved. Also of serious concern are recent personnel issues that have overshadowed KNAB's investigative efforts and called into question its investigative capacity. Foreign bribery allegations have not been proactively investigated. KNAB therefore needs to ensure that its personnel issues do not interfere with KNAB's ability to investigate foreign bribery. Latvia should also proactively investigate allegations of foreign bribery, as well as related money laundering and false accounting. Enforcement efforts could be improved through increased training and closer co-operation between relevant agencies.

The report further expresses concerns about the risk that proceeds of foreign bribery are laundered through Latvian banks by non-resident clients. Existing measures have failed to detect alleged large-scale money laundering that was subsequently reported in the media. Latvia should accordingly require banks that take non-resident deposits to adopt stronger anti-money laundering measures. It should also inspect banks more frequently and sanction banks that breach relevant laws. The money laundering offence should be enforced more consistently.

The report also notes positive aspects. Latvia has proactively sought international co-operation in corruption cases. It made significant efforts to amend legislation in order to comply with the Convention. However, further amendments in the areas of the foreign bribery offence, extradition, corporate liability and external auditor reporting are needed. Latvia has undertaken measures to raise awareness of foreign bribery and promote compliance systems in the private sector, though these have yet to bear fruit. Latvia has made efforts to raise awareness in the public sector and has received one report of foreign bribery from a public official. To increase such reporting, the government should follow through its intention to enact a comprehensive framework to protect whistleblowers. The Working Group welcomed regulations to help detect bribes during tax audits and recommended that Latvia ensure this measure adequately addresses foreign bribery. The Group was also encouraged by the range of sources and investigative techniques available to Latvia and encouraged Latvia to make full use of these measures.

The report and its recommendations reflect findings of experts from the Czech Republic and Switzerland and were adopted by the OECD Working Group on Bribery. The report is based on laws, regulations and other materials supplied by Latvia. It is also based on information obtained by the evaluation team during its four-day on-site visit to Riga on 5-8 May 2015 where the team met representatives of Latvia's public administration, private sector, and civil society. Latvia will provide an oral follow-up report on its implementation of certain recommendations by October 2016. It will further submit a written follow-up report by October 2017.

A. INTRODUCTION

1. This Report concerns the Phase 2 peer evaluation of Latvia conducted by the OECD Working Group on Bribery in International Business Transactions (Working Group). It evaluates Latvia's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention); 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Anti-Bribery Recommendation); and 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation). The purpose of the evaluation is to study the structures in place in Latvia to enforce the laws and regulations implementing these instruments and to assess their application in practice.

1. The On-Site Visit

2. An evaluation team composed of lead examiners from the Czech Republic and Switzerland, and the OECD Secretariat¹ visited Riga, Latvia on 5-8 May 2015. The on-site visit was conducted pursuant to the procedure for the Phase 2 self- and mutual evaluation of the implementation of the Convention and the 2009 Recommendation. During the on-site visit, the evaluation team met representatives of the Latvian public and private sectors, judiciary, parliamentarians, civil society, and media. (See Annex 1 for a list of participants.) Latvian officials absented themselves from the panel with civil society. Prior to the on-site visit, Latvia provided written responses to the Working Group's standard and supplementary Phase 2 questionnaires. Further information was provided after the on-site visit. The evaluation team also conducted independent research to gather additional information.

3. The evaluation team appreciates the high level of co-operation received from the Latvian authorities at all stages of the Phase 2 evaluation, including the detailed questionnaire responses, the provision of translated legislation and other pertinent documentation, and the smooth organisation and co-ordination of the on-site visit. The evaluation team is additionally grateful to all on-site visit participants for their co-operation and openness during the discussions.

2. General Observations

(a) Political and Legal System

4. Latvia is a parliamentary republic. Deputies are elected to the 100-seat Parliament (*Saeima*) under a system of proportional representation. The highest executive power lies with the Cabinet of Ministers, which is led by the Prime Minister. The President is the Head of State.

5. Latvia's legal system is based on civil law and closely modelled on Germany's. In criminal matters, cases are generally heard in the first instance in a District (City) Court, with *de novo* appeals in Regional Courts and further cassation appeals (with leave) to the Supreme Court. A separate Constitutional Court hears matters such as the constitutionality of laws and international agreements.²

¹ The Czech Republic was represented by Ms. Lenka Habrnálová, Ministry of Justice and Mr. Petr Janoušek, Police Unit for Combating Corruption and Financial Crime. Switzerland was represented by Dr. Claire A. Daams, Federal Prosecutor, Office of the Attorney General and Mr. Markus Leibundgut, Federal Tax Administration. The OECD Secretariat was represented by Mr. William Loo, Ms. Kathryn Gordon, Ms. Liz Owen and Ms. Lise Née, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

² CPC Section 442; Judicial Power Law Part II; Constitutional Court Law; website of the [Supreme Court](#).

(b) Economic Background

6. Latvia is a country of two million people and has the third smallest economy of the 41 Parties to the Convention.³ Since gaining independence in 1991, it has experienced periods of rapid growth and economic crisis. Since 2011, Latvia has had one of the highest rates of economic growth in Europe and now ranks as an upper middle income economy.⁴ Latvia joined the World Trade Organisation in 1991, the European Union (EU) in 2004 and the euro area in January 2014.

7. Latvia plays only a limited role in international trade and foreign direct investment (FDI). Latvia has a very open economy but is the second smallest exporter and importer of goods among the 41 Working Group members. In 2013, the biggest export destinations were the EU (70.4%) and the Russian Federation (11.6%). The main exports were manufactures (57.3%), agricultural products (31.5%), and fuels and mining products (10.6%).⁵ Latvia's outward FDI stocks as a percentage of GDP are well below the average for the world and developed economies. As of the end of 2014, major FDI recipients are Lithuania (26%), Switzerland (18%), Cyprus⁶ (8%), Estonia (7%) and the Russian Federation (7%). The wholesale and retail trade, and financial services and insurance were the largest sectors at 26% each. The high share in finance and insurance may be partly due to investments to "pass through" countries such as Switzerland or Cyprus, which serve as channels for international investment flows toward other destinations.⁷

8. Small- and medium-sized enterprises (SMEs) and state-owned enterprises (SOEs) play important roles. Latvia states that its business sector is dominated by micro and SMEs. Only 270 (0.3%) companies are considered to be "large" under EU definitions, many of which are subsidiaries of foreign enterprises. Nevertheless, Latvia aims to become a "leader in SME innovation and export." The SOE sector in Latvia relative to the size of the economy and percentage of total employment exceeds OECD averages.⁸

3. Overview of Corruption Trends and Recent Measures**(a) Corruption Overview**

9. Although the perceived level of corruption in Latvia appears to be decreasing, the media and commentators have described some high profile corruption scandals. Latvia ranked 43rd out of 175

³ Nominal GDP at current prices in Euros. Source: [Eurostat 2014](#).

⁴ Source: [World Bank 2013](#); OECD (2015), *Economic Surveys: Latvia*, pp. 14 and 21.

⁵ WTO (September 2014), [Trade Profiles and Statistics Database](#). Latvia's average trade-to-GDP ratio in 2010-2012 of 118% indicates high trade openness, which is common for small, open economies like Latvia's. Economic transactions are less likely to cross international borders for larger countries with extensive internal markets.

⁶ Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

⁷ Source: OECD. Outward FDI stock was EUR 964 million in 2014, representing about 5% of Latvian GDP, which compares with 36% for the world average and 47% for the developed economies.

⁸ Sources: OECD (2015), *Review of the Corporate Governance of State-Owned Enterprises: Latvia*, p. 13; Latvian State Revenue Service; European Commission (2013), *"SBA Factsheet 2013 Latvia"*, p. 6. The EU defines large companies as those with at least 250 employees, EUR 50 million turnover or a balance sheet of at least EUR 43 million.

countries in Transparency International's 2014 Corruption Perception Index.⁹ Opinion polls conducted for the government suggest that the public perceives corruption as being less of a problem now than in the past. Other sources suggest that, relative to other post-communist states, Latvia has had less petty corruption but high levels of grand corruption and evidence of "state capture". Recent information indicates that the level of public trust in Latvian government, parliament and political parties remains low. Latvians' perception that their legislators were captive to private oligarchic interests came to a head with the 2008 financial crisis and the 2011 so-called *Oligarchs Case* that involved charges of bribery, money laundering and other crimes.¹⁰ The investigation of this case has seen delays owing to its complexity and to personnel turmoil in Latvia's anti-corruption enforcement agency, as explained later in this report. This and other high profile domestic corruption scandals – such as the bribery of officials of the state-owned electrical power company - have raised awareness and fostered public debate about domestic corruption. Nonetheless, it is said that there is still "a lack of public awareness of the negative consequences of corruption, responsibility for corrupt behaviour, and exercise of authority of state officials in case of a conflict of interest".¹¹ Public awareness of foreign bribery appears to be even lower, though Latvia expects this to rise as a result of awareness raising campaigns following its 2014 accession to the Convention.

10. Many Latvian companies have significant exposure to risks of foreign bribery and money laundering. These risks stem from their activities in highly regulated industries (*e.g.* electrical power) and extractive industries, clients in government procurement (*e.g.* pharmaceuticals), and exposure to regions or countries with high bribery risks. Latvia's financial sector also provides "bridging" services between East and West (see p. 26). Over half of Latvian bank deposits originate from outside Latvia (see p. 26) with around 80% of non-resident deposits from beneficial owners in countries in the Commonwealth of Independent States (CIS) in Eastern Europe and Central Asia.¹²

11. Since independence Latvia has taken measures such as the creation of the anti-corruption enforcement agency and the development of national anti-corruption strategies and programmes. Latvian authorities state that these efforts are responses to the perceived risks of corruption and related offences described above. Latvia has also received some positive reviews in governance matters. One report gives Latvia positive assessments for press freedom, civil liberties and political rights.¹³ It has scored high in global rankings in regulation and business environment, but OECD indicators tend to place Latvia in the lower third of member countries.¹⁴

⁹ Transparency International's [Corruption Perception Index](#) ranks countries according to their perceived level of corruption in the public sector.

¹⁰ Kuris, G., Princeton University (2012), *Innovations for Successful Societies*, "[Surmounting State Capture: Latvia's Anti-Corruption Agency Spurs Reforms, 2002-2011](#)"; Corruption Prevention and Combating Guidelines for 2015-2020, p. 19.

¹¹ Corruption Prevention and Combating Guidelines for 2015-2020, p. 29.

¹² ECFIN (2014), "[Country Focus: Assessing Business Practices in Latvia's Financial Sector](#)", p. 3; OECD (2015), *Economic Survey: Latvia*, p. 24.

¹³ Freedom House (2015), *Freedom of the Press Report*.

¹⁴ See OECD rankings in OECD (2015), *Economic Survey: Latvia*, Annex. Latvia placed 23 out of 189 economies in the World Bank's 2015 *Ease of Doing Business Report* and 42nd out of 148 economies in the World Economic Forum's *Global Competitiveness Report 2014-2015*.

(b) Implementation of the Convention and Legislative Developments

12. Under Latvia's legal system, treaties must be adopted and approved by the Parliament through a legislative act. The law adopting and approving the Convention was enacted on 6 March 2014 and entered into force on 21 March 2014. Latvia deposited its Instrument of Accession to the Convention with the OECD on 31 March 2014 and became a Party to the Convention on 30 May 2014.

13. Although Latvia's Phase 1 evaluation was only in June 2014, there have nevertheless been some legislative developments in the intervening months. As elaborated in this report, Latvia has amended its legislation on jurisdiction to prosecute legal persons. Additional legislative amendments have been drafted to address, among other things, extradition as well as sanctions for foreign bribery and related offences.

(c) Cases Involving the Bribery of Foreign Public Officials

14. There are five known allegations of bribery of foreign public officials that could implicate Latvian individuals or companies, or other entities over which Latvia has jurisdiction. None have led to formal investigations. Two allegations involve non-Latvian companies bribing non-Latvian officials where the bribes transited through Latvian banks. The factual details of two other allegations are unavailable as the cases are under preliminary investigation in Latvia. Latvia has not provided details about a fifth allegation even though the matter has been closed after a preliminary investigation.

15. During the course of this evaluation, Latvian authorities provided differing responses regarding the number of relevant foreign bribery allegations, with the number varying between one and three (in addition to the two allegations where bribes may have transited through Latvian banks). The final figure of five allegations was confirmed after the on-site visit.

16. *Case #1 Information Technology Contract Case:* In April 2014, a US company admitted to US authorities that its Russian subsidiary had bribed Russian public officials to win government information technology contracts. A German intermediary wired EUR 2.2 million to Latvian and Lithuanian bank accounts of shell companies for the benefit of Russian officials. The misconduct occurred in 2000-2007.¹⁵

17. Latvian authorities first received requests for mutual legal assistance (MLA) from foreign authorities in 2009. The Latvian Public Prosecutor's Office for Financial and Economic Crimes executed the requests. Latvian authorities did not, however, consider whether any individuals or companies could be held liable for foreign bribery, money laundering or other related offences for the act of transferring the bribe through Latvian bank accounts to Russian officials. As explained at p. 62, Latvia has jurisdiction over individuals (including non-residents) who launder money through an account with a Latvian bank.

18. *Case #2 Gold Mining Case:* According to media reports in 2013-2014, a Canadian company allegedly bribed officials (including a former President) of Kyrgyzstan in 2004. The bribes were allegedly paid to secure access to a gold mine and were channelled through intermediaries in Latvia, among other places.¹⁶ At the May 2015 on-site visit, Latvian authorities were not aware of this allegation. After the on-site visit, KNAB stated that it has sought information about the allegations.

¹⁵ Department of Justice Press Release (9 April 2014) and (11 September 2014); Plea Agreement CR 14-201 (9 April 2014), US District Court (Northern District of California, San Jose Division); Securities and Exchange Commission Cease-and-Desist Order (9 April 2014), File No. 3-15832.

¹⁶ Asia Times (5 March 2013); Asia Times (10 September 2014); Globe and Mail (25 April 2013).

19. *Case #3 Information from Diplomat Case:* In 2014, a Latvian diplomat provided information to the Corruption Prevention and Combating Bureau (KNAB) that a Latvian entrepreneur bribed senior foreign public officials to obtain public procurement contracts. Latvia considered that it was unable to confirm the allegations with foreign authorities because the foreign country was experiencing conflict. KNAB made inquiries with other Latvian law enforcement agencies but did not take investigative steps in Latvia. The matter was then closed.

20. *Cases #4 and 5 Information from Media and Information from Law Enforcement Agency Cases:* In 2014, KNAB learned of two foreign bribery allegations, one through a media report and another from a foreign law enforcement agency. Preliminary investigations were opened into both matters and are ongoing at the time of this report.

Commentary

The lead examiners congratulate Latvia for taking significant legislative steps to implement the Convention both before and after becoming a Party to the Convention. They note that the Convention entered into force in Latvia only in May 2014 (i.e. 18 months ago before this report) and acknowledge that it is therefore in its early stages of implementation. Nonetheless, as this report explains, there remain concerns about Latvia's practical implementation of the Convention, including the operation of its anti-corruption law enforcement agency. Recent personnel issues have overshadowed the agency's investigative efforts and called into question its investigative capacity. Governmental action risks creating a perception of political interference in the agency's work. There are also serious concerns that Latvia has not adequately addressed substantial risks of money laundering by non-resident clients of Latvian banks. Latvia should be more proactive in investigating foreign bribery allegations. Sanctions for corruption are inadequate. Further legislative amendments are also needed, including to the foreign bribery offence.

B. PREVENTION, DETECTION AND AWARENESS OF FOREIGN BRIBERY

1. General Efforts to Raise Awareness

(a) Overall Anti-Corruption Strategy

21. Since 1998, Latvia's overall anti-corruption strategy has been formalised in a series of medium-term policy planning documents that set forth a binding, overall anti-corruption strategy as well as detailed action plan. Its [National Anti-Corruption Strategy 2009-2013](#) was followed in July 2015 by the government of the "Corruption Prevention and Combating Guidelines for 2015-2020". The Guidelines establish precise goals for improving public sector management and enhancing public sector integrity. They also set forth a programme for reducing public tolerance towards corruption and promoting public involvement in the policy making process. Foreign bribery is explicitly mentioned in several places in the Guidelines, though most of the emphasis appears to be on the public and private dimensions of domestic corruption.

22. Latvian officials at the on-site visit stated that, on the issue of foreign bribery, the Guidelines focus on awareness-raising. This approach was chosen because Latvia had only recently acceded to the Convention and amended the relevant implementing legislation. The first step is therefore to ensure that stakeholders understand and apply these recent developments.

Commentary

The lead examiners commend Latvia for specifically addressing foreign bribery in its Corruption Prevention and Combating Guidelines for 2015-2020. They are encouraged that the Guidelines' refer to the need to raise awareness of foreign bribery. The Guidelines (sub-objectives 6.2 and 6.3) also address reporting by overseas diplomatic missions and bribe detection by tax officials.

The lead examiners also note that there are additional pressing and substantial issues as identified in this report such as KNAB's efforts and capacity to detect and investigate foreign bribery allegations (p. 36); the process for appointing and dismissing the Director of KNAB (p. 36); the prevention, detection and enforcement of corruption-related money laundering (pp. 27 and 62) and false accounting (p. 66); and the effectiveness of Latvia's foreign bribery offence (p. 55). The lead examiners therefore recommend that Latvia use the numerous follow up activities foreseen in the Corruption Prevention and Combating Guidelines for 2015-2020 to address these important matters. Further concerns regarding the Guidelines and corporate compliance measures are discussed below.

(b) Government Initiatives to Raise Awareness

23. Since acceding to the Convention in 2014, Latvia has increased efforts to raise awareness of foreign bribery. These recent efforts have not yet had visible impact and the actual level of awareness of foreign bribery remains extremely low.

24. KNAB has regular contacts with business associations, trade unions and anti-corruption NGO's. It organised a conference in October 2014 attended by Parliamentarians, public officials, civil society and the public where *inter alia* the Convention and corporate liability were discussed. On 9 December 2014, KNAB and the Confederation of Employers held an event to raise awareness of foreign bribery. Since December 2014, KNAB has distributed a leaflet on internal anti-corruption measures for companies. It has also translated the [Anti-Corruption Ethics and Compliance Handbook for Business](#). In 2015, two senior advisors in KNAB's Policy Planning Division will be responsible for raising awareness of foreign bribery and oversee a budget of EUR 4 674 for such activities. Awareness-raising events covering foreign bribery are planned pursuant to a partnership agreement with the Estonian Ministry of Justice.

25. The Ministry of Foreign Affairs (MOFA) has also engaged in some awareness-raising. Since 2014, KNAB has attended meetings and trainings for ambassadors and diplomats, during which it distributed a leaflet on foreign bribery and encouraged diplomats to support Latvian companies that are subject to bribe solicitation. In 2014 and 2015, MOFA sent the KNAB leaflet to all embassies and missions abroad. It also instructed missions to raise awareness of and consult with Latvian companies operating abroad. MOFA has required the missions to indicate by November 2015 whether they have actually carried out these activities.

26. A few additional government bodies have participated in awareness-raising. The Ministry of Finance organised an event for the accounting and auditing profession in 2014 (see p. 20). The Ministry of Justice presented the Convention at this event and at another conference on money laundering in June 2015. The tax authorities have raised awareness of its officials (see p. 19). KNAB presented on the Convention and foreign bribery in a seminar organised by the Latvian Investment and Development Agency (LIAA). LIAA has informed companies of the risks when organising trade missions, but whether foreign bribery was specifically discussed is unclear. LIAA also stated that its representative offices are informed and are encouraged to speak to companies about foreign bribery issues, but there is no information on whether companies have in fact been contacted.

27. The Ministry of Economics states that it is responsible for policy matters and does not have direct contact with companies. Nevertheless, business associations at the on-site visit stated that they have worked closely with the Ministry to develop policies on corporate social responsibility, as formalised in the “National Action Plan on Promoting Responsible and Sustainable Business Conduct in Latvia”. The Ministry states that the prevention and detection of foreign bribery will be incorporated into this Plan.

28. The Financial and Capital Market Commission (FCMC) has been inactive. The FCMC regulates listed companies and is therefore well-positioned to engage these companies on compliance issues. It has addressed issues related to money laundering and terrorism financing but not foreign bribery.

29. Latvia has begun to raise awareness among SMEs. LIAA’s seminar was attended by some SMEs. After the on-site visit, an Association of Small and Medium Enterprises was established. KNAB and six representatives of the Association discussed issues related to foreign bribery and other matters in September 2015. Further efforts to reach out to SMEs and assist them to adopt compliance measures are still needed (see p. 21). The National Economic Council is an important institutional proponent of SME interests but has not engaged in foreign bribery-related awareness-raising.

(c) *Private Sector Initiatives to Raise Awareness*

30. As mentioned at p. 7, many Latvian companies operate in sectors and countries that expose them to risks of foreign bribery. At the on-site visit, many civil society representatives concurred with this view. Two companies also recounted that they had been solicited by foreign public officials to pay bribes.

31. It is striking, therefore, that most Latvian companies and business associations are unaware of or even deny their exposure to this risk. All companies and business associations at the on-site visit, including the two that have faced bribe solicitations abroad, stated that they were not at risk of committing foreign bribery. Yet this risk was clearly present when these companies described their operations. Several companies that relied heavily on local agents stated that agents are paid success fees “and then they can do what they like with them”. These companies were unconcerned or wilfully blind about the risk of an agent bribing a foreign official or using agent fees to pay bribes, or the companies’ liability for such conduct. One transport and freight company stated that foreign bribery was not a major risk because its clients are in the “private sphere” and that its services are priced in a “free and transparent” market. This assessment ignores bribery risks such as the state’s role in procurement, regulation and enforcement. Another company in food exports failed to perceive foreign bribery as a risk despite having to obtain import permits from foreign authorities. Pharmaceutical companies stated that their industry-wide anti-corruption policies do not apply to sales agents, even though such agents are involved in high-risk transactions like marketing to government procurement agencies.

32. Business associations and companies have done very little to raise awareness given the corporate sector’s perception that foreign bribery is not a risk. Private sector participants at the on-site visit were unaware of the Convention and Latvia’s foreign bribery offence. Business associations have promoted various aspects of responsible business conduct but not foreign bribery. As explained at p. 21, compliance systems for foreign bribery in Latvian companies are either rudimentary or non-existent. This means that the companies do little, if anything, to raise awareness of foreign bribery among their managers, employees and business partners.

33. This general lack of awareness of foreign bribery also casts doubt on the effectiveness of government awareness-raising efforts to date. Private sector and civil society representatives at the on-site visit were unaware of Latvian authorities’ awareness-raising efforts described in the previous section. For the time being, the government’s message does not appear to be reaching its intended audience.

Commentary

The lead examiners note that Latvia's efforts to raise awareness of foreign bribery have been recent given its accession to the Convention in May 2014. Nonetheless, they are very concerned that Latvia's business sector fails to appreciate its exposure to the risk of foreign bribery. Government efforts to raise awareness do not seem to have had a tangible impact in the private sector. The lead examiners therefore recommend that Latvia continue to undertake specific efforts to significantly raise awareness of foreign bribery in the private sector. These measures should involve business associations and also target important sectors including SMEs and SOEs.

2. Reporting and Whistleblowing

(a) Duty to Report Crimes and Reporting Channels

34. Latvian authorities acknowledged that there is no general duty on individuals to report suspicions of crime. Under CL Section 315, an individual commits an offence if he/she knows “with certainty” but fails to report the preparation or commission of a serious or especially serious crime. (Foreign bribery is classified as a serious crime under CL Section 7.) However, the individual’s knowledge of the crime must be certain; a mere suspicion is not enough. In practice, this provision has been applied primarily against persons who have witnessed or have been informed about a crime and failed to report to law enforcement. Civil society representatives stated that the offence is rarely prosecuted, if ever. Latvian authorities, however, indicated that there were 96 convictions under this provision since 2010, none of which relates to corruption or economic crime cases.

35. Some government bodies require their officials to report foreign bribery. In 2014 and 2015, MOFA instructed its overseas embassies and missions to “monitor and notify cases of foreign bribery, and to provide information on the known cases when the representatives of the Latvian enterprises have possibly been involved in corruption, including cases discussed in the foreign mass media or other sources”. A diplomat reported a foreign bribery allegation to KNAB in 2014 (see p. 10). Missions were also instructed to provide appropriate assistance when Latvian companies are confronted with bribe solicitations. Reporting by tax officials is discussed at p. 19. The MOJ stated that all public officials are required to report conflict of interest. These areas aside, Latvian public officials do not have a general duty to report suspicions of crimes such as foreign bribery.¹⁷ New legislation requiring reporting of all bribery offences is expected.

36. For those who choose to report corruption, KNAB accepts reporting in writing, by telephone, email or via a free hotline. Reports may be anonymous. A campaign has been organised to raise awareness of these reporting channels. KNAB has launched domestic corruption investigations based on information provided by employees and competitor companies. It has received reports from public officials who had been offered bribes by Latvian individuals or companies. There have not been reports of bribes offered by foreign individuals or companies, however. The Ministry of Interior also accepts reports of crimes.

¹⁷ However, sub-objective 8.3 of the Corruption Prevention and Combating Guidelines 2015-2020 foresees the creation by the end of 2015 of a general obligation on public officials to inform the KNAB “on all cases at their disposal that point to alleged commitment of criminal offence.”

Commentary

The lead examiners welcome MOFA's efforts to raise awareness and to instruct its overseas missions to report allegations of foreign bribery. They note that MOFA staff have already reported one foreign bribery allegation to KNAB. To strengthen these measures, the lead examiners recommend that MOFA continue to provide written guidance and training to MOFA staff on their obligation to detect and report foreign bribery (including through media monitoring), and on the assistance that foreign missions should give to Latvian companies about bribe solicitation.

The lead examiners regret that other Latvian public officials are not obliged to report suspicions of foreign bribery. They therefore recommend that Latvia pursue its intention to put in place measures to require reporting by public officials, directly or indirectly through an internal mechanism, to law enforcement authorities of suspected acts of bribery of foreign public officials in international business transactions detected in the course of their work.

(b) Whistleblowing and Whistleblower Protection

37. Latvia acknowledges that it lacks a comprehensive legal framework to protect whistleblowers. Presently, Labour Law Section 9 prohibits the punishing or causing of adverse consequences for an employee who, within the scope of a legal employment relationship, “informs competent authorities regarding suspicions about the commission of criminal offences or administrative violations in the workplace”. The same prohibition applies to an employee who “exercises his/her rights in a permissible manner”. In the event of a dispute, the employer must prove that his/her actions were justified. Damages are available as a remedy; it is unclear whether other measures such as a transfer or reinstatement are available. Other provisions are even more limited. The Law on Special Protection of Persons protects only witnesses in criminal proceedings, not whistleblowers generally. The Law on Submissions covers mainly complaints made by citizens to a government institution. The Law on Prevention of Conflict of Interests in Activities of Public Officials only protects public officials who report conflicts of interest.

38. Given the lack of a legislative framework, whistleblowing is not a major feature of the compliance and law enforcement landscape in Latvia. Several on-site visit participants stated that the current framework for whistleblower protection is not sufficient and doubted that whistleblowing could ever be effective without better protection. Most business representatives noted that their companies had no internal whistleblowing facilities. Some discussants feared that whistleblowing could be abused. Others mentioned historical reasons for distrust of whistleblowing in Latvia.

39. Plans are in place to remedy this deficiency. A memorandum of understanding was signed in January 2015 by the State Chancellery, Prosecutor General's Office, KNAB and Delna (the Latvian chapter of Transparency International). The memorandum acknowledges the important social and political role of whistleblowing. It commits the parties to draft a whistleblowing law by the end of 2015 and to raise awareness. Guidelines for whistleblowers and companies are also expected. The draft law will cover whistleblowing in both the public and private sectors, according to on-site visit participants.

Commentary

The lead examiners are encouraged by the government's commitment to develop a comprehensive framework for whistleblower protection. They urge all parties involved to pursue this initiative with the necessary vigour, and recommend that Latvia ensure that appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the

competent authorities suspected acts of foreign bribery. The lead examiners also recommend that Latvia take steps to encourage whistleblowing, for example, by conveying the importance of bona fide whistleblowing as a component of public and private integrity systems, raising awareness of the protections available to private sector whistleblowers, and ensuring that easily accessible channels are available for whistleblowers.

3. Officially Supported Export Credits

40. An export credit is the provision of trade financing in the form of credits (i.e. loans), credit insurance and/or guarantees, typically to an exporter or a bank, to facilitate an international trade transaction. Where export credits are provided by a government, rather than by a private financial institution, the export credit is considered “officially supported”. Altum (previously the Latvian Guarantee agency) is Latvia’s officially supported export credit agency.

41. According to its questionnaire responses and information provided during the on-site visit, Altum mistakenly considered that it is not subject to the OECD 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits (2006 Recommendation). Export credits are generally divided into short-term (usually under two years), medium-term (two to five years) and long-term (over five years). Altum only provides short-term export credit guarantees, which it believed were not covered by the 2006 Recommendation. In fact, the 2006 Recommendation covers all export credits regardless of the length of the repayment term.¹⁸ Just before the Working Group meeting to discuss a draft of this report in October 2015, the Ministry of Justice agreed that the 2006 Recommendation applies to Altum.

42. In any event, Altum has incorporated some of the elements of the OECD 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits (2006 Recommendation) into its anti-bribery policy. However, this policy falls short of translating all elements of the 2006 Recommendation. It is also unclear whether all aspects of this policy have been effectively implemented in practice.

43. Altum conducts limited due diligence to detect and prevent foreign bribery. It requires all applicants for support to declare in the application form that neither they nor anyone acting on their behalf would commit foreign bribery. Applicants must also disclose convictions of foreign bribery within the past five years and current charges. But further steps are taken only when two criteria are met: (1) the export transaction exceeds EUR 200 000,¹⁹ and (2) the applicant is a public person (*i.e.* State or local government, or an institution fully funded by the state) or a company whose strategic decisions are made by a public person as a majority shareholder. The company’s ownership structure is identified using publicly available sources or the company’s credit report. Very few transactions meet these criteria, according to Altum. The decision to apply these criteria is due to Altum’s resource constraints (it has a staff of three), though Altum retracted this statement after the on-site visit. Furthermore, even when these two criteria are met, Altum would only verify whether the applicant is on the debarment lists of multilateral development banks. It does not check the Register of Punishment to determine whether an applicant has been convicted of foreign bribery in Latvia. Altum also does not seek details on agents’ commissions associated with the transaction.

¹⁸ Other OECD instruments (such as the Arrangement on Officially Supported Export Credits) may be applicable only to export credits with certain repayment terms. The 2006 Recommendation, however, is applicable to all export credit transactions regardless of the length of the repayment term, except where Members have decided to implement it on a policy basis rather than on a transaction basis, in accordance with Footnote 2 of the 2006 Recommendation (for example, for short-term whole-turnover and multi-buyer export credit insurance policies).

¹⁹ In October 2015, Altum expressed an intention to eliminate this threshold.

It indicated after the on-site visit that it only provides short-term support to exports of consumer goods and that these transactions typically do not involve the use of agents.

44. Altum also does not routinely conduct enhanced due diligence when an exporter or applicant has been convicted or is under investigation for foreign bribery. Whether it would do so is decided on a case-by-case basis, “taking into account recommendations of competent authorities such as KNAB”. It is unclear whether Altum would examine whether an applicant has appropriate management control systems or due diligence measures to combat bribery. Altum indicated that it rejects an application for support if it learns that a client has a prior conviction for bribery within the previous five years. It does not, however, refer to a case where this has happened.

45. Altum further indicates that, if it has “credible evidence” that foreign bribery has been committed by a client, its agent or representative, then it would ask the client to clarify the circumstances surrounding the conclusion of the export contract. What Altum considers “credible evidence” is unknown. Altum would suspend the application pending the outcome of the enhanced due diligence process. The board then decides whether to report to KNAB.²⁰ If bribery is proven after support has been granted, Altum would invalidate its support and seek reimbursement of funds that have been provided. In practice, Altum has not reported any suspicions to KNAB or terminated support as it has yet to detect any instances of foreign bribery. Altum did not indicate whether exporters would be denied future support. Altum has not provided training or guidelines on these procedures to its staff.

46. Altum has done little to raise awareness of foreign bribery among its staff and clients. It organised a meeting in 2014 with the Ministry of Justice and KNAB to raise awareness among exporters and applicants of the legal consequences of engaging in foreign bribery. Altum also informs its clients about the legal consequences of foreign bribery through its [website](#).

Commentary

The lead examiners note that Altum incorrectly considered in the Phase 2 questionnaire responses and during the on-site visit that it is not subject to the 2006 Recommendation . They remain concerned that Altum does not take adequate measures to prevent, detect and report foreign bribery. Due diligence is not systematically undertaken on all applicants/exporters because of Altum’s resource constraints. Little has been done to raise awareness of foreign bribery among Altum’s staff and exporters. The lead examiners therefore recommend that Latvia (a) ensure that Altum has sufficient human and financial resources to systematically conduct adequate due diligence on all applicants for support, (b) ensure that Altum’s anti-bribery policy and practice meet the 2006 Recommendation, and (c) train Altum’s staff on preventing, detecting and reporting foreign bribery.

4. Official Development Assistance (ODA)

47. Latvia’s role as a provider of development co-operation is relatively recent. Total net official development assistance (ODA), as reported to the OECD, reached USD 25 million (EUR 22.3 million) in 2014. Priority partner countries are Eastern Partnership countries (Belarus, Georgia, Moldova and Ukraine) and in Central Asia (Uzbekistan, Kyrgyzstan and Tajikistan). Over 90% of its ODA is channelled through multilateral institutions. Latvia stated at the on-site visit that bilateral projects accounting for EUR 500 000 were mainly small-scale technical assistance provided by NGOs, line ministries and universities.

²⁰ OECD Working Party on Export Credits and Credit Guarantees (22 April 2014), Survey on Measures Taken to Combat Bribery in Officially Supported Export Credit, pp. 10 and 13.

Nevertheless, Latvia's official ODA strategy envisages private sector implementation.²¹ The Development Co-operation Policy Division of the Ministry of Foreign Affairs (MOFA) administers ODA.

48. Latvia does not have specific measures to prevent, detect and report foreign bribery in bilateral ODA-funded projects. MOFA stated at the on-site visit that it does not perceive ODA-funded projects to be at risk of foreign bribery. Criteria for awarding projects do not address foreign bribery directly.²² Due diligence is not conducted before contracts are signed. Project agreements do not include anti-corruption clauses. No clear obligation to report foreign bribery was identified; vague references to "existing legislation" and internal policies were made with no specificity. After the on-site visit, the MOFA stated that CL Section 315 requires its official to report suspicions of foreign bribery. In reality, however, this provision does not impose such a reporting obligation (see p. 13). MOFA has not raised awareness of foreign bribery among its staff and project partners. It indicated, however, that foreign bribery would be addressed in its mid- to long-term ODA plan that is currently being developed.

Commentary

Latvia's bilateral ODA programme is small but is likely to grow. The lead examiners therefore recommend that Latvia adopt adequate measures to prevent, detect and report foreign bribery, and consider excluding companies convicted of this crime from ODA projects, if Latvia engages the private sector in future ODA-funded projects.

5. Tax Authorities

49. This section examines Latvian legislative provisions that prohibit the tax deduction of bribe payments. It also addresses the measures taken by tax authorities to prevent, detect and report foreign bribery, as well as to share tax information with Latvian and foreign authorities for use in foreign bribery investigations. The State Revenue Service (SRS) is Latvia's tax authorities.

(a) Non-Deductibility of Bribes

50. Latvia enacted an express statutory provision prohibiting the tax deduction of bribe payments in 2013. The Law on Enterprise Income Tax (LEIT) prohibits the tax deduction of "expenses unrelated to economic activity", which according to LEIT Section 5(9) include bribe payments.²³ In Phase 2, the Latvian authorities added that if the tax authorities deny a tax deduction (because it is a bribe or for other reasons), then the taxpayer has the onus of proving the legitimacy of the deduction.

(b) Detection of Bribe Payments

51. In May 2014, the SRS amended Internal Regulation 38 which specifies the procedures that SRS officials should apply to detect bribery. The Regulation specifically refers to foreign bribery (para. 1) and the 2009 Tax Recommendation (para. 2). It describes 16 categories of taxpayer behaviour as red flag indicators of bribery (paras. 5 and 6). It then prescribes in substantial detail the procedure a tax examiner needs to follow for detecting bribes (paras. 7-12). Steps include analysing a taxpayer's financial statements, banking and accounting records, and verification through third party information. Particular

²¹ [Latvian Development Co-operation Policy Strategy 2011-2015](#), pp. 6-7 and 10.

²² [By-law of the Grant Project Tender "Aid to Development Co-operation Projects in the Beneficiary Countries Stipulated by the Republic of Latvia"](#).

²³ Phase 1 Report, paras. 141-142; see Annex 3 at p. 76 for the text of the provision.

mention is given to travel and entertainment expenses that could be used to hide bribes, and salary lists containing fictitious employees for siphoning funds as bribes. The Regulation also requires SRS officials to report suspected bribery to KNAB (see p. 19).

52. Nevertheless, there is room for improving Internal Regulation 38. The definition of a public official in the Regulation (para. 3) is taken from the Law on Prevention of Conflict of Interest in Activities of Public Officials. This definition covers Latvian, not foreign, officials. The Regulation has its own definition of bribery (para. 4) that is substantially different from the foreign bribery offence in CL Section 323, and may therefore not cover some bribes under the CL. The Regulation is more concise than the OECD Bribery Awareness Handbook for Tax Examiners.²⁴ Nevertheless, it may be worthwhile to consider incorporating more material from the Handbook into the Regulation.

53. A further question is whether and when Internal Regulation 38 would be used to detect bribery. The Regulation applies during a tax audit (and other similar “tax administration events”; para. 1). The SRS understandably cannot audit all tax returns. Two computerised systems (ESKORT and RASA) are used to identify the corporate and individual taxpayers that are most at risk of violations and would thus be audited. Factors that are considered in making this decision include a company’s economic activity, prior tax history, and employee and salary information. It is not entirely clear that the computerised systems would take into account the risk of a taxpayer paying bribes (as opposed to merely evading taxes) in deciding whether a tax audit should be conducted.

54. In practice, SRS has never detected bribery through tax audits. In 2011-2015, however, it identified seven cases of “risks associated with funds that could be used to bribe public officials or foreign public officials”. The cases were reported to KNAB and the State Audit Office which determined that the suspicions did not warrant criminal investigations.

Commentary

The lead examiners welcome SRS’s initiative to enact Internal Regulation 38 for detecting bribes during tax audits. They recommend that SRS (a) amend the Regulation to ensure that it covers foreign bribery as defined in CL Section 323, (b) consider incorporating additional material from the OECD Bribery Awareness Handbook for Tax Examiners into the Regulation, (c) take steps to ensure that taxpayers who are at risk of committing foreign bribery are identified for tax audits, and (d) assess whether bribes are effectively detected by tax authorities as per the 2009 Tax Recommendation I(ii).

(c) Post-Conviction Enforcement of Non-Deductibility of Bribes

55. If a taxpayer is convicted of (domestic or foreign) bribery, tax authorities should re-examine the tax returns for the relevant years to determine whether the bribes had been deducted. This is an efficient way to enforce the non-deductibility of bribes since the tax authorities do not have to prove that a deducted expense was a bribe; this will have already been proven in court.

56. SRS can initiate a re-examination of a tax return within three years after the return has been filed (Law on Taxes and Fees, Section 23(1)). However, it does not routinely initiate re-examination of the tax returns of taxpayers who have been convicted of bribery. Furthermore, the three-year limitation period is too short, considering foreign bribery is often discovered only many years after the crime has been

²⁴ The OECD Handbook provides practical guidance to help tax inspectors and investigators identify suspicious payments likely to be bribes. The 2013 version is available on [OECD iLibrary](#).

committed. On the contrary, SRS stated that re-assessments can be conducted upon the request of law enforcement in criminal proceedings (Section 23(4¹) of the Law on Taxes and Fees). In these cases, the 10-15 year statute of limitations for criminal prosecutions of bribery applies. However, prosecutors do not always make such a request, according to on-site visit participants.

Commentary

The lead examiners recommend that Latvia take steps to require that prosecutors request SRS to conduct an assessment of an alleged offender's tax return under Section 23(4¹) of the Law on Taxes and Fees in all foreign bribery cases.

(d) Reporting Foreign Bribery

57. SRS officials are generally prohibited from disclosing information about a taxpayer which the official learns while carrying out his/her statutory duties. However, a tax examiner who uncovers suspicions of bribery during a tax examination must report the matter to KNAB within five days (SRS Internal Regulation 38, paras. 13-19). As mentioned above, in 2011-2015 SRS reported five cases to KNAB and two to the State Audit Office.

(e) Awareness of Foreign Bribery and Training

58. The Latvian authorities have taken measures to raise awareness of foreign bribery and to train tax officials. SRS officials attended a course organised by KNAB on "Corruption, fraud and initial sign identification" on 16 December 2014. Financial police officers from SRS attended a two-day seminar on "Preventing and Combating Corruption" organised by the Latvian Judicial Training Centre in November 2014. However, the seminar appears to focus on corruption in the Latvian judiciary. Latvia has translated the 2013 version of the [OECD Bribery Awareness Handbook for Tax Examiners and Tax Auditors](#), as well as the 2009 Anti-Bribery Recommendation. The Ministry of Finance (MOF) website contains fairly detailed information on the Convention, including the non-tax deductibility of bribes. In May 2015, SRS and FIU officials participated in a three-week training programme on criminal investigation at the [OECD International Academy for Tax Crime Investigation](#).

59. The SRS has made some efforts to raise awareness. One course in December 2014 covered the detection of bribes and tax examiners' reporting obligations in Internal Regulation 38. The Bribery Awareness Handbook, 2009 Anti-Bribery Recommendation, SRS Internal Regulation 38 and KNAB course materials were distributed to SRS staff through email and the SRS internal website. It would be beneficial for Latvia to review whether adequate guidance has been provided not only to tax authorities but also taxpayers on "the types of expenses that are deemed to constitute bribes to foreign public officials" (2009 Tax Recommendation I(ii)).

Commentary

The lead examiners welcome Latvia's efforts to raise awareness and train tax officials and taxpayers on foreign bribery-related issues. They recommend that Latvia continue these efforts, particularly by providing additional training to tax examiners on bribe detection and by further raising awareness of foreign bribery among tax officials and taxpayers.

(f) Sharing of Information and Tax Secrecy

60. As mentioned above, SRS officials are prohibited from disclosing information about a taxpayer which the official learns while carrying out his/her statutory duties. An exception to this rule is where Latvian law enforcement officials request information from SRS for use in criminal investigations. KNAB

stated that it can request information from SRS under CPL Section 190 or by directly accessing SRS's database. It has not experienced any difficulties in obtaining tax information.

61. On an international level, Latvia has signed treaties that allow tax information to be shared between Latvian and foreign authorities for use in non-tax related criminal investigations and prosecutions. Since November 2014, Latvia has been party to the [Multilateral Convention on Mutual Administrative Assistance in Tax Matters](#) (MAAC) and amending protocol.²⁵ Article 22(4) of the Convention allows information provided under the Convention for tax purposes to be used for other purposes "when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use." Latvia also accepts the Article 26(2) of the [OECD Model Tax Convention](#) which contains similar language and which has been adopted in Latvia's double tax agreement with India. Latvia "welcomes" the inclusion of this language in its future bilateral treaties.

62. Despite these treaties, it is unclear whether Latvia is able to provide tax information to foreign authorities for use in criminal investigations. As mentioned, SRS cannot disclose tax information absent a statutory exception. Only one exception applies to providing tax information to foreign authorities. It is limited to using the information "for the performance of tax administration functions" and does not apply to criminal investigations (Taxes and Fees Law (TFL), Section 22(2)3)). Latvia first argued that treaties to which it is party (such as the MAAC) are automatically incorporated into domestic law. However, Section 13 of the International Agreements Law only provides that a ratified international treaty prevails over domestic law *in case of conflict*. There is no conflict because the MAAC and the Model Tax Convention provide for the use of tax information in criminal investigations only if this is permitted under the laws of the supplying Party. In other words, the MAAC and the Model Convention expressly defer to Latvian law.

63. Latvia stated that it provided tax information to a foreign country for use in administrative tax proceedings, and subsequently agreed that the same information could also be used in criminal non-tax proceedings. This situation is different because the initial request from the foreign authorities was not for information to be used in criminal proceedings.

Commentary

The lead examiners recommend that the Working Group follow up Latvia's provision of tax information to foreign authorities for use in foreign bribery investigations.

6. Accounting, Auditing, Corporate Compliance and Ethics Programmes

64. This section addresses issues relating to the accounting and auditing profession, including the awareness of foreign bribery, relevant accounting and auditing standards, corporate compliance measures for prevention and detection, and reporting by auditors. The false accounting offence is discussed at p. 64.

(a) Awareness and Training

65. Latvia has made efforts to raise awareness of foreign bribery among the accounting and auditing professions. The Latvian Association of Sworn Auditors (LASA) is the only independent organisation that regulates the auditing profession. In August 2014, the Ministry of Justice (MOJ) attended LASA's summer conference and presented the role and responsibilities of auditors in preventing and detecting foreign bribery. In November 2014, KNAB attended a LASA meeting and presented the measures to be taken for

²⁵ See [chart](#) of jurisdictions participating in the Convention.

implementing the Convention. In January 2015, the MOJ attended the Accounting Forum organised by MOF and again presented the Convention and steps taken to implement the Convention. Representatives of professional accounting organisations and universities with accounting programmes were in attendance. The MOF has posted on its website information on the Convention, the non-tax deductibility of bribes, and red flag indicators of bribery. During LASA's August 2015 summer conference, KNAB gave a presentation on the Convention and indicators of bribery. A magazine article authored by KNAB was expected to be published in the same month. The two auditing firms that attended the on-site visit stated that they were aware of foreign bribery and the Convention. However, as explained at p. 22, there are significant concerns over whether external auditors are fully aware of their role in detecting foreign bribery.

(b) Accounting Standards

66. Article 8 of the Convention requires parties to establish accounting and auditing standards that prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery.

67. Latvia largely meets the requirements of Article 8 of the Convention (Phase 1 Report paras. 98-100). The MOF is responsible for developing and overseeing state policy and standards on accounting and auditing. The Law on Accounting (LOA) requires an entity's accounting information to be truthful, comparable, timely, significant, understandable and complete. An entity's accounts must reflect all of its economic transactions and facts or events that change the state of the entity's property. Accounts must allow persons qualified in accounting to obtain a true and clear view of the entity's financial position and cash flow, and the results of its operations. Accounting entries must be timely, complete, precise, systematically arranged, and be supported by source documents (Sections 2 and 7 LOA). The Annual Accounts Law (AAL) and the Law on Consolidated Annual Accounts prescribe additional requirements for financial statements.

68. As a member of the European Union, Latvia is subject to the International Accounting Standards (IAS) Regulation 1606/2002 adopted by the European Union. Most if not all listed companies and financial institutions are required to apply International Financial Reporting Standards (IFRS). Other firms may (but are not required) to apply IFRS or Latvian Generally Accepted Accounting Principles (GAAP) for consolidated financial statements. Differences between IFRS and Latvian GAAP do not appear relevant for present purposes. IFRS for SMEs have not been adopted.

(c) Internal Controls, Supervisory Boards and Audit Committees

69. The 2009 Anti-Bribery Recommendation X asks Parties to encourage companies to develop and adopt adequate internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery. Companies should also be encouraged to create monitoring bodies, independent of management, such as audit committees of boards of directors or of supervisory boards.

70. Latvia states that Cabinet Regulation 585/2003 sets out the general requirements regarding corporate internal controls of accounting. The Regulation applies to all legal persons including domestic and foreign merchants, and branches of foreign merchants.²⁶ A manager of an undertaking is required to

²⁶ Financial institutions and "governmental institutions of direct administration" are subject to additional requirements. See Cabinet Regulation 326/2012 regarding the Internal Control System in Institutions of Direct Administration and FCMC Regulatory Provisions 233/2012 Regarding the Internal Control System.

develop and maintain an accounting control system (Section 70). This system must control the holding of the undertaking's resources, the undertaking's conformity with accounting requirements, and the timeliness and correctness of the information provided by the undertaking's accounting department. This includes verification that all of the undertaking's economic transactions are accurately reflected in its accounts in due time (Section 68). The undertaking's accounting function must be separate from the entity's other economic activities and be performed by qualified persons (Section 69).

71. A Latvian company may establish a "council" (essentially a supervisory board) if its articles of association so provide (Commercial Law Section 220). The council's functions include supervising the board of directors; monitoring the compliance of the company's business with the law; and examining the company's annual accounts (Sections 291-300). The council must provide a written report on its examination of the annual accounts and attach it to the accounts (Section 175). Council members cannot be the company's board member, auditor, proctor or commercial representatives. They also cannot be a board member of or have the right to represent a dependant company. The company's articles of association may restrict who can be a council member (Section 295). Supervisory boards in SOEs were abolished in 2009.²⁷

72. Listed companies are required to establish an audit committee (Financial Instrument Market Law Section 54¹). The audit committee's responsibilities include monitoring the preparation of financial statements and consolidated financial statements; overseeing the company's internal control and risk management systems; proposing an external auditor for the board's consideration; monitoring the conduct of external audits; and reviewing the independence of the external auditor. An audit committee member cannot be a board member of the company or an undertaking controlled by the company. At least one audit committee member must meet the criteria on independence set out in the statute.

73. Aside from these general measures, most Latvian companies do not have corporate compliance and ethics measures that specifically address corruption or foreign bribery. Only one of the seven companies at the on-site visit had developed a code of ethics that addressed anti-corruption. Two companies adopted standard industry-wide codes. Furthermore, all of these codes focus mostly on gifts and hospitality. There is no mention of issues such as foreign bribery, due diligence of agents, or facilitation payments. Measures concerning whistleblowing were inadequate or non-existent (see p. 14). Business associations at the on-site visit supported their members on corporate social responsibility but not anti-corruption specifically. The OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance (2009 Anti-Bribery Recommendation Annex II) has not been promoted. Additional research based on publicly available information pointed to a similar conclusion. Most large Latvian companies appear to have little or no management practice in relation to corruption in general and foreign bribery in particular. The exception is some Latvian companies that are subsidiaries of corporate groups which are exposed to foreign bribery enforcement in Western and Northern Europe or North America.

74. The Corruption Prevention and Combating Guidelines 2015-2020, which were adopted in July 2015, do little to advance understanding and practice in this crucial area. They set a 2018 horizon for completing work on developing "understanding of corruption risks and its negative impact on business [and] enhanc[ing] better compliance with the principle of corporate social responsibility" (p. 86). Latvia should ensure that this work redresses serious managerial shortcomings in the area of anti-corruption in general, and in foreign bribery in particular. The Guidelines (sub-objectives 3.3-3.5) address internal control measures for SOEs in relation to corruption, but do not specifically address foreign bribery.

²⁷ OECD (2015), *Review of the Corporate Governance of State-Owned Enterprises: Latvia*, pp. 114-126.

Commentary

Latvian companies do not seem to have effective ethics and compliance programmes to address corruption and foreign bribery. This is of particular concern since many Latvian companies operate in countries or sectors with a significant level of corruption. The lead examiners therefore recommend that Latvia take steps to encourage companies to develop, adopt and effectively implement adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. The treatment of this issue in the Corruption Prevention and Combating Guidelines 2015-2020 should be made more concrete and should address the pressing compliance challenges facing the Latvian business community (e.g. clarification of obligations relating to subsidiaries and business partners). Latvia should follow up vigorously its intention to produce guidance on internal controls for SOEs in the anti-corruption area and ensure that the guidance explicitly deals with foreign bribery. Latvia should also encourage business and professional associations to develop similar programmes or measures in their efforts to assist companies, particularly SMEs. These efforts should take into account the Good Practice Guidance on Internal Controls, Ethics, and Compliance in Annex II of the 2009 Anti-Bribery Recommendation.

(d) External Auditing

75. The 2009 Anti-Bribery Recommendation X recommends Parties to take the steps necessary, taking into account where appropriate the individual circumstances of a company, including its size, type, legal structure and geographical and industrial sector of operation, so that laws, rules or practices with respect to external audits, and internal controls, ethics and compliance are fully used to prevent and detect foreign bribery, according to their jurisdictional and other basic legal principles.

76. Annual external audits in Latvia are mandatory for listed (stock) companies and financial institutions.²⁸ External audits must also be conducted for companies, co-operative societies, European co-operative societies and European companies registered in Latvia if they exceeded two of the following criteria in the two previous years: (a) balance sheet of EUR 400 000; (b) net turnover of EUR 800 000; and (c) 25 employees on average (AAL Section 62; Phase 1 Report, para. 106). Latvia stated that only 7% of entities that prepare annual accounts and consolidated annual accounts are externally audited.

77. Latvian external auditors are required to apply the International Standards on Auditing (ISAs).²⁹ ISA 240 requires external auditors to detect material misstatements in a company's financial statements that are caused by fraud. ISA 250 requires external auditors to detect non-compliance with laws and regulations that could lead to material misstatements in a company's financial statements.

78. The independence of external auditors is governed by several provisions. A sworn auditor must be independent in his/her professional activity. LSA Section 25 prohibits government officials, courts, prosecutors, investigators and the management of an audited company from engaging in certain acts that constitute interference with auditor independence. LSA Section 26 prohibits the provision of an audit opinion if independence has been jeopardised and lists instances where independence is considered compromised. Commercial Law Section 176(4) prohibits certain persons linked with a company from being that company's external auditor. Further rules and guidance on independence are in Sections 290 and 291 of the Handbook of Code of Ethics for Professional Accountants prepared by the International Ethics

²⁸ Mandatory annual external audits are also conducted on municipalities and for political organisations (parties) whose revenues in the financial year exceeds ten times the minimum monthly wage.

²⁹ LSA Sections 1(12) and 28(1); Phase 1 Report, para. 107.

Standards Board for Accountants. Latvia expects to implement by 2016 the EU Audit Regulation 537/2014 and revised Audit Directive 2014/56/EU, which include provisions on auditor independence.

79. Latvian auditors at the on-site visit provided mixed views on their role in detecting foreign bribery. They stated that they are more likely to uncover indications of tax or management fraud instead of foreign bribery. Many auditors also believed that Latvia's companies are too small or are not internationally active and hence would not be at risk of committing this crime. Several auditors did state, however, that if they audited an exporting company, then they would consider red flag indicators of foreign bribery such as abnormally large consultant and legal fees. One on-site visit participant referred to a system for identify risky clients. Nevertheless, one auditor believed that external auditors needed to improve their procedures for detecting fraud and bribery. Another auditor believed that the responsibility for detecting bribery rests with internal and not external auditors.

80. The same accounting standards apply to SOEs and private companies. SOEs that meet the size criteria for external audits defined by AAL Section 62 are externally audited by certified external auditors or audit firms. The State Audit Office (SAO), Latvia's public sector auditor, also audits at least some SOEs. The SAO conducts non-financial probity audits of SOEs' performance and compliance with laws and regulations.³⁰ Latvia states, however, that the SAO has a right to conduct financial audits pursuant to the SAO Law Sections 1(3) and 2. SAO recommendations to rectify discovered deficiencies are included in the SAO's audit report and published on its website. SAO must report suspected breaches of law (including foreign bribery) to law enforcement (SAO Law, Section 3).

Commentary

The lead examiners commend Latvia for making efforts to raise awareness of foreign bribery among external auditors. They note, however, that Latvian auditors at the on-site visit provided mixed views on their role in detecting foreign bribery. They therefore recommend that Latvia take further steps to raise awareness, including by providing training to external auditors on detecting foreign bribery (possibly in co-operation with LASA).

(e) Reporting Foreign Bribery and Sharing Information by External Auditors

(i) Reporting Foreign Bribery to Company Management

81. Latvian external auditors are required to report suspected foreign bribery to the audited company. External auditors must inform the audited company's management of "issues not included in the [audit] opinion (for example, shortcomings, errors and violations of the internal control system), which shall not affect the opinion delivered".³¹ Latvia adds that the ISAs require external auditors to report foreign bribery to company management or those responsible for governance. If the company's remedial actions are inadequate, then the external auditor may have to qualify the audit report, disclaim an opinion, or resign.

82. Latvia has not taken any action to encourage companies that receive reports of suspected acts of foreign bribery from an external auditor to actively and effectively respond to such reports (Phase 1 Report, para. 158). Participants at the on-site visit stated that company management usually does not respond to adverse findings in an audit report. The company board has a legal duty to organise the company's business, which includes reacting adequately to all aspects of an audit report. However, one external auditor stated that boards only react to matters considered to be of high priority. Another auditor

³⁰ OECD (2015), *Review of the Corporate Governance of State-Owned Enterprises: Latvia*, pp. 79 & 81-82.

³¹ LSA Section 33(1); Phase 1 Report, para. 109.

stated that companies commonly do not react to audit reports, and that it would be helpful if the government mandated company action. One governmental representative said that the government would take action in this area in the near future. Shortly before this report was adopted, Latvian authorities stated that they presented the Convention in a conference for accounting professionals and published an article on identifying foreign bribery in a business magazine. This is a positive awareness-raising measure. However, these general awareness-raising measures do not encourage companies to respond to reports by external auditors of suspected acts of foreign bribery.

Commentary

The lead examiners reiterate the Working Group's concern in the Phase 1 Report (para. 158) and recommend that Latvia take effective steps to encourage companies that receive reports of suspected acts of foreign bribery from an external auditor to actively and effectively respond to such reports.

(ii) *Reporting Foreign Bribery and Providing Information to Competent Authorities*

83. Latvia is in the process of changing the LSA to require an external auditor to report foreign bribery to competent authorities. Under the current law, Latvian auditors are not required to report foreign bribery to competent authorities, though they are required to report suspected money laundering transactions to the FIU (LSA Section 27(1); see p. 29). The Phase 1 Report (para. 158) recommended that Latvia consider imposing a requirement to report foreign bribery. If an amendment presently before Parliament is enacted, a new LSA Section 33(3²) would require external auditors to report foreign and domestic bribery discovered during an audit to KNAB within three days of discovery. The auditor is not liable contractually or civilly for making the report (LSA Section 33(4)).

84. Concerns remain that external auditors cannot provide information to investigators, prosecutors and judges upon request. LSA Section 27(1) prohibits external auditors from disclosing “commercial secrets” obtained while performing professional duties. Section 25(2)2 prohibits courts, prosecutors and investigators from questioning external auditors as witnesses regarding facts that they learn while providing professional services, except in cases referred to in Section 33. The current Section 33, however, does not apply to foreign bribery investigations since it merely obliges auditors of financial institutions to provide information to the Financial and Capital Market Commission upon request (LSA Section 33(2); Phase 1 Report, paras. 110-111). The proposed amendment to LSA Section 33 (mentioned above) would not remedy this shortcoming. The new provision only addresses spontaneous reporting of foreign bribery detected by an external auditor, and not providing information to law enforcement upon request. There will likely be instances where an auditor does not have reason to suspect that foreign bribery has taken place (and hence is not required to report) but nonetheless possesses information relevant to a foreign bribery investigation. A Latvian prosecutor confirmed that it would be helpful if an external auditor could be required to testify or to provide information in such cases.

Commentary

The lead examiners welcome Latvia's efforts to require external auditors to report foreign bribery to competent authorities. They urge Latvia to enact the legislative amendment as soon as possible. They also reiterate the concerns expressed in Phase 1 and recommend that Latvia amend its legislation to clarify that courts, prosecutors and investigators may require an auditor to provide information for use in foreign bribery investigations.

7. Prevention and Detection through Anti-Money Laundering Measures

85. This section considers Latvia's anti-money laundering measures. An assessment of all aspects of this regime is beyond the scope of this evaluation. Instead, this report focuses on matters that relate closely to the implementation of the Convention and the prevention and detection of foreign bribery. As explained below, Latvia has significant exposure to corruption and foreign bribery-related money laundering due to a high proportion of non-resident clients in the banking sector. Latvia has enacted a legal framework to address this and other money laundering risks. Of substantial concern, however, is that Latvia has not given sufficient resources and priority to ensure the effective implementation of this framework. Concerns about the enforcement of the criminal offence of money laundering are discussed at p. 62.

(a) *Latvia's Exposure to Corruption-Related Money Laundering*

86. Despite being a relatively small economy, Latvia has a substantial financial sector specialising in foreign clients that provides a significant contribution to the economy. Of Latvia's 20 banks, 14 specialise in non-resident banking (as defined by FCMC, Latvia's banking regulator). One bank at the on-site visit stated that more than half of their deposits originate from outside Latvia, while another placed the figure at 65%. Other banks are said to have more than 90% of their assets and liabilities linked to non-resident deposits. The total amount of non-resident deposits is equivalent to 40% of Latvia's GDP. Activities in the sector contribute 0.8-1.5% to annual GDP. The number and size of non-resident deposits have grown steadily since the 2009 financial crisis. The adoption of the euro in 2014 further facilitated a steep growth of non-residents deposits.³²

87. A very large portion of these non-resident deposits originate from the Commonwealth of Independent States (CIS) in Eastern Europe and Central Asia. FCMC estimated that around 80% of total non-resident deposits in 2013 have beneficial owners in CIS countries.³³ FCMC added during this evaluation that the growth of non-resident deposits from Russia has remained steady despite international sanctions imposed in the spring of 2014. Latvian banks have a market advantage in CIS countries because they share Russian as a common language with the local population, according to FCMC.³⁴ Banks at the on-site visit stated that they accept non-resident deposits mainly through their representative offices abroad. Many Latvian banks thus have offices in Russia, Ukraine, Kazakhstan, Belarus, Uzbekistan, Moldova and Azerbaijan.

88. Non-resident banking poses a substantial risk that money obtained from corruption committed outside of Latvia is laundered inside the country. Much of the deposits originate from countries with reportedly high levels of corruption. Funds deposited in non-resident accounts could thus be instruments or proceeds of corruption in these countries. Furthermore, the cross-border nature of transactions and the distance at which these transactions are conducted pose challenges to supervision. FCMC has acknowledged that, "Business with non-resident customers is mainly associated with country risk, legal risk and reputation risk. [...] [A]s a result of taking non-resident deposits, there is a relatively greater risk that a bank may be involved in money laundering or terrorist financing activities."³⁵

³² OECD (2015), *Economic Survey: Latvia*, pp. 10 and 24; ECFIN (2014), "Country Focus: Assessing business practices in Latvia's financial sector", p. 2; FCMC, *Annual Report 2012*, pp. 6-7, 87 and 94; FCMC, *Annual Report 2013*, p. 14. Latvian authorities put non-resident deposits' contribution to annual national GDP at just under 1%.

³³ ECFIN (2014), "Country Focus: Assessing Business Practices in Latvia's Financial Sector", p. 3.

³⁴ FCMC, *Annual Report 2012*, p. 94.

³⁵ European Commission, *Convergence Report 2013: Latvia*, pp. 9 & 42; FCMC, *Annual Report 2012*, p. 95.

89. Information about several cases amply illustrates Latvia's exposure to money laundering related to corruption and foreign bribery. In the *Information Technology Contract Case* (see p. 9), the subsidiary of a US company paid bribes to Russian officials through a non-resident bank account in Latvia. The *Gold Mining Case* (see p. 9) involved allegations of a Canadian company bribing public officials in Kyrgyzstan. Part of the alleged bribes was again channelled through a Latvian bank account. The media has also reported cases of foreign officials allegedly laundering in Latvia the proceeds of corruption, fraud and embezzlement committed in Afghanistan, Moldova, Kazakhstan and Russia.³⁶ Very large amounts of money - in one instance USD 1 billion - were allegedly laundered in these cases.

(b) Latvia's Anti-Money Laundering Measures

90. Latvia's measures to prevent, detect and report money laundering are set out in the Prevention of Money Laundering and Terrorism Financing Law (AMLTFLL). The Law applies to a range of "subjects" including financial and credit institutions, specified non-financial businesses and professionals such as lawyers, accountants and auditors, as well as casino and gaming operators (Section 3). These entities are required to put in place systems to detect potential money laundering and to report suspicious and unusual transactions.

(i) Customer Due Diligence and Politically Exposed Persons

91. The AMLTFLL sets out measures for customer identification that regulated entities must take. Entities must conduct customer due diligence before establishing a business relationship, or if there are suspicions of money laundering or of the veracity of previously obtained information (Section 16). Customer due diligence involves the identification of the beneficial owners, determination of the purpose and intended nature of a business relationship, on-going monitoring of the relationship, and maintenance of relevant documentation (Sections 17-18).

92. The FCMC Regulation 125/2008 does not adequately address the money laundering risks posed by non-resident deposits. AMLTFLL Sections 22-23 require regulated entities to conduct enhanced due diligence when establishing a business relationship with a non-face-to-face customer. A non-resident who opens an account with a Latvian bank through an office outside of Latvia is considered a face-to-face customer; enhanced due diligence is not required on this basis alone. FCMC Regulation 125/2008 requires enhanced due diligence to be performed with respect to clients from countries designated as tax havens by Latvia or blacklisted by the UN, EU or FATF. These countries do not necessarily correspond to those that are sources of non-resident deposits, however. The Regulation (Section 15.5) states "customers whose commercial or private activities are not related to the Republic of Latvia" are considered high money laundering risks, except where a non-resident client opens an account at an overseas branch office of a bank, and his/her private or commercial activities are in the country where the branch office is located. Most non-resident depositors would likely meet this exception and not be considered high money laundering risks. The list of a financial institution's activities considered at risk of money laundering also does not include the taking of non-resident deposits (Section 18).

93. Despite these limitations in the statute and regulations, one bank stated at the on-site visit that it frequently subjected non-residents to enhanced due diligence because of the heightened risks of money laundering associated with these potential customers. After the on-site visit, Latvian authorities stated that

³⁶ [The Independent](#) (15 October 2014); [Eurasianet.org](#) (30 October 2014); [LSM](#) (25 August 2014); [Baltica](#) (28 September 2012); [BNE](#) (20 June 2013); Independent Joint Anti-Corruption Monitoring and Evaluation Committee (2 October 2014), *Unfinished Business: The Follow-Up Report on Kabul Bank*; [CBC News](#) (28 November 2012); [CNN](#) (7 May 2015); [BNE](#) (17 January 2013).

many other banks similarly apply enhanced due diligence to non-resident clients. Nevertheless, the relevant statutes and regulations should be amended to reflect the practice on the ground.

94. Additional measures apply to politically exposed persons (PEPs). AMLTFL defines a PEP as: (a) a person who “is or has been entrusted with prominent public functions in another Member State or third country during the past year” including certain listed senior officials of the government, judiciary, armed forces, SOEs and political parties; (b) a parent, spouse or a person equivalent to a spouse, child, or the spouse (or equivalent) of a child of that person; and (c) a person who has a “publicly known business relationship” or joint business with that person (Section 1(18); see Annex 2 at p. 82 for full text of the provision). Money laundered by PEPs could therefore be proceeds of foreign bribery.

95. To address the special risks posed by PEPs, AMLTFL Section 25 requires regulated entities to determine whether a customer (or the beneficial owner) is a PEP both before and after establishing a relationship with the customer. If a customer is a PEP, enhanced customer due diligence applies. A business relationship can then be commenced or continued only with the approval of the board (or a specially authorised board member). The reporting entity must take steps to determine the origin of the PEP’s funds. It must also monitor the PEP’s transactions on an on-going basis.

96. One concern is that the AMLTFL’s definition of a PEP is too narrow.³⁷ It does not cover individuals who held a prominent public position over a year ago.³⁸ The list of PEPs in part (a) of the definition above may not be exhaustive (because of the word “including”), but notably missing are senior judges of trial courts and state, provincial and municipal-level officials. The list of familial PEPs in part (b) does not include siblings or grandchildren. FCMC stated at the on-site visit that step-children are covered but the text of the statute does not support this view. Part (c) includes individuals who have a “business relationship” with senior officials. This would leave out an official’s close associates such as a boyfriend, girlfriend or mistress. It would exclude oligarchs who are close associates but not business partners of senior officials. Some banks at the on-site visit recognised these shortcomings and applied a more expansive definition in practice. AMLTFL Section 1(3) also defines a “business relationship” as one between a regulated entity and its customer. This does not appear appropriate when applied to the definition of a PEP.

97. Inadequate implementation is a further concern. On-site visit participants stated that banks in practice use commercial databases for PEP identification. The Latvian authorities later confirmed this practice by Latvian banks. These methods - in combination with Know-Your-Customer procedures - for identifying PEPs hardly seem adequate, according to international standards.³⁹

Commentary

The lead examiners are concerned that the AMLTFL’s definition of a PEP is too narrow. The definition only covers individuals who held a prominent public position within the past year. Important categories of persons are also missing. The lead examiners therefore reiterate the

³⁷ The MONEYVAL 2012 (para. 27) report stated that “With respect to PEPs, Latvia has adopted a restrictive legal definition. The AML/CFT Law’s definition is limited to a defined list, and as such, it does not allow for additional interpretation. Given the list-based approach, there is inadequate coverage of all of the FATF defined categories of PEPs.” See also para. 606.

³⁸ Latvia commits to removing this one-year limitation when it implements the 4th EU Anti-Money Laundering Directive.

³⁹ FATF (2013), Guidance on Politically Exposed Persons.

concerns expressed in the Phase 1 Report (paras. 94 and 156) and urge Latvia to amend its legislation to address these concerns.

The lead examiners also note that the FCMC and some financial institutions recognise that Latvian banks' business activities with non-resident deposits pose heightened risks of money laundering. These risks have been illustrated in an actual foreign bribery case involving Latvia. They welcome the initiative of some financial institutions to voluntarily conduct enhanced due diligence when doing business with non-residents. This practice, however, is not universal. The lead examiners therefore recommend that Latvia require all regulated entities to apply enhanced due diligence and other additional anti-money laundering measures when evaluating non-residents who pose money laundering risks.

(ii) *Suspicious and Unusual Transaction Reporting*

98. AMLTFL Chapter IV requires regulated entities to file “unusual transaction” reports (UTRs) and “suspicious transaction” reports (STRs). A transaction is unusual if one or more indicators in Section 8 of Cabinet of Ministers Regulation 1071 is present. Most of these indicators are threshold-based, *e.g.* cash transactions of more than EUR 60 000. A suspicious transaction is one in which “suspicions have aroused regarding money laundering or terrorism financing”. The on-site visit discussions indicated that reporting entities may benefit from guidance on the difference between STRs and UTRs. Reports are made to the financial intelligence unit (FIU) which is known as the “Control Service” in the AMLTFL. The Prosecution Office supervises the FIU and the Prosecutor General appoints the Head of the agency.

99. The FIU is responsible for analysing UTRs and STRs, and forwarding to law enforcement information “that may be used for the prevention, detection, pre-trial criminal proceedings or adjudication of money laundering, terrorism financing or an attempt to carry out such actions, or of another associated criminal offence”. STRs and UTRs that relate to corruption (including foreign bribery) are supposedly forwarded to KNAB, though in practice some may be sent to the State Police. Transactions may be suspended where there are “substantial suspicions” of money laundering. The FIU also analyses and researches money laundering trends and gathers data and statistics (AMLTFL Sections 32(1), 50-51 and 55).

100. In practice, the FIU forwards relatively few of its analyses of STRs to law enforcement for criminal investigations. In 2010-2014, the FIU received reports about 110 851 suspicious transactions but forwarded information on only 28 217 transactions (25%) to law enforcement. The FIU explained that since 2005 its priority has been to provide information on large money laundering schemes involving more than 20 individuals. The reason for this approach may be a lack of resources. The FIU has increased its budget since 2010 and now has 30 staff, approximately 20 of which process STRs and 12 prepare cases for transmission to law enforcement. Nonetheless, on average each transaction analyst was still responsible for analysing approximately 850 reports or 1 150 transactions in 2014. The high workload could result in backlog or insufficient analysis. Moneyval has expressed similar concerns.⁴⁰

101. There are also questions over the system's effectiveness in detecting corruption and related money laundering. Most STRs relate to tax offences. In 2010-2014, only 28 out of 87 742 STRs (0.03%) received by the FIU were believed to be corruption-related. Of the over 28 000 STRs sent by the FIU to law enforcement for further investigation, only 222 (0.79%) were sent to KNAB. These numbers are very low in light of Latvia's corruption risks. Foreign bribery-related STRs were even rarer. The FIU representative at the on-site visit could only recall one STR involving overseas bribery. None of KNAB's

⁴⁰ Moneyval (2012), *Report on Fourth Assessment Visit: Latvia*, para. 376.

foreign bribery investigations originated from information from the FIU (see p. 9). The FIU explained that it has an elaborate computerised process of matching individuals associated with suspicious transactions with lists of Latvian officials provided by tax authorities. This technique, however, is unlikely to uncover the laundering of the proceeds of corruption committed by foreign officials.

102. Reporting entities may also fail to identify suspicious transactions related to corruption because of a lack of guidance. The FIU and FCMC have not issued guidelines on PEPs or money laundering typologies. The FIU produces only guidelines in the form of indicators of suspicious transactions. Some of these indicators refer to foreign bribery, e.g. the transaction is the “laundering of proceeds derived from bribery, including from abroad” or involves “proceeds [that] are related to bribery, including from abroad”. But such indicators are of limited assistance because they do not help reporting entities to identify when bribery has occurred. Some banks stated that they have developed internal indicators to fill the void. This is commendable, but there is no assurance that these internal standards and practices are effective and appropriate across the industry, or are consistently and universally applied.

103. Latvian authorities provide feedback to reporting entities but more focused training is needed to improve the quality of reporting. The FIU is statutorily required to provide feedback to regulated entities on the outcome of their STRs and UTRs. In practice, the FIU sends each reporting entity an annual summary of reports that have been forwarded to law enforcement. Because of the large number of reports, feedback on a specific report is provided only upon the demand. None of the banks at the on-site visit have ever requested feedback. The Latvian authorities also have not provided training or seminars to regulated entities on reporting corruption-related money laundering. Some bank representatives at the on-site visit were not familiar with or misstated the statutory definition of PEPs, which points to a need for training and awareness-raising.

Commentary

The lead examiners are of the opinion that Latvia’s system of reporting suspicious transactions is not effective for detecting corruption and related money laundering. The number of suspected corruption cases forwarded by the FIU to KNAB for investigation is extremely low and not commensurate with the corruption risks in Latvia. The lead examiners therefore recommend that Latvia (a) ensure that the FIU has sufficient resources to analyse all STRs and UTRs and forward information related to foreign bribery to KNAB, and (b) provide additional guidance, typologies and training to regulated entities that specifically address the reporting of money laundering related to corruption and foreign bribery, especially money laundering by non-resident bank clients.

(iii) Ensuring Compliance by Regulated Entities

104. AMLTFL Chapter VIII designates various government agencies as supervisors to ensure that the regulated entities comply with their obligations, including those related to customer due diligence and transaction reporting. The FCMC is one of the most important regulators, covering *inter alia* credit institutions (*i.e.* banks), insurance companies, pension funds, and investment managers. All supervisory authorities are required to regularly inspect entities under their remit to assess compliance with the AMLTFL, and to impose sanctions for violations. Latvian authorities state that banks are subject to regular inspections, targeted examinations based on specific information that banks are required to submit, follow-up activities, and off-site monitoring.

105. There is substantial concern that there are insufficient inspections of banks, especially those specialising in non-resident deposits, to ensure their compliance with the AMLTFL. An inspection is announced approximately one week in advance and follows more or less the same structure. After an on-

site inspection, there would be additional follow-up. In September 2015, Latvian authorities stated that the number of FCMC experts who oversee AMLTFL compliance by banks had increased to eight. However, only two of the experts conduct on-site inspections of banks to oversee AMLTFL compliance by 20 domestic banks and branches of 8 foreign banks in Latvia. They inspected on average 14 banks per year in 2011-2013, and just 8 in 2014. At the 2014 rate, each bank would be inspected on average once every three to four years. The infrequent inspections are particularly alarming considering the high percentage of inspections (58%) that uncovered non-compliance. FCMC stated at the on-site visit that most instances of non-compliance with AMLTFL related to non-resident business, including issues concerning PEPs. As mentioned above, many Latvian banks accept non-resident deposits through their offices located abroad. FCMC stated that it has not conducted on-site inspections of these overseas offices over the past three to four years. FCMC considers that on-site inspections are unnecessary because these overseas offices do not make business decisions but merely collect customer identification information.

106. A further concern is that non-compliance has not been adequately sanctioned. The media reported allegations that foreign officials laundered at least EUR 63 million of proceeds of a tax fraud through non-resident bank accounts in Latvia. In 2013, FCMC fined a bank only EUR 142 000 – the maximum available – in relation to this case for breach of the AMLTFL.⁴¹ (Five other Latvian banks through which proceeds in the same case were also allegedly laundered were not punished as they were considered not to have breached the AMLTFL.) The maximum fine had been applied in six previous cases, which indicates that it is too low. An individual (*e.g.* bank employee) who fails to report suspected money laundering can only be fined up to EUR 350 (Administrative Violations Code Section 165⁴). No employees or officers of financial institutions have been sanctioned for assisting or co-operating in money laundering since at least 2010. In 2014, the maximum fines were increased to 10% of a legal person's turnover for the previous year and to EUR 5 million against natural persons.⁴² As described at p. 62, the criminal money laundering offence is also inadequately enforced.

Commentary

The lead examiners are seriously concerned that many Latvian banks do not comply with the AMLTFL and that Latvian authorities have made insufficient efforts to enforce compliance. Many instances of non-compliance that have been uncovered relate to non-resident deposits, which pose particular risks of money laundering related to foreign bribery. Nevertheless, bank inspections to ensure compliance are infrequent, largely because of the FCMC's inadequate resources. Sanctions imposed in practice so far are too low to have deterrent effects.

For these reasons, the lead examiners recommend that Latvia increase the FCMC's resources for ensuring compliance with the AMLTFL. FCMC should conduct on-site inspections of regulated entities, including their overseas offices, at a frequency that is commensurate with an entity's risk of assisting or facilitating money laundering. Greater priority should be given to inspecting banks that specialise in non-resident deposits. The FCMC should also examine why it and/or reporting entities failed to detect the instances of alleged money laundering that have been reported in the media and take appropriate remedial action.

⁴¹ Section 198(4) of the Credit Institutions Law. An additional nominal fine of LVL 500 (EUR 710) can be imposed against a legal entity for failure to implement the required internal processes and training (Section 165⁸ of the Administrative Violations Code).

⁴² Credit Institution Law Section 198. If the legal person's turnover for the previous year is less than EUR 142 000, then a fine in this amount can be imposed.

Latvia must also increase their efforts to ensure effective enforcement of the AMLTFL. When breaches of the AMLTFL are detected, Latvia should commence proceedings against the relevant natural and legal persons. The Working Group should also follow up the sanctions imposed in practice for breaches of the AMLTFL given the inadequate sanctions imposed in previous cases and the recent amendments to increase the maximum fines. Latvia should also provide the Working Group with data on inspections and enforcement of the AMLTFL.

C. INVESTIGATION, PROSECUTION AND SANCTIONING OF FOREIGN BRIBERY AND RELATED OFFENCES

1. Investigation and Prosecution of Foreign Bribery

107. “Criminal proceedings” in Latvia comprise an investigative stage and a prosecutorial stage. The investigative stage is the responsibility of an investigative agency, under the supervision of a prosecutor. After sufficient evidence is gathered to prosecute, the investigative agency will turn the case over to a prosecutor for the purposes of indictment and prosecution.

(a) Relevant Law Enforcement Authorities

(i) Corruption Prevention and Combating Bureau (KNAB)

108. The Corruption Prevention and Combating Bureau (KNAB) is responsible for investigating corruption offences including foreign bribery. The Police have jurisdiction to investigate all criminal offences unless specified otherwise in law. Latvia states that investigations of corruption are conducted by KNAB pursuant to the Law on Corruption Prevention and Combating Bureau (KNAB Law) and the Criminal Procedure Law (CPL). The Phase 1 Report (para. 70) noted that KNAB’s enabling legislative provisions refer to “criminal offences in the State Authority Service, if such offences are related to corruption”, which, on its face, appears to focus on solely domestic corruption.⁴³ As in Phase 1, Latvia explained that the provision allows KNAB to investigate all offence in Chapter XXIV of the Criminal Law, which is entitled “Criminal Offences Committed in State Authority Service” and include foreign bribery. During the on-site visit, multiple panellists agreed that KNAB would be responsible for foreign bribery investigations. In practice, KNAB opened preliminary investigations into three of Latvia’s five foreign bribery allegations.

109. Investigators and prosecutors met on-site stated that KNAB is also responsible for investigating related offending in a corruption case (*e.g.* money laundering or false accounting) (CPL Section 387(6)). KNAB may investigate the related offending independently or through a KNAB-led inter-agency team depending on the complexity of the offence and the available resources. The situation is slightly different where a foreign bribery allegation emerges from an investigation conducted by another law enforcement agency. One on-site panellist confirmed that the original investigating agency would likely continue the investigation, though it would be possible to transfer the foreign bribery element to KNAB.

110. KNAB is made up of two main branches: prevention and enforcement. The enforcement branch is responsible for the detection and investigation of corruption offences, including foreign bribery. The

⁴³ CPL Section 387(6) gives KNAB jurisdiction over “criminal offences *in the State Authority Service*, if such offences are related to corruption” (emphasis added). KNAB Law Section 8(1) grants KNAB the authority to investigate criminal corruption offences and defines corruption as “bribery or any other action *by a public official* intended to gain an unmerited benefit” (emphasis added).

Division on Investigations in the enforcement branch conducts investigations. When an investigation is opened, the Head of the Division appoints an investigator from the Division to lead the case under the supervision of a prosecutor from the Public Prosecution Office (PPO).

(ii) *Public Prosecution Office (PPO)*

111. The PPO is headed by the Prosecutor General. The Office is comprised of a central Prosecutor General's Office (PGO) and additional offices for regional, district and specialised prosecutors (including offices for economic and organised crime). Within the PGO is the Division for Investigation of Especially Important Cases. Prosecutors at the on-site visit clarified that the Division is responsible for all "high-status" KNAB cases which includes foreign bribery cases. Like KNAB, the Division also has jurisdiction over related offending in a corruption case.

112. During the investigation stage, a prosecutor from the PPO supervises the investigator who conducts an investigation. The supervision is at a high-level; in general, the supervising prosecutor intervenes only at key moments or when a problem arises. Under Section 37(2)(1) CPL, the prosecutor must give instructions on the direction of an investigation and the performance of investigative actions where the investigation is not sufficiently targeted and results in delay or "unjustified intervention in the life of a person". In practice, KNAB investigations that are not completed within six months result in a meeting among the lead investigator, the supervising prosecutor and another senior prosecutor. At other times during an investigation, however, the supervising prosecutor is entitled, but not obliged, to give instructions. In practice, the prosecutor frequently gives instructions at the beginning of criminal proceedings. If the lead investigator disagrees with the instruction then it may be appealed, although investigators stated that appeals are rare. The prosecutor may also familiarise him/herself with the materials of the criminal proceedings. Latvia states that pursuant to an order of the Prosecutor General, the supervising prosecutor must maintain a file on the investigation, including copies of procedural decisions. He/she may carry out investigative actions and revoke the investigator's decisions, although investigators stated that in practice these powers are rarely exercised (CPL Section 37; Law of Prosecution Office, Section 12). On-site panellists expressed satisfaction with this form of prosecutorial supervision.

113. Greater involvement by the supervising prosecutor could ensure investigations proceed smoothly to prosecution. Under the existing framework described above, the supervising prosecutor usually provides instructions or guidance at the beginning of an KNAB investigation and when an investigation remains open after six months. Beyond these two points in time, the extent to which the supervising prosecutor is involved in and informed of the case depends largely on the proactivity of the investigator and prosecutor involved. The lead investigator is not required to consult the supervising prosecutor regarding investigative decisions. Several investigators at the on-site visit said they regularly discussed cases with the supervising prosecutor, but this does not occur systematically in every case. After the on-site visit, KNAB stated that its investigators provide information to prosecutors in every case but the intensity and frequency of the subsequent discussions vary.

114. When sufficient evidence has been gathered, the investigator will transmit the case to the PPO for the purpose of indictment and prosecution. Alternatively, the supervising prosecutor may decide to initiate prosecution at any time. In both scenarios, the PPO takes control of the case, after which the prosecutor in charge can take further investigative actions, or proceed directly to indictment.

Commentary

The lead examiners recognise that, in Latvia's legal system, the lead investigator should be able to act independently without consulting the supervising prosecutor on all investigative steps in a foreign bribery case. Nonetheless, an arrangement where the supervising prosecutor

is regularly updated as an investigation progresses would help ensure all investigatory avenues are sufficiently and promptly pursued. In a context where KNAB is experiencing high staff turnover (see p. 36), an active and involved supervising prosecutor is also important for providing expertise and maintaining institutional knowledge and consistency. The lead examiners therefore recommend that Latvia take steps to ensure that KNAB investigators systematically have in-depth discussions with the supervising prosecutor in all foreign bribery cases.

(iii) *Co-operation and Co-ordination between KNAB and Other Investigative Agencies*

115. Close co-operation between KNAB and other agencies is also important to ensure that all foreign bribery allegations are systematically transmitted to KNAB for investigation. For example, there may be instances where allegations are reported to the Police (which has primary responsibility for private-sector corruption cases). One on-site panellist stated that there was an “informal agreement” that the Police and the PPO would send foreign bribery allegations to KNAB. Another panellist noted that if foreign bribery was uncovered by another agency, KNAB would be informed because, in a small country like Latvia, law enforcement officials “all know each other”. These informal systems do not appear to always work in practice. KNAB was not informed of the foreign bribery allegations in the *Gold Mining Case*. It was also unaware of the foreign bribery allegations in the *Information Technology Contract Case* that were contained in MLA requests sent by foreign authorities to Latvia. Latvia emphasised that this was because the MLA requests predated Latvia’s accession to the Convention so at that time there was no agreement that such allegations would be forwarded to KNAB. Following the on-site visit, Latvia stated that it intended to send letters to all relevant law enforcement institutions emphasising that all foreign bribery allegations must be sent to KNAB.

Commentary

The lead examiners are concerned that foreign bribery allegations are not routinely transmitted to KNAB for investigation. Currently, whether KNAB is informed depends on informal agreements and personal relationships between KNAB and other law enforcement authorities. An arrangement that is not in writing may not be known to and applied by all officials. Some law enforcement officials may also be unaware of the relatively new foreign bribery offence or KNAB’s jurisdiction over this offence. The lead examiners are encouraged by Latvia’s stated intention to instruct law enforcement agencies to transmit information on foreign bribery to KNAB. They recommend that Latvia pursue this intention and establish clear rules that ensure all allegations of foreign bribery are systematically transmitted to KNAB for investigation.

(iv) *Training and Expertise within KNAB, the PPO, and the Judiciary*

116. Additional training for KNAB officials is needed. KNAB has provided information on the foreign bribery offence to its officials, but training has been provided to only two investigators in 2014 as part of an international training programme. Another international training event will occur in October 2015. KNAB investigators have received training on corporate liability but not on the conduct of corporate investigations, financial investigations or asset tracing. Panellists on-site emphasised that KNAB is a small office, and investigators can easily discuss foreign bribery issues as they arise. Moreover, KNAB usually hires highly qualified individuals with investigative experience. However, in light of KNAB’s current high turnover and personnel issues (see p. 36), there is a serious risk that relevant knowledge is lost, which makes regular and systematic training particularly important. Latvia stated that one of the difficulties encountered in corruption cases is that “other economic crimes are frequently committed that substantially

delay the investigation in general”. This may be due to a lack of training and expertise in KNAB on related offending.

117. The PPO’s Division for Investigation of Especially Important Cases may encounter similar difficulties. Like KNAB, they are specialised in corruption but have limited experience in other economic crimes (which are handled by a specialised prosecutorial division). The PPO has provided training on general corruption issues.⁴⁴ Training was also provided on legal person liability and economic and financial crime in 2013 and 2014 and was widely attended. The State Audit Office (Latvia’s public sector auditor) provided additional training. Latvia states that only one prosecutor has participated in specific training on foreign bribery which was held overseas. However, prosecutors on-site confirmed that they had all received some training on foreign bribery (*e.g.* about the Convention). The Division has very low staff turnover so experience is retained.

118. During the on-site visit, representatives of the judiciary reported that they had not received training on foreign bribery. The Judicial Training Centre trains judges but its course on corruption has not previously covered the Convention or foreign bribery. The Centre explained that courses were based on suggestions from judges and that there had not been interest in foreign bribery. Following the on-site visit, Latvia confirmed that in 2016 training for judges is intended to cover the Convention, the foreign bribery offences, and the liability of legal persons.

119. After the on-site visit, Latvia added that it had adopted a plan to provide additional training to increase the capacity of the judiciary and law enforcement. It is unclear whether and how these efforts address foreign bribery.

120. Foreign bribery investigations often require expertise in forensic accounting and forensic information technology. Latvia reports that two KNAB officials are certified in forensic information technology. Forensic accounting or forensic information technology procedures are also available to KNAB and the PPO at the investigation or prosecution stage through expert examinations (CPL Section 33). In corruption cases “specific and difficult expert examinations” are often required due to the existence of other economic offences, the complexity of corruption offences, and the “specific field[s]” in which it occurs. Both KNAB and the PPO can make use of the Forensic Department of the State Police, which has a five-person Accounting Audit Unit capable of forensic accounting, and a 12-person Info-Technical Expert-Examination Unit capable of computer forensics. KNAB reportedly uses the forensic computing unit “if required”, but uses the forensic accounting expertise “less frequently”. This is curious, given the accounting complexity of bribery cases and KNAB’s lack of forensic accounting knowledge. Several KNAB investigators also receive annual training on forensic information technology from the European Anti-Fraud Office (OLAF) (as well as assistance with data-mining).

Commentary

The lead examiners welcome Latvia’s recent efforts to train investigators and prosecutors on foreign bribery-related topics. Nonetheless, there is a lack of training and expertise in certain areas. They recommend Latvia provide regular training to KNAB, the PPO and the judiciary on (a) the foreign bribery offence and related offending, (b) legal person liability, and (c) investigative techniques, including forensic accounting and information technology.

⁴⁴ Topics have included detection and investigation techniques, the consequences of corruption, and prevention and combating corruption.

(b) Operation and Independence of Relevant Authorities

(i) Corruption Combating and Prevention Bureau (KNAB)

(1) Resources and Personnel Issues

121. KNAB's annual budget for 2014 was EUR 4.7 million, a significant increase from the 2012 budget of EUR 3.34 million. KNAB's Division of Investigations has 19 investigator positions in addition to a Deputy Head and Head of Division. During an investigation, the Division of Investigations may call upon resources from the Division of Criminal Intelligence (18 officers plus a Deputy Head and Head of Division) and the Division of Intelligence Support (7 officers plus a Deputy Head and Head of Division).

122. Recently, reports have emerged of serious personnel issues within KNAB. In June 2014 a government Working Group for the Evaluation of KNAB identified a "lack of fair, equal, and open selection of applicants", "long-term human resource management problems", and "staff turnover [that] threatened the institutional memory and the overall competency of the institution to implement the anti-corruption functions". From 1 January 2014 to 18 May 2015, 17 staff left KNAB (out of a total of 142). Sixteen of these departures have been senior officials such as senior legal, financial and intelligence specialists; Heads of Division; and senior investigators. A senior investigator in the highly complex *Latvenergo* domestic corruption case was among those who have left. Other senior investigative officials have been demoted away from investigative positions, including the Deputy Head of Enforcement, who was relegated to a minor administrative role.⁴⁵ The former Head of the Division of Investigations who attended the on-site visit had also been moved to an administrative position. Many of these staff movements have resulted in litigation against KNAB management. As of May 2015, ten of the vacancies left by these departures and demotions had not been refilled. By October 2015, seven vacancies remain unfilled. Candidates are "under scrutiny" for four of the vacancies. A wide variety of on-site visit panellists indicated that the situation stemmed from management difficulties.

123. This personnel situation has resulted in a reduction in KNAB's staff strength. While many of the vacancies have been filled, this will not fully address the significant loss of experience and institutional knowledge. Multiple on-site panellists from a range of sectors and agencies highlighted these issues and their negative effect on KNAB's competence, staff morale, and the public's confidence in the institution. Several voiced the opinion that these internal issues have reduced KNAB's ability to effectively combat corruption.

124. The effect of these personnel issues may also be seen in the number and quality of KNAB investigations. Research into domestic corruption in Latvia concluded that the number of public officials tried for corruption is steadily decreasing and fewer serious cases are being pursued. The number of public officials prosecuted decreased by 56% from 46 in 2012 to 20 in 2013. These 20 officials were convicted in 2013, the lowest total since 2004. A majority of cases involved bribing traffic police.⁴⁶ Latvia notes that KNAB has transmitted more cases to the PPO (12 in 2012, 16 in 2013, and 27 in 2014), but no information was provided on the seriousness of these cases. The Working Group for the Evaluation of KNAB noted that there were "a significant number of proceedings with a delayed investigation, including criminal proceedings of possible crimes that have received public concern".

125. On-going KNAB investigations underscore these concerns. The major domestic corruption *Oligarchs Case* commenced in 2011 with investigative measures undertaken in respect of 26 companies

⁴⁵ LSM (15 July 2014), "[PM 'Surprised' at Latest KNAB Warfare](#)".

⁴⁶ Providus (9 February 2015), "[Trial Statistics for Offences Committed in Public Service](#)".

and 11 people,⁴⁷ including prominent political figures. Four years on, the case is still under investigation by KNAB. The statute of limitations against one political figure will expire if charges are not laid by the end of 2015. The likelihood of this being achieved has been significantly reduced following the recent resignation of the lead investigator in the case who has been a strong critic of current KNAB management.⁴⁸ As further explained at p. 44, delays have also been seen in Latvia's two on-going foreign bribery investigations; preliminary investigations were opened in 2014 but have yet to progress to the formal investigation stage. Statistics provided by KNAB indicate that investigations in cases that were sent for prosecution in 2014, many of which are not complex, took on average almost 19 months to complete. Investigations that were not sent to the prosecutor took even longer at almost 29 months.

Commentary

The lead examiners remain seriously concerned about KNAB's previous personnel issues. A large number of KNAB's senior investigators and staff left the agency between January 2014 and May 2015. The lead examiners are encouraged that most of the departed staff had been replaced by October 2015. Nevertheless, some of the senior investigators who remain have been re-assigned to non-investigative positions. Litigations between staff and management damage staff morale and distract from KNAB's daily work. All of these factors overshadow the agency's investigative efforts and call into question the agency's capacity to successfully detect and investigate corruption including foreign bribery, especially the most complex cases. The statistics described above indicate the number of investigations that have culminated in prosecutions and convictions has declined, as have the complexity of concluded cases. Domestic and foreign corruption cases have seen delay. Foreign bribery allegations have not been proactively investigated.

The lead examiners therefore recommend that Latvia ensure that personnel issues do not interfere with KNAB's ability to investigate foreign bribery. They also recommend that the Working Group monitor KNAB's enforcement record in terms of the number and complexity of successfully concluded cases. Latvia should provide detailed enforcement data to the Working Group for this purpose.

(2) Political oversight of KNAB

126. KNAB falls under the supervision of the Prime Minister. Under the State Administration Structure Law, the Prime Minister's supervision is "limited to examining the lawfulness of decisions" (Section 7(5)). Latvia explained that the supervision would not extend to specific cases. This was confirmed by KNAB representatives at the on-site. An inter-agency working group led by the State Chancellery has drafted a new law which is intended to strengthen KNAB's functional independence and will address issues including the political oversight of KNAB, and the appointment and dismissal of the Director of KNAB. The draft law is under consultation with relevant agencies and Latvia stated that it would be considered by Cabinet in September 2015.⁴⁹

⁴⁷ The Baltic Course (2 September 2014), "[Latvian Revenue Service investigating VAT fraud case in connection with Slesers](#)"; BNN (30 May 2011) "[Six officials involved in Latvian oligarchs case](#)"; Kuris, G. (6 May 2013), "[Outfoxing the Oligarchs in Latvia](#)", Foreign Policy.

⁴⁸ BNN (9 April 2015), "[CPCB Has Most Likely Failed to Acquire Solid Evidence in 'Oligarchs Case'](#)".

⁴⁹ KNAB News (4 March 2015), "[KNAB asks members of Parliament to take responsibility for the further progress of the amendments in the KNAB law](#)".

(3) Appointment of the Director of KNAB

127. As illustrated by KNAB's current personnel issues (see above), while the Director of KNAB is not directly involved in investigations, he/she may still have a significant impact on KNAB's effectiveness. On-site panellists acknowledged that the Director may suffer from attempted political interference, and noted the importance of the Head as "the safeguard of independence". It is therefore vital that the Director is objective, competent, and free from political interference.

128. Previous appointments of the Director of KNAB saw some controversy. Since its creation in 2002, the Law on KNAB (Section 4(1)) has required that Parliament appoint the Director upon the recommendation of Cabinet. This was not sufficient to ensure transparency and merit-based appointments. At the on-site visit, the Director of KNAB in 2004-2008 stated that prior to his appointment he had to secretly meet two politically influential oligarchs to obtain their blessing. He believed that he was ultimately appointed because he was perceived as "more or less easy to manage", though ultimately this proved not to be the case.⁵⁰ In 2009, KNAB's third Director was chosen by the Prime Minister and nominated by Cabinet without an open competition or any consultation. Until his dismissal in 2011, this Director received criticism regarding his independence. One NGO was of the view that his decisions were politically-motivated and aimed to "weaken the investigative part of the agency".⁵¹

129. The process was improved in 2011 prior to the appointment of the current Director. The Law on KNAB was amended to require Cabinet to announce an open competition for the post. Cabinet was also required to appoint a commission led by the Director of the State Chancellery and comprised of the Chief Justice of the Supreme Court, the Prosecutor General, the Director of the Constitution Protection Bureau, and the Chief of the Security Police to evaluate applicants. At the on-site visit, representatives of the Cabinet Office stated that Cabinet must adopt the commission's recommendation on who should be appointed KNAB Director. However, the law does not so require. Latvia notes that all Cabinet meetings and decisions are public and available online, so such a decision would be transparent and publicly accountable.

130. Further improvements were made in 2012 and will take effect during the selection of the next KNAB Director. Section 4(3) of the Law on KNAB contains some requirements for the position (*e.g.* an absence of criminal convictions). In 2011, Cabinet was given the power to specify additional conditions and procedures for appointment as part of the open competition process. In 2012, the criteria for the commission to evaluate candidates were comprehensively revised. The procedures now set out a detailed assessment system canvassing a range of criteria including reputation, anti-corruption experience, management experience, and team-building ability. The new criteria, however, are elaborated through Cabinet regulation and are not enshrined in statute.

131. There are continuing limitations to the procedure, however. Parliament is not required to follow the recommendation of Cabinet and the commission, and hence the ultimate decision on appointment is likely to be political. This has occurred in the past. In 2003 and 2004, though not required to do so at that time, Cabinet appointed a commission to evaluate applicants. Parliament twice rejected the recommendation of Cabinet before making an appointment. Latvia stated that the only guarantee against influence in Parliament's voting is the oath to act "honestly and conscientiously" taken by every Parliamentarian. As described above, the Director who was eventually appointed by Parliament had to secretly secure the blessing of two politically influential oligarchs.

⁵⁰ Kuris, G. (6 May 2013), "[Outfoxing the Oligarchs in Latvia](#)", Foreign Policy.

⁵¹ Kuris, G. (2012), *Innovations for Successful Societies*, "[Surmounting State Capture: Latvia's Anti-Corruption Agency Spurs Reforms, 2002-2011](#)", Princeton University, p. 15.

132. Whether the latest procedure results in an objective, merit-based process thus remains to be seen. On-site panellists noted that in the last application round in 2011, few applications were received. There is a concern that the difficulties and political pressure faced by previous Directors may deter qualified candidates from applying. (The various attempts to dismiss the past and present Directors are discussed in the next section.) Panellists noted that previous appointment procedures had been flawed, but are hopeful that the current framework may be sufficient to ensure independence and competence.

Commentary

The lead examiners are encouraged by Latvia's recent changes to the criteria for appointing the Director of KNAB to ensure future appointments are capable, experienced, and qualified. This is particularly important given the role of the Director in ensuring the effective operation of KNAB and safeguarding independence. To ensure that the new criteria are applied as intended, the lead examiners recommend that the Working Group follow up whether future appointments of the Director of KNAB are based on competence and without any real or perceived political interference.

(4) Dismissal of KNAB Director

133. The Director of KNAB is appointed for a five-year term but can be dismissed at an earlier stage (KNAB Law, Section 4(1)). Reasons for dismissal include joining a political party or being “unsuitable for the position” (Section 5(6)). On-site panellists stated that this ground applies when a Director no longer meets the appointment criteria. One representative from civil society noted that this ground is vague, and in particular that it is unclear whether the ground covers incompetence or the poor performance of duties. A recent NGO report recommended that the dismissal grounds be more clearly defined.⁵² KNAB representatives confirmed that a poor evaluation review would not constitute grounds for dismissal.

134. There are questions over whether the process for dismissal is sufficient to prevent improper influence and considerations. A decision to dismiss the Director is taken by Parliament upon the recommendation of Cabinet. Until 2012, Parliament's decision was taken through a secret vote. Cabinet must establish a committee headed by the Prosecutor General or a Chief Prosecutor to assess the ground for dismissal. Unlike the appointment process, there are no statutory requirements regarding the committee's composition that would guarantee its independence. There is also no requirement that Cabinet abide by the committee's recommendation, though in the past the government has only ever moved to dismiss the Director upon such a recommendation. As with decisions on appointment, the Cabinet's decision is public and transparent. Parliament is also not required to follow the recommendation of Cabinet or the committee, so the final decision on dismissal could be political. This contrasts with the Prosecutor General who can be dismissed only where the committee finds grounds.

135. No Director of KNAB has ever served a full term. The first Director (2002-2003) resigned due to illness. The second Director faced four unsuccessful disciplinary proceedings initiated by the Prime Minister during his tenure in 2004-2008. These were based on weak evidence, and in each case were rejected by the committee and were not submitted to Parliament. In a fifth successful attempt, the Director was dismissed after two KNAB officials were convicted of stealing seized money.⁵³ Parliament dismissed the third Director (2009-2011) after the committee found breaches of the CPL and IOL. The current Director has been publicly criticised by the government in light of KNAB's on-going personnel issues. The

⁵² Delna (12 May 2015), “[Recommendations for Bolstering the Independence of the Corruption Prevention and Combating Bureau \(KNAB\)](#)”, p. 3.

⁵³ Baltic Times (29 October 2008), “[New KNAB head by year end](#)”.

Prime Minister relied on labour and civil service law to establish a committee to evaluate the Director's performance, which the Director claimed was illegal. The Committee evaluated the Director's performance as "good" – the third of five rankings ("excellent", "very good", "good", "improvement needed", and "unsatisfactory"). Latvia confirmed that the Prime Minister is planning no further action regarding the Director and that the Director could be dismissed only on the basis of the statutory criteria set out in the KNAB Law (which, as stated above, do not encompass poor performance).

136. A common feature of the dismissal attempts is that they are accompanied by the government's repeated and public comments on the Director's dismissal, and on KNAB's activities in general. The current government has openly discussed KNAB's personnel issues and the Prime Minister has publicly stated that she is pushing for the Director's dismissal.⁵⁴ Similarly, a previous government openly criticised KNAB's second Director in 2004-2008 and called for his dismissal prior to initiating proceedings.⁵⁵

137. These actions by the government create a risk of actual or perceived political interference in KNAB and non-compliance with Article 5 of the Convention. This Article stipulates that foreign bribery investigations and prosecutions must not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved. Commentary 27 of the Convention further recognises that foreign bribery cases should not be subject to improper influence by concerns of a political nature. Panellists noted that despite the risk of interference at the top level, KNAB investigators themselves were "very independent" and political or economic factors would not influence an investigation. This is illustrated by the agency's investigation of government officials, and economically significant individuals and companies. These views, however, should be considered alongside the recent mass departures from KNAB and demotions of senior staff. Moreover, Latvia has not taken any steps to raise awareness of Article 5 of the Convention among KNAB investigators and other government officials.

Commentary

The lead examiners are concerned that the process for dismissing the Director of KNAB can give rise to political interference. The current grounds for dismissal are not defined with sufficient clarity. The process for dismissal is not adequately protected from political influence. They therefore recommend that Latvia amend its legislation to clarify the statutory grounds for dismissal, including a more precise definition of when the KNAB Director is "unsuitable for the position", and the circumstances under which the Director may be dismissed for poor performance. Latvia should also amend its legislation to specify the composition of the committee on dismissal and to permit dismissal only where the committee finds grounds.

The lead examiners are also concerned about the current government's and past governments' repeated and open criticism of KNAB and threats to dismiss the KNAB Director that were made up to the time of the on-site visit in May 2015. KNAB ought to be held publicly accountable. When its performance does not meet expectations, it should rightly be subject to criticism, especially from the public and civil society. The government, however, stands in a different position. Since KNAB's principal mandate is to investigate government officials, the government's open, constant, unrestrained commentary and threats of dismissal risks creating

⁵⁴ Delfi (2 April 2015), "[Saeimā nav atbalsta Streļčenoka nomaīnai; viņš turpinās vadīt KNAB, atzīst Straujuma](#)"; Delfi (9 March 2015), "[Koalicijai nav vienprātības par Streļčenoka atbilstību amatam](#)"; Delfi (9 March 2015), "[Straujuma apņēmības pilna virzīt uz Saeimu jautājumu par Streļčenoka nomaīnu](#)".

⁵⁵ ZZ (26 September 2007), "[Kalvītis: Mans pacietības mērs par KNAB pārkāpumiem ir pilns](#)"; Providus (23 October 2010), "[Loskutova atstādināšana: juridiskas pārdomas](#)".

the perception of political interference in what should be an independent and apolitical body. Latvia states that it has since adopted a policy not to make similar comments in the future. The lead examiners recommend that the government continue to refrain from comments of this nature unless there are reasonable grounds for disciplinary action or dismissal, in which case the government should allow the statutory disciplinary or dismissal proceedings to commence and run their course. Latvia should also raise awareness of Article 5 of the Convention among KNAB and other relevant government officials.

(ii) *Public Prosecution Office (PPO)*

138. The PPO reported no difficulties with its resources. Its annual budget has remained consistent over the past five years, averaging approximately EUR 20 million and increasing to EUR 21.8 million in 2014. In terms of human resources, the Division for Investigation of Especially Important Cases currently has 12 prosecutors who are managed by a Chief Prosecutor. The caseload of the Division appears to be manageable, with the Division handling an average of 10 new cases per year (increasing to 16 in 2014). Prosecutors on-site stated that the Division was “very well-off” and had “sufficient resources”, including for funding forensic tests or travel for investigations. Forensic accounting expertise is available from outside the Division where required. On-site panellists referred to one case where two private sector experts were hired to provide expertise in banking.

139. Like the Director of KNAB, the Prosecutor General is appointed by Parliament through an open vote. The candidate is nominated by senior members of the judiciary. The Law on the Prosecution Office (LPO) (Sections 33, 36-37) specifies the eligibility criteria which include, for example, experience as a judge or prosecutor and a “good reputation”. The Prosecutor General is appointed for five years and can be reappointed by Parliament for one additional term. He/she can be dismissed only if a Supreme Court judge (chosen by the Chairman of the Court) finds grounds for dismissal. On-site panellists from the public and private sector spoke very highly of the independence of the PPO and the Prosecutor General.

140. The Prosecutor General may attend Cabinet meetings (LPO Section 23(3)5); Phase 1 Report para. 83). In 2014, the Prosecutor General attended 4 of 72 meetings. Latvia states that the right is exercised when Cabinet discusses extradition cases, legislative amendments, or issues affecting budget or law enforcement. However, the law does not provide such a limit and discussions on specific prosecutions would be permissible under law. One safeguard is that Cabinet meetings are accessible online.

Commentary

The lead examiners are encouraged by the available resources and degree of independence of the Public Prosecution Office and the Prosecutor General. They note that this agency could serve as a positive model for any changes to KNAB’s institutional framework, including, for example, changes to the dismissal procedure for the Director of KNAB.

(iii) *Judiciary*

141. The judiciary in Latvia has three tiers: District (City) Courts, Regional Courts, and the Supreme Court. Judges are appointed by Parliament following nomination from the Minister of Justice (for District and Regional Courts) or the Chief Justice (for the Supreme Court) “on the basis of the opinion of the Judicial Qualification Board” which is comprised of nine judges from various levels (Law on Judicial Power, Section 57). An initial appointment is for a three-year “probationary period”. At the end of this period, a judge may be confirmed by Parliament for an indefinite term. Parliament’s involvement in this process, particularly the initial confirmation, creates a risk of political interference.

142. The Judicial Disciplinary Liability Law sets out the judicial disciplinary process. Disciplinary procedures can be initiated by the Minister of Justice, or a range of chief and senior judges. Procedures can be initiated for a variety of reasons such as a failure to perform duties and dishonourable actions. The Judicial Disciplinary Board (comprised of 11 judges) reviews the information and makes a decision which is publicly available on the Supreme Court website. The Board may take a range of actions, including imposing disciplinary sanctions, and recommending prosecution or removal from office. A judge may be removed from office by Parliament only on the basis of a decision from the Judicial Disciplinary Board or a criminal conviction (Law on Judicial Power, Sections 81(2) and 83). In 2010-2014, 53 disciplinary procedures were initiated, 59% of which were upheld by the Board. Judges at the on-site visit felt that most procedures were grounded, but noted that the Board occasionally finds a lack of intent in the alleged infringement (*e.g.* the offence was a matter of interpretation rather than an intentional offence).

(c) Commencement and Conduct of Investigations and Prosecutions

143. Upon the receipt of an allegation that a crime has been committed, law enforcement authorities such as KNAB may open a preliminary investigation or a formal investigation.

(i) Preliminary Investigations

144. A preliminary investigation may be opened where there is insufficient information to open a formal investigation, or where the allegation is in an anonymous report or media report. Media and anonymous information cannot form the basis of a formal investigation (CPL Section 369(3)). During the on-site visit, KNAB confirmed that it undertakes daily media analysis, but “it is not that extensive”. KNAB also confirmed that an investigator’s decision to pursue a preliminary investigation is discretionary.

145. A preliminary investigation may be in the form of a departmental examination or an investigatory operation. A departmental examination will be used where an allegation can be sufficiently verified without the use of coercive techniques in the CPL Section 373(3) (*e.g.* interrogation, search and seizure). Instead, KNAB is entitled to use the investigatory powers set out in Section 10 of the KNAB Law (*e.g.* obtaining information from government bodies, companies and financial institutions). An investigatory operation, however, allows KNAB to use coercive techniques in the Investigatory Operations Law (IOL), including inspection, questioning, and examination of a person. With the approval of the Chief Justice of the Supreme Court, KNAB may also exercise powers of entry, monitoring of correspondence, wiretapping, and access to computer information (IOL Section 6). KNAB stated that it usually uses investigatory operations to verify anonymous and media reports of crime.

(ii) Formal Investigations

146. The evidentiary thresholds for opening investigations against natural and legal persons are different. A decision to open a formal investigation is taken in writing (CPL Sections 372 and 376). An investigation against a natural person (known as “criminal proceedings” in the CPL) may be opened if there is “the actual possibility” that a criminal offence has taken place, or if an offence has “possibly” taken place and an investigation is necessary to obtain the information required to determine whether an offence did, in fact, occur (CPL Section 370). An investigation against a legal person is known in the CPL as “proceedings regarding the application of a coercive measure to a legal person.” Such proceedings would be opened only if proceedings have been opened against a natural person (see p. 59 for a more detailed discussion), and if “most likely” there are grounds for imposing corporate sanctions (CPL Section 439(1)).

147. Information forming the basis to open an investigation may come from an investigative agency, the PPO, a court, a victim, or any legal or natural person (CPL Section 369). The information could include

evidence gathered in a preliminary investigation (see above). Information from foreign authorities in a mutual legal assistance (MLA) request was used to open a formal investigation in the *Latvenergo* domestic bribery case but not in the *Information Technology Contract* foreign bribery case.

148. A decision not to open a formal investigation must be in writing though it need not include full reasoning (CPL Section 373). Latvia advised that a reasoned decision would be recorded where the “process of evaluation is complex and where it is not certainly clear where a crime was committed or not”. A victim may appeal an investigator’s decision not to open an investigation to a prosecutor. Latvia explained that in foreign bribery cases, there will generally be no recognised “victim” though this would depend on the specific circumstances of the case. For example, a multilateral development bank may have the right to appeal as a victim if the bank suffered material loss because of foreign bribery in the context of a bank-funded project and Latvia declines to investigate. Other interested parties (*e.g.* anti-corruption NGOs) do not have the right of appeal.

149. During a formal investigation, KNAB may use the full panoply of investigative techniques in the CPL. Techniques in the KNAB Law and the IOL (see above) are generally not used. CPL techniques include questioning and interrogation, consensual examination of a person, and inspection of a place or object if it is public or the investigator has permission. With judicial approval, investigators may inspect private places; examine a person by force; conduct search and seizure; intercept mail, communications, and electronic data; conduct audio, video and physical surveillance; and use undercover operations (CPL Chapters 10-11). KNAB stated that it did not face problems obtaining judicial consent where the investigative measure was justified.

150. CPL Section 190 also entitles investigators to access tax information from the State Revenue Service (SRS). KNAB stated at the on-site visit that it can directly access this information in a database, with a follow up request to SRS if necessary. Latvia stated that “there are no acknowledged difficulties of requesting and obtaining information from the SRS”.

151. Bank information can be obtained with judicial consent.⁵⁶ Latvia states that the judge is required to consider two factors. The first is the existence of any human rights concerns (*e.g.* whether obtaining the information would constitute an unjustified intervention into the life of the relevant person) (CPL Sections 12(1) and 40). The second consideration was initially expressed by Latvia as the existence of a “causal relationship” between the information and the offence, but was later said to be the relevance and necessity of the information. KNAB confirmed that it routinely seeks bank information in corruption cases without difficulties or delays. Finally, KNAB and the PPO may (with judicial consent) freeze “criminally acquired property”, profits, instrumentalities, or financial resources to the value of such (CPL Sections 361(1) and 361(1¹)).

(iii) *Terminating and Suspending a Formal Investigation*

152. A lead investigator, with consent of the supervising prosecutor, may suspend an investigation if (a) the offence is not associated with violence, (b) the person who committed the crime cannot be found within four months, and (c) the minimum investigative steps prescribed by the Prosecutor General have been taken.⁵⁷ Latvia maintains that foreign bribery cases would not be suspended as these investigations

⁵⁶ CPL Section 121(5); Law on Credit Institutions, Section 63(1)5).

⁵⁷ CPL Section 400. According to Sections 2 and 3 of Prosecutor General Order 67, the minimum investigatory steps include interrogation, inspection of documents (including electronic data and documents from credit institutions), expert and auditor interviews, and special investigative measures.

are too complex for the minimum investigative steps to be taken in four months. However, there is nothing in law providing for this. No KNAB investigations have been suspended in the past five years.

153. An investigation will be terminated if extortion or effective regret applies (see p. 45), the guilt of the suspect cannot be proved, it is concluded that an offence has not taken place, the limitation period has expired, the suspect has died, double jeopardy applies, a settlement has been reached (see p. 46) or, in the case legal persons, where there is no proof that the offence was committed in the interest or for the benefit of the legal person or due to a lack of supervision.⁵⁸ An investigation will also be closed where the investigator, with the consent of the prosecutor, concludes that the harm does not warrant punishment, the offence was committed by a minor and mitigating circumstances apply, proceedings cannot be completed within a “reasonable term”, or the person was subject to human trafficking and forced to commit the offence (CPL Section 379). Data provided by Latvia indicates that KNAB closes approximately 15 cases out of an average of 43 on-going investigations per year. These cases are typically closed due to lack of evidence or the expiration of a limitation period.

(iv) *Opening and Terminating a Prosecution*

154. If upon completion or during an investigation the supervising prosecutor is convinced that the evidence is sufficient to prove the guilt of the accused, then the prosecutor can commence prosecution.⁵⁹ Where more evidence is required, the file will be returned to the investigator for further investigation. A prosecution cannot be commenced where a statutory exclusion applies, including where the limitation period has expired, the accused has died, or double jeopardy applies.⁶⁰ A decision not to commence prosecution must be made in writing and may be appealed to a higher prosecutor.⁶¹ Prosecutors at the on-site noted that there is a high degree of discretion in opening a prosecution; while a higher prosecutor may be consulted, the decision is not systematically supervised or reviewed. A recent study concluded that fewer corruption prosecutions – especially serious cases – are being brought to court.⁶²

(v) *Actual Foreign Bribery Investigations*

155. As stated at p. 9, there have been five known allegations of foreign bribery involving entities over which Latvia has jurisdiction. Latvia learned of these cases through an incoming MLA request, a report from a diplomat, a report from a foreign law enforcement agency, and the media. One of these allegations (*Gold Mining Case*) was unknown to Latvia at the time of the on-site visit despite having received some publicity. This indicates that Latvia’s media detection capabilities may be inadequate. No allegations have been detected through the FIU, whistleblowers, or reports from the public.

156. Latvia’s activities in respect of the five allegations indicate some lack of proactivity. There was no investigation in the *Gold Mining Case* at the time of the on-site visit; KNAB began to seek information about the allegations only afterwards. In the *Information Technology Contract Case*, bribes were allegedly paid through Latvian bank accounts. The authorities became aware of the case through an MLA request, but did not consider looking into possible bribery or money laundering offences by the account-holders (see p. 62). Preliminary investigations have been commenced in three cases, although it is unclear what, if

⁵⁸ CPL Sections 392, 392¹, 377, and 441³.

⁵⁹ CPL Sections 7, 37(3)(1) and 38(1).

⁶⁰ CPL Sections 377, 392(2) and 403(3).

⁶¹ CPL Sections 336 and 344.

⁶² Providus (9 February 2015), “[Trial Statistics for Offences Committed in Public Service](#)”.

any, investigative steps have been taken. One case (*Information from Diplomat Case*) has been closed. The other two (*Information from Media* and *Information from Law Enforcement Agency Cases*) have been open since 2014 and are being pursued through investigatory operations under the IOL. The now-closed *Information from Diplomat Case* was pursued through a departmental examination. It is unclear why the more powerful IOL investigatory operations were not used to investigate this allegation.

Commentary

The lead examiners are reassured that a wide range of sources can lead to a formal investigation in Latvia. Similarly, they are encouraged by the variety of investigative techniques available to KNAB both before and during a formal investigation. They note that these techniques have been used to investigate two of Latvia's five foreign bribery allegations. No allegations have progressed to the formal investigation or prosecution stage. The lead examiners therefore recommend that KNAB ensure that all credible foreign bribery allegations are proactively investigated and that full use is made of the broad range of investigative measures available, as appropriate.

(d) *Settlements, Including Effective Regret, Extortion and Plea Agreements*

(i) *Extortion and Effective Regret*

157. An accused may be released from liability for bribery by an investigator, prosecutor, or court where he/she is a victim of extortion. CL Section 324(2) defines extortion as “the demanding of a bribe in order that legal acts be performed, as well as the demanding of a bribe associated with threats to harm lawful interests of a person”. The Phase 1 Report (para. 76) raised concerns that the provision would cover situations where an individual demands a bribe in return for the performance of “legal acts”, for example, a bribe in return for obtaining customs clearance to which the payer is entitled. The provision also covers instances where the bribe-payers “legal interests” are threatened. This term is broad; prosecutors at the on-site visit confirmed that it may cover economic interests including, for example, a bribe which is solicited in return for the right to tender a bid in a public procurement contract.

158. Latvia has an “effective regret” provision through which an investigator, prosecutor or court may release from liability an accused who voluntarily reports the offence and actively assists in the investigation (CL Section 324). Latvia hypothesised that the provision could be used in a foreign bribery case, *e.g.* where an intermediary reported the offence and assisted the investigation into the bribe payer. In 2014, KNAB issued guidelines for investigators to ensure that this provision is applied consistently. These guidelines require investigators to consider specific factors such as whether the bribe-payer provided information not known to investigators, whether obtaining such information in another way would have been difficult or impossible, the motives for engaging in bribery and for reporting the crime etc. No such guidance exists for prosecutors or courts. Latvia stated that a prosecutor would decide “independently and individually on the basis of his/her own opinion”. A prosecutor at the on-site visit noted that it could not be ensured that the provision would be uniformly applied. Two Latvian prosecutors also stated that extortion and effective regret can be applied to legal persons, although this has not occurred in practice. After the on-site visit, the Ministry of Justice disagreed and stated that these provisions only apply to natural persons.

159. One further question is whether immunity from prosecution under these provisions would be granted too readily. Until 2013, extortion and effective regret were full defences, *i.e.* individuals who meet the stipulated criteria were entitled to be released from liability. Upon the Working Group’s recommendation, Latvia amended these provisions so that the granting of immunity would be discretionary. Nonetheless, some practitioners might not be applying the amended provisions. One lawyer at the on-site visit exhibited a lack of awareness of the amendment, stating that extortion was still a full

defence. There is a risk that investigators, prosecutors, or judges share this view and are misapplying the provisions as a result.

160. KNAB has applied effective regret in two domestic bribery cases that were not particularly compelling. In both cases, bribe-givers reported their crimes and aided the subsequent investigation. However, the intermediaries in both cases kept the bribe instead of passing it to an official. The bribe-givers' motivation for reporting the crime was therefore likely not remorse but to settle a score. The cases were also arguably not serious since no official was actually corrupted. It is not evident why these offenders were given total immunity instead of conditional immunity or reduced sentences.

(ii) *Releases from Liability*

161. If an accused admits guilt and provides "substantial assistance" in the disclosure of a more serious offence, a prosecutor may release the accused from liability subject to a probationary period (of up to 18 months) and the fulfilment of other conditions (e.g. an apology or reparation).⁶³ Alternatively, the Prosecutor General could terminate the proceedings entirely (i.e. unconditionally) (CPL Section 410) though Latvia reports this has not occurred in the past three years. Latvia explained that in deciding to release liability on these grounds, the prosecutor will consider a range of factors including the personality of the accused, the nature and circumstances of the offence, whether the accused pleads guilty and makes compensation, and the level of assistance provided by the accused. However, these criteria are not codified; the Prosecutor's Handbook merely sets out the statutory requirements and not these factors.

(iii) *Plea Agreements*

162. Plea agreements are available for natural and legal persons (CPL Chapter 38 and Section 441⁶-441⁸). The agreements are made between the prosecutor and the accused, on either party's initiative. The agreement is in writing and requires that the accused admits guilt, agrees to a statement regarding the offence, and accepts a specified punishment. The agreement is approved by the court. Prosecutors on-site stated that such agreements are publicised as an anonymised judgment, including the facts of the case and reasons why a plea agreement was pursued. The Prosecutor's Handbook sets out the relevant legislative requirements, but does not provide further guidance on, for example, additional factors to be taken into account in deciding to enter a plea agreement, or whether a sentence discount can be offered. In 2013, 13 of 77 domestic bribery proceedings were terminated through a plea agreement and 1 of 143 in 2014.

Commentary

The lead examiners note that the application of settlements is up to the discretion of the investigator, prosecutor, or court. The lead examiners recommend that to ensure consistency, Latvia undertake training and provide information to prosecutors and the judiciary on the application of settlements in foreign bribery cases (including effective regret, releases from liability, and plea agreements), and ensure KNAB investigators are aware of the 2014 guidance on effective regret. To ensure transparency, they further recommend that Latvia make public, where appropriate and in conformity with applicable rules, available information about the settlements in foreign bribery cases, including the facts, the reason for settlement, the terms of the settlement, and any sanctions imposed.

⁶³ CPL Section 58¹. A Chief Prosecutor can also make this decision if the accused has no prior convictions.

(e) Limitation Periods and Delays in Proceedings

163. The Phase 1 Report (paras. 86-87) concluded that the statute of limitations applicable to foreign bribery as set out in CL Section 56 is sufficiently long on its face. The limitation period for the foreign bribery offence (CL Section 323) and for intermediaries in foreign bribery (CL Section 323) is 10 years. The period rises to 15 years if the offences are aggravated. Time begins to run from the commission of the offence. The prosecution must charge a natural person (*i.e.* commence prosecution) or seek his/her extradition before the limitation period expires. For legal persons, the prosecution must notify the legal person of the initiation of proceedings (CL Section 70⁹(1)).

164. The limitation period is not suspended by any act of investigation prior to indictment. The period continues to run where MLA is requested or if criminal proceedings have been suspended because the accused is seriously ill, in hiding or located outside Latvia (Phase 1 Report, paras. 85-87). As mentioned at p. 50, Latvia has experienced difficulties in obtaining MLA in corruption cases.

165. Latvia stated that there no cases were time-barred in 2014 and only one in 2013 (because the accused had absconded). There is some indication that cases progress quickly once they reach the courts. Data provided by Latvia show that, of the criminal court proceedings that were launched in 2013-2014, 95.7% were concluded within two months, and just 0.1% were terminated after more than one year.

166. Nevertheless, some of KNAB's high profile cases have seen substantial delay. As mentioned at p. 36, the investigation in the *Oligarchs Case* began in 2011. As early as 2013, the Prosecutor General raised concerns about the length of time the case was taking. The case still has not reached the indictment stage, prompting concerns that it could be time-barred by 2015.⁶⁴ The investigation in the *Latvenergo Case* started in 2010. Some offenders have resolved their charges through settlements but others are still pending trial. KNAB's on-going personnel issues, which has seen the departure of senior staff including an investigator in the *Latvenergo Case* (see p. 36), can only add delay. Latvia states that the delay in the *Oligarchs* and *Latvenergo Cases* is reasonable because of the cases' complexity.

Commentary

The lead examiners are concerned about the delay in some of KNAB's investigations. The Oligarch and Latvenergo Cases are complex and time-consuming. Nevertheless, the delay in concluding these investigations and prosecutions is a cause for concern. KNAB's recent personnel issues may have further exacerbated delays. The lead examiners therefore recommend that Latvia take steps to ensure that KNAB's investigations proceed without undue delay. Latvia should also maintain comprehensive statistics on delay in proceedings and cases that are time-barred.

(f) Mutual Legal Assistance (MLA) and Extradition**(i) Central Authorities**

167. Latvia has two central authorities for MLA and extradition under the Convention. Extradition and MLA requests in cases that are under pre-trial investigation are the responsibility of the International Co-operation Division of the Department of Analysis and Management of the Prosecutor's General Office (PGO). Requests in cases that are before the courts or after judgement fall within the competence of the Judicial Co-operation Division of the Ministry of Justice (MOJ) (Phase 1 Report, para. 116). The total staff

⁶⁴ BNN (9 April 2015), "[CPCB Has Most Likely Failed to Acquire Solid Evidence in 'Oligarchs Case'](#)".

in the two central authorities consist of four legal advisors in the MOJ and one Chief Prosecutor and nine Prosecutors in the PGO. Informal direct co-operation between law enforcement authorities and courts is also available (CPL Section 675).

168. Requests received by the MOJ are forwarded to the PGO. If necessary, the PGO would further forward requests to KNAB or the State Police. As mentioned at p. 34, there are concerns that incoming requests in corruption cases may not necessarily be sent to KNAB for execution. This in turn could cause information in incoming requests that are relevant for opening a domestic investigation in Latvia to be overlooked. This may have occurred in the *Information Technology Contract Case*.

(ii) *Mutual Legal Assistance*

169. Article 9 of the Convention requires Parties to provide prompt and effective assistance to other Parties to the fullest extent possible under their laws, treaties and arrangements.

(1) Legal Framework for MLA

170. Latvia's framework to provide and seek mutual legal assistance (MLA) in criminal matters is set out in CPL Part C and is unchanged since Phase 1. Latvia can provide MLA based on bilateral and multilateral treaties. This includes the Convention, although no requests have been made or received on this basis so far.⁶⁵ Requests from EU Member States are subject to a specific regime (CPL Sections 860-875). In the absence of a treaty, MLA may also be sought and provided based on reciprocity (CPL Section 675; Phase 1 Report, para. 114). Latvia does not make MLA conditional on a minimum penalty.

(2) Dual Criminality

171. As described in the Phase 1 Report (para. 121), Latvia generally does not require dual criminality before providing MLA but there are exceptions. First, Latvia may refuse a request for a "compulsory measure" if the underlying offence is not criminally punishable in Latvia and if a treaty does not apply to the request. If a treaty does apply, then the request may nevertheless be refused if the requesting State requires dual criminality before providing MLA of a similar nature to other States (CPL Section 852). Second, MLA for "special investigative actions" described in CPL Chapter 11 may be granted only if such actions are admissible in criminal proceedings in Latvia for the same offence (CPL Section 853).

172. Separate rules apply to requests from an EU Member. Whether dual criminality is required depends on whether the offence underlying the request is listed in CPL Annex 2, which includes corruption, money laundering and fraud. For these listed offences, if the offence underlying the request is punishable by deprivation of liberty of at least three years in the requesting State, then Latvia would not examine whether dual criminality exists (CPL Section 860(6)). For listed offences that do not meet this criterion and unlisted offences, dual criminality is generally required (CPL Section 861(1)4).

(3) MLA for Confiscation

173. MLA requests for confiscation from EU countries are governed by CPL Chapter 75. CPL Section 794 lists grounds for refusal such as double jeopardy and expiry of statute of limitations. No inquiry is made regarding whether dual criminality is met where the offence underlying the request is listed in CPL Annex 2, which includes corruption, money laundering and fraud.

⁶⁵ See Phase 1 Report, para. 114 for the relevant bilateral and multilateral treaties to which Latvia is party.

174. MLA requests for confiscation from non-EU countries are less straightforward. CPL Section 791(1) states that such requests could be granted only if the Criminal Law (CL) provides for confiscation as a basic or additional punishment for the same offence, or if the property could be confiscated in criminal proceedings on grounds provided for in the CPL. As explained at p. 69, confiscation is a basic or additional punishment for aggravated and further-aggravated foreign bribery under the CL, but not for non-aggravated foreign bribery.⁶⁶ MLA for confiscation in non-aggravated foreign bribery cases is governed by CPL Section 791(2), which states that “confiscation shall be applied only in the amount established in the judgment of the foreign state, that the object to be confiscated is an instrumentality of the committing of the offence or has been obtained by criminal means.”

Commentary

The lead examiners recommend that the Working Group follow up whether Latvia can provide confiscation as MLA in foreign bribery cases.

(4) Bank Secrecy

175. The legal framework for providing bank information as MLA is not completely clear. Pursuant to Section 63(4) of the Credit Institutions Law (CIL), confidential bank information can only be disclosed to foreign authorities “according to the procedures specified in international agreements”. This raised the question of whether MLA involving bank information could be provided in the absence of a treaty. In Phase 1 (paras. 123-126), Latvia stated the Convention provides a treaty basis for lifting bank secrecy under CIL Section 63(4). Confidential bank information could hence be provided to both Parties and non-Parties to the Convention for use in foreign bribery investigations.

176. Latvia provided a different explanation in Phase 2. It states bank information can be provided based on reciprocity in the absence of a treaty, and referred to five requests in which information was provided on this basis. Latvia added that CIL Section 63(4) does not prohibit MLA to be provided in these situations. Instead, under CIL Section 63(1)5), banks are required to hand information for use in pre-trial proceedings over to Latvian authorities executing a foreign MLA request. The argument is thus similar to the one concerning tax secrecy (see p. 19). However, on its face this latter provision could be interpreted to apply only to Latvian criminal proceedings, not foreign ones. In practice, Latvia has provided bank information to foreign authorities.

(5) MLA in Non-Criminal Proceedings

177. Article 9(1) of the Convention requires Parties to provide MLA to another Party for use in non-criminal proceedings against a legal person within the scope of the Convention. This is because several Parties to the Convention impose non-criminal liability against legal persons for foreign bribery.

178. Latvia cannot provide MLA to a foreign state for use in non-criminal proceedings against a legal person. CPL Part C only provides for MLA in *criminal* matters. In Phase 1 (para. 119), Latvia stated that MLA would be provided in non-criminal matters if the conduct underlying the request “corresponds to a criminal offence provided for in the Criminal Law”. The statutory basis of this statement was unclear. In Phase 2, Latvia indicates that there is no legal basis for co-operation in these cases. Latvia has not received requests of this nature to date. Latvia plans to address this matter through new legislation.

⁶⁶ See p. 50 for the definitions of aggravated and further aggravated foreign bribery.

Commentary

The lead examiners recommend that Latvia take all necessary measures to ensure that MLA can be provided in foreign bribery-related non-criminal proceedings against a legal person. They further note that this is a horizontal issue among Parties to the Convention.

(6) MLA in Practice

179. Statistics on MLA are available only from 2014 when an electronic record system was created in MOJ. This system records requests processed by the MOJ, PGO and State Police. However, information on the number of executed, pending and rejected requests and the time taken to execute requests can be retrieved only manually from the system. KNAB also provided information relating to MLA in certain domestic corruption cases.

180. Regarding incoming requests, prior to 2014, Latvia received four MLA requests relating to foreign bribery from Parties to the Convention. The time taken for execution was between two to five months. In 2014, Latvia received 688 MLA requests, including 19 requests in corruption-related cases, 14 of which sought bank information. As of March 2015, 9 of the 19 requests had been executed within two to five months of receipt, 1 was close to completion, and 9 others were partially executed. Latvia indicated that it has never declined to render MLA in a corruption case. The requests received in 2014 also included 46 requests for seizing or freezing of assets. As of April 2015, 43 of the 46 requests had been executed. Latvia indicated that 3 of the 46 requests involved corruption-related cases and were executed within two months. One request was denied because the bank account had already been closed.

181. As for outgoing requests, Latvia has yet to request MLA in a foreign bribery case. In domestic corruption cases, Latvia stated that obtaining MLA is one of the biggest difficulties. In 2014, the PGO sent 10 MLA requests in domestic corruption cases, 6 of which were executed within 1-6 months. Latvia did not indicate the type of assistance sought. One request to a Party to the Convention for confidential banking information was substantially delayed because of that Party's lengthy proceedings for executing MLA requests.

182. KNAB provided additional information on several major domestic corruption cases. In the *Latvenergo Case*, Latvia sent roughly 30 MLA requests in 2010-2014 to at least 13 countries (including 10 Parties to the Convention). All of the requests were executed apart from those to two countries, one of which is a Party to the Convention. In the *Oligarchs Case*, 12 MLA requests were sent to 4 Parties to the Convention in 2012-2014. All but those to one Party to the Convention have been executed. All 6 requests in the *Iberdrola Case* were executed. In these cases, Latvia proactively pursued the execution of the requests. In some cases, KNAB also formed joint investigative teams with its foreign counterparts and attended co-ordination meetings organised by Eurojust.

Commentary

The lead examiners are encouraged that KNAB appears to have proactively pursued MLA in several major domestic corruption investigations. Nevertheless, given the absence of comprehensive statistics prior to 2014, the lead examiners are unable to fully evaluate Latvia's system for seeking and providing MLA. They therefore recommend that Latvia maintain statistics on all incoming and outgoing MLA and extradition requests, including on the offences involved, assistance requested, and time required for execution.

(iii) *Extradition*(1) Legal Framework for Extradition

183. As identified in Phase 1, Latvia may seek and provide extradition based on multilateral and bilateral treaties.⁶⁷ In the absence of a treaty, extradition may be sought and provided based on reciprocity (CPL Section 675). The European Arrest Warrant (EAW) applies to extradition with EU countries.

184. CPL Chapters 65 and 66 govern the execution of extradition requests. The PGO must examine an incoming request within 20 days of receiving the request or additional information provided by the requesting state at Latvia's request. If a request is granted, the person sought has 10 days to appeal the decision to a Court. Dual criminality is required: the conduct underlying an extradition request must be punishable under Latvian law by deprivation of liberty of at least one year, or a more serious punishment (CPL Section 696(2); Phase 1 Report, paras. 129-130). Mandatory and optional grounds to decline extradition are listed in CPL Section 697 and were considered in the Phase 1 Report (paras. 129-130).

185. CPL Sections 714-722 applies to EAWs. Latvia will not examine whether there is dual criminality if the EAW relates to an offence that is punishable in the requesting state by deprivation of liberty of at least three years and the offence is listed in CPL Annex 2 (which includes corruption, money laundering and fraud) (CPL Section 714(2)).

186. Latvia has not made or received an extradition request in a foreign bribery case.

(2) Extradition of Latvian Nationals

187. The Phase 1 Report (para. 134) expressed concerns that Latvia may not prosecute its nationals in lieu of extradition. Latvia does not extradite its nationals unless there is an applicable treaty; the person sought consents; or extradition is requested pursuant to an EAW. However, the CPL does not expressly require Latvia to prosecute a national whose extradition has been refused solely on grounds of nationality. Latvia stated that the principle of mandatory prosecution would require its authorities to exercise nationality jurisdiction to prosecute such cases. The Working Group nevertheless recommended that Latvia amend its legislation to comply with Article 10(3) of the Convention and the principle of *aut dedere aut judicare* respectively *aut dedere aut punire* (Phase 1 Report, paras. 133-134).

188. In Phase 2, Latvia initially referred to a draft amendment to the CPL currently before the Saeima to address the Working Group's concerns. However, the amendment merely states that if extradition is denied solely on the basis of nationality, then the transfer of criminal proceedings from a foreign state to Latvia would be executed in accordance with the CPL. The amendment thus does not expressly require Latvia to prosecute nationals whose extradition has been refused and hence does not address the Working Group's recommendation in Phase 1. Latvia reiterates its position in Phase 1, namely that the principle of mandatory prosecution would apply in these cases.

Commentary

The lead examiners are concerned that Latvia does not fulfil its obligations under the principle of "extradite or prosecute". They are disappointed that Latvia is currently amending the extradition provisions of the CPL but has not taken the opportunity to include an express "extradite or prosecute" requirement in the law. They therefore reiterate the concerns in the

⁶⁷ See the Phase 1 Report (para. 128) for a list of the applicable treaties to which Latvia is party.

Phase 1 Report (para. 161) and recommend that Latvia amend its legislation to expressly require the prosecution of Latvian individuals whose extradition has been refused solely on grounds of nationality, such as by revising the draft amendment of the CPL currently being considered by Parliament.

(iv) *Article 5 and International Co-operation*

189. Pursuant to CPL Section 850, MLA and extradition requests may be declined if they may harm Latvia's sovereignty, security, social order and "other substantial interests". The Working Group was concerned that the provision would also allow Latvia to deny extradition and MLA requests based on factors listed in Article 5 of the Convention, namely considerations of national economic interest, the potential effect upon relations with another State, and the identity of the natural or legal persons involved (Phase 1 Report, para. 117). According to Latvia, this provision was applied in one case to deny the disclosure of a "commercial secret" that was an "element of a product produced by a Latvian company". Latvia stated that the provision could also be used to protect state secrets and attorney-client privilege.

Commentary

The lead examiners recommend that the Working Group follow up whether factors listed in Article 5 of the Convention influence the granting of MLA or extradition by Latvia in foreign bribery cases.

2. Offence of Foreign Bribery

190. CL Section 323 prohibits the giving of a bribe to a "State official", which is defined in CL Section 316 to include both Latvian and foreign public officials:

Section 323 Giving of Bribes

(1) For a person who commits giving of bribes, that is, the handing over or offering of material values, properties or benefits of other nature in person or through intermediaries to a State official in order that he or she, using his or her official position, performs or fails to perform some act in the interests of the giver or person offering the bribe, or in the interests of other persons, irrespective of whether the bribe offered is for this State official or for any other person, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service or a fine.

191. CL Section 322 contains a separate offence for an intermediary who gives a bribe to a foreign public official on behalf of the principal offender:

Section 322 Intermediation in Bribery

(1) For a person who commits intermediation in bribery, that is, acts manifested as the handing over of a bribe or the offering thereof from the giver of the bribe to a person accepting the bribe, the applicable punishment is deprivation of liberty for a term not exceeding four years or temporary deprivation of liberty, or community service or a fine.

192. The Phase 1 Report concluded that Latvia's foreign bribery offence largely conforms to the Convention but that several matters should be further examined in Phase 2.

(a) *Elements of the Offence*

(i) *Requirement of Direct Intent*

193. In both Phases 1 and 2, Latvian authorities explained that the offence in CL Section 323 is one of direct intent. In other words, there must be proof of an intention to (a) give a bribe, and (b) make a public official perform or fail to perform an act by using his/her official position in his/her interest or those of another person (Phase 1 Report, paras. 9-10).

194. There are significant concerns, however, that the requirement of direct intent as defined in Latvian law would exclude many cases of foreign bribery from the offence. At the on-site visit, participants were asked to consider a hypothetical situation where a company pays EUR 1 million to a consultant whose sole task is to obtain a contract from a foreign government in a corruption prone country for the company. The company does not inquire how the money would be used or what specifically the consultant would do. Latvian investigators, prosecutors, judges and defence lawyers unanimously believed that the company's conduct would not amount to an offence under CL Section 323 because there was no direct proof that the company knew that an official would be bribed. Circumstantial evidence of knowledge is generally not enough for a conviction.

195. An actual domestic bribery case demonstrates this loophole. In the *Iberdrola Case*, KNAB initially investigated a company for bribing Latvian public officials through an intermediary. The company ultimately was charged not with bribery but with the less serious offence of trading in influence. At the on-site visit, prosecutors explained that they could not proceed with a bribery charge because "the evidentiary threshold is rather high and they need to prove who knew what. [...] Company emails never said that the intermediary would pass the money on to an official."

196. Additional jurisprudence referred to by Latvian authorities does not resolve this concern. In a 2006 case,⁶⁸ a company board member was convicted of promoting bribery as an abettor by giving the bribe money to the briber (company owner) at the briber's request. However, the board member knew that the briber would have a meeting in government premises during which "money would be handed over to an official".

197. Latvia added that these concerns about direct intent requirement in its bribery offence should be addressed by developing court practice in domestic and foreign bribery cases. However, it is quite possible that cases of bribery involving the use of intermediaries described above would not reach the courts since practitioners consider that Latvia's bribery offence does not cover these situations. The *Iberdrola Case* mentioned above is a prime example because prosecutors substituted bribery charges with trafficking in influence. There is also no guarantee that jurisprudence would evolve to expand the offence to cover this loophole. Latvia also proposed using training and awareness-raising to address the concerns, but these measures are not sufficient to change Latvian law.

(ii) *Promise to Bribe*

198. Under Article 1 of the Convention, a country's foreign bribery offence must cover the giving, offer and promise of a bribe. As the Phase 1 Report (para. 12) noted, an "offer" and a "promise" cover distinct situations. An offer occurs when a bribe-giver *on his/her own initiative* expresses his/her readiness to pay the public official. A promise is broader and includes a bribe-giver's definitive commitment to pay that is *prompted by the public official* (i.e. solicitation). A "promise" also covers situations where the briber

⁶⁸ Riga Regional Court (31 October 2006), No. 13870001305/KA-04-270-06/29; Phase 1 Report, para. 10.

commits him/herself or agrees with the official to give an undue advantage *later, e.g.* after the public official has performed the act requested by the briber. An “offer” may cover situations where the briber shows his/her readiness to give the undue advantage *at any moment*.

199. Latvia’s foreign bribery offence does not expressly cover the “promise” of a bribe. CL Section 323 only refers to the “handing over or offering” of bribes. However, Latvian authorities stated that the term “offering” includes a “promise” since the two words have the same meaning in the Latvian language. They also referred to one case in which an individual was convicted of offering a bribe. The individual had offered to pay part of the bribe before the public official performed the requested act and promised to pay the second part after. The official did not accept the briber’s proposition.⁶⁹

200. Concerns remain about cases of solicitation, however. Private sector lawyers at the on-site visit stated that a person who accepts a bribe solicitation by a public official is only guilty of attempted bribery and not the full offence. The actual delivery of the bribe to the official is necessary to complete the offence in CL Section 323. This would be inconsistent with Article 1 of the Convention. In response, Latvia states that CL Section 323 was amended in 2013 to delete the requirement that bribery is an offence only if a briber’s offer to pay the bribe is accepted by the official. This amendment, however, does not concern a bribe solicited by an *official*.

(iii) *Definition of a Foreign Public Official*

201. CL Section 323 prohibits the bribery of a “State official”, which is defined in CL Section 316:

Section 316 Concept of a State Official

(3) As State officials shall also be considered officials of international organisations, international parliamentary assemblies, international courts and delegated persons of these institutions, as well as any person holding a legislative, executive or judicial office of a foreign country or in any of its administrative unit, whether appointed or elected; as well as any person exercising a public function for a foreign country, including for its administrative unit, a public agency or public enterprise.

202. It is unclear whether the term “administrative unit” in this definition includes “all levels and subdivisions of government, from national to local” as required by the Convention. In comparison, CL Section 316(1) which applies to corruption of *Latvian* (*i.e.* not foreign) officials refers to “representatives of State authority (...) in the State or local government services”. Latvia explained that such language is not found in the definition of a foreign official in CL Section 316(3) since foreign states may have more levels of government than the two that exist in Latvia (State and local). Latvian authorities stated that the definition in CL Section 316(3) complies with the Convention but did not provide supporting jurisprudence.

203. CL Section 316(3) also does not expressly cover officials of an “organised foreign area or entity, such as an autonomous territory or a separate customs territory”, as required by the Article 1(4)(b) and Commentary 18 of the Convention. Latvian authorities stated that the term “foreign country” in CL Section 316(3) covers foreign areas and entities. Supporting jurisprudence was not provided.

⁶⁹ Ogre District Court (14 August 2014).

(iv) *In Order that the Official Act or Refrain from Acting in Relation to the Performance of Official Duties*

204. CL Section 323 covers bribes to induce a foreign public official to perform acts or omissions using his/her official position. It is not clear that CL Section 323 complies with the Convention in this respect. In Phase 1 (para. 20), Latvia asserted that the provision meets the Convention. To buttress their position in Phase 2, Latvian authorities referred to a case involving companies that bribed Latvian officials to obtain construction permits from Riga City Council.⁷⁰ It is not entirely clear whether this case supports Latvia's position.

(v) *In Order to Obtain or Retain Business or Other Improper Advantage in the Conduct of International Business*

205. CL Section 323 does not refer to bribes paid "in the conduct of international business" like the Convention. Instead, it criminalises bribes paid "in the interest of the giver or person offering the bribe, or in the interest of other persons". Latvia stated in Phase 1 (para. 21) that this phrase would cover all bribes irrespective of whether they are paid in the conduct of international business.

206. There are, however, two potential issues. First, it is unclear whether the term "interest" would broadly cover all types of advantages that could be obtained in international business. In Phase 2, Latvian authorities referred to cases where bribes were paid to avoid a tax audit and to obtain construction permits. Second, the CL Section 323 offence requires proof that the bribe was paid in the interest of the person who gives or offers the bribe, or of another person. It is unclear whether this person could be a legal - as opposed to a natural - person.⁷¹ Latvian authorities referred to two cases where individuals were convicted for paying bribes in the interest of a legal person. But since the Latvian authorities did not provide the Court's reasoning, it is difficult to conclude whether these cases settle this issue.

Commentary

The lead examiners remain very concerned that deficiencies in Latvia's foreign bribery offence which were identified in Phase 1 have yet to be addressed. They are especially concerned that CL Section 323 does not cover a situation where a company pays a large sum to a consultant whose sole task is to obtain a contract from a foreign government in a corruption prone country for the company, even if the company does not inquire how the money would be used or what specifically the consultant would do. The offence thus fails to cover one of the most common modus operandi of committing foreign bribery. The lead examiners therefore recommend that Latvia amend its legislation to remedy this situation. The foreign bribery offence should also be amended to expressly cover (a) the promise of a bribe, and (b) bribery of officials of any organised foreign area or entity, such as an autonomous territory or a separate customs territory.

The lead examiners further recommend that the Working Group follow up (a) whether Latvia's foreign bribery offence covers bribes paid in return for any use of the public official's position, whether or not within the official's authorised competence, and (b) the interpretation of the term "in the interest of the giver or person offering the bribe, or in the interest of other persons" in CL Section 323.

⁷⁰ Riga Regional Court (11 March 2011), No. 16870000208/K04-39-11/5).

⁷¹ Commentary 6 states that it is an offence "whether the offer or the promise is made or the pecuniary or other advantage is given on that person's own behalf or on behalf of any other natural or legal entity".

(b) Defences and Exemption from Prosecution

207. There are no specific defences to foreign bribery under Latvia's legislation. In 2013, Latvia repealed the defences of effective regret and extortion (though these remain grounds for granting prosecutorial immunity; see p. 45). Latvian authorities also state that its foreign bribery offence in CL Section 323 covers facilitation payments.

(c) Jurisdiction to Prosecute Natural Persons

208. The Phase 1 Report (para. 58) questioned whether Latvia has jurisdiction to prosecute criminal offences committed only partly in its territory. CL Section 2(1) provides jurisdiction to prosecute criminal offences committed "in the territory of Latvia"; it does not refer to offences which takes place partly in Latvia or, in the alternative, what part of the offence must be committed on Latvian territory.

209. In Phase 1, Latvia indicated that CL Section 2(1) would be interpreted broadly to provide jurisdiction over offences committed partly on its territory. In Phase 2, Latvian authorities cited the *Latvenergo Case* in support of their position. The case concerned a foreign company that alleged trafficked in influence to obtain contracts from a Latvian SOE. Latvian authorities stated that part of the offence was committed outside Latvia, namely the "offer of material values, meeting and entering into a consultation agreement was made outside Latvia, [and] the money was transferred from Turkey to Cyprus." The links between the case and Latvia include "a desirable agreement in Latvia, a citizen of Latvia [who] had a possibility to influence Latvian officials and a couple of meetings were held in Latvia. As the person who accepted material values was detained in Latvia, Latvian jurisdiction was determined." The *Latvenergo Case*, however, has not been decided by a court and is therefore not yet jurisprudence.

210. As for nationality jurisdiction, the Phase 1 Report (para. 60) concluded that Latvia's framework conforms to the Convention. CL Section 4 provides jurisdiction to prosecute Latvian citizens, non-citizens and permanent residents for offences committed outside Latvia, "regardless of whether it has been recognised as criminal and punishable in the territory of commitment".

3. Liability of Legal Persons

211. In 2005, Latvia enacted CL Sections 12 and 70¹ to hold legal persons liable for criminal offences through the application of "coercive measures":

Section 12 Liability of a Natural Person in the Case of a Legal Person

For the criminal offences committed by a natural person in the interests, for the benefit or as a result of a lack of supervision or control by a private law legal person, the natural person shall be criminally liable but coercive measures provided for in this Law may be applied to a legal person.

Section 70¹ Basis for the Application of Coercive Measures to Legal Persons

For the criminal offences provided for in the Special Part of this Law, coercive measures may be applied by a court or in the cases provided in law by a public prosecutor to a private law legal person, including a state or a municipal capital company, as well as a partnership, if the criminal offence has been committed in the interests or for the benefit of the legal person or as a result of a lack of supervision or control by a natural person acting as an individual or as a member of the collegial institution of the relevant legal person:

- (1) on the basis of a right to represent the legal person or to act on behalf of such legal person,
- (2) on the basis to take decisions in the name of such legal person,
- (3) realising control within the scope of the legal person.

212. Latvia stated that, from January 2011 to September 2014, corporate proceedings for the application of coercive measures have been brought against 28 legal persons, including 5 relating to (domestic) bribery. This section considers some issues concerning the corporate liability provisions that were raised in the Phase 1 Report.

(a) Legal Entities Subject to Liability

213. The Phase 1 Report (paras. 31 and 148) queried whether all legal persons could be held liable under the CL. Section 70¹ provides for liability against partnerships, “private law legal persons”, and State or municipal capital companies. The CL does not define the term “private law legal persons”. Latvia stated in Phase 1 that the definition of this phrase is found in its body of private law. One relevant provision is Commercial Law Section 135, which stipulates that a company is a legal person and acquires such status when it is recorded in the Commercial Register. Also relevant is Civil Law Section 1 407, which stipulates that “The State, local governments, associations of persons, institutions, establishments, and such aggregations of property as have been granted the rights of a legal person shall be considered to be legal persons.” Latvia explained that State, local governments and institutions are public law legal persons. “Aggregations of property as have been granted the rights of a legal person” arise in Latvian inheritance law and are unlikely to be relevant for foreign bribery purposes. The remaining entities, *i.e.* associations of persons and establishments, are private law legal persons for the purposes of the CL.

214. In Phase 2, Latvia referred to additional legislative definitions of “private law legal persons”. The Associations and Foundations Law Section 3 states that associations and foundations become legal persons when they enter the Register of Associations and Foundations. Latvian law treats European Economic Interest Groupings as partnerships that in turn have legal personality.⁷²

215. The Phase 1 Report (para. 31) also queried whether partial SOEs could be subject to corporate liability in the CL. CL Section 70¹ allows liability to be imposed on “a state or a municipal capital company”. This phrase covers companies whose shares belong entirely to the State or a local government (Public Person Capital Shares and Enterprises Governance, Section 1).⁷³ Latvia pointed out in Phase 2 that all partial SOEs are registered in the Commercial Register and are thus private legal persons by reason of Commercial Law Section 135. A search of Latvia’s on-line commercial register indicates that all 32 of the largest whole or partial SOEs⁷⁴ are in the Commercial Register.

216. In practice, among the 28 legal persons that have faced corporate liability proceedings, there were 22 limited liability companies, 2 joint stock companies, 1 farm and 2 foreign legal persons.

⁷² European Economic Interest Grouping Law, Section 2; CL Section 70¹; Company Law Sections 1 & 77.

⁷³ Previously the Law on State and Local Government Capital Shares and Capital Companies.

⁷⁴ OECD (2015), *Review of the Corporate Governance of State-Owned Enterprises: Latvia*, Annex 1.

(b) Standard of Liability

217. The Phase 1 Report (para. 35) identified several concepts in the corporate liability provisions that should be followed up. In Phase 2, these matters remain unresolved in the absence of sufficient practice.

218. Under CL Section 70¹, a legal person is liable when a relevant natural person commits foreign bribery “in the interests or for the benefit of the legal person”. Upon an analysis of 20 proceedings for CL, Latvia concluded that “in the interests” is broader than “for the benefit” though the two phrases are nevertheless close in meaning. Five of the proceedings involved both concepts. The courts, however, have not had sufficient opportunity to interpret these provisions. Latvia asserted that CL Section 70¹ covers all situations as required by the Convention, *e.g.* speeding up customs clearance.

219. Latvia stated that there are three bases for imposing corporate liability under CL Section 70¹, namely when a natural person commits foreign bribery (a) in the interests of the legal person, (b) for the benefit of the legal person, or (c) as a result of insufficient supervision or control, acting individually or as a member of the collegial authority of the relevant legal person. In other words, elements (a), (b) and (c) are not applied cumulatively. There is, however, no jurisprudence yet on this point.

220. The Phase 1 Report (para. 33) also raised a question about the burden of proof. Under Latvian law, the prosecution has the onus of proving all elements of the offence. This includes proof that the company’s failure to exercise supervision or control resulted in foreign bribery being committed. This could be challenging for prosecutors since the legal person, not the investigator and prosecutor, is much more familiar with its internal organisation.⁷⁵ Two on-going corporate proceedings in Latvia concern liability based on a failure to exercise supervision or control of natural persons who committed offences. Latvia stated that it is premature to conclude whether the burden of proof in these cases is problematic.

221. CL Section 70¹ does not expressly impose liability when a person with senior managerial authority “directs” or “authorises” (as opposed to “commits”) foreign bribery, as expressly required in the 2009 Anti-Bribery Recommendation Annex I (Phase 1 Report, para. 35). Latvia stated that liability arises in this situation if the other criteria in CL Section 70¹ are met, *i.e.* the criminal offence is committed in the interests or for the benefit of the legal person, or as a result of insufficient supervision or control.

222. CL Section 70¹ imposes corporate liability if a natural person commits foreign bribery while acting individually or as a member of the legal person’s “collegial authority”. Latvia stated that “collegial authority” (also referred to as “collegial institution”) is understood as “the management offices, boards, councils, committees, chambers and similar arrangements within a legal person which are created by a legal person for managerial purposes.” According to Latvia, this definition does not imply a need for senior management involvement if the natural person in question had the authority to act in that capacity.

(c) Parent Companies and Subsidiaries

223. The 2009 Anti-Bribery Recommendation Annex I.C states that a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to commit foreign bribery. Latvia states that a shareholder is generally not liable for a company’s obligations (Commercial Law, Section 137) but a parent company may be liable for foreign bribery committed by a subsidiary.

224. As noted above, a legal person can be liable under CL Section 70¹ when a natural person commits foreign bribery in the interests or for the benefit of the legal person. If an employee of a

⁷⁵ For example, see *Chile Phase I Report*, para. 32.

subsidiary commits foreign bribery, then the parent company could be liable if there is proof that the bribery was in the interest or for the benefit of the parent. The other requirements of CL Section 70¹ must also be met, *i.e.* the employee of the subsidiary must (i) represent or act on behalf of the legal person (*i.e.* the parent); (ii) take decisions in the name of the parent; or (iii) exercise control over the parent.

225. Latvia stated that there are two additional bases of liability. First, corporate liability under CL Section 70¹ also arises if a legal person insufficiently supervises or controls a subsidiary that commits foreign bribery. A parent is not legally obliged to supervise or control its subsidiaries under the Group of Companies Law. Whether a parent has an obligation in a specific case would depend on the circumstances of that case. Second, a parent can be liable based on complicity if it authorises or approves a bribe paid by a subsidiary. Complicity includes aiding, abetting, organising and facilitating the offence.

Commentary

The lead examiners are encouraged that the Latvian authorities have prosecuted companies under the corporate liability provisions in Section 70¹ CL. To date, proceedings have been brought against at least 28 legal persons, including 5 for domestic bribery. Nevertheless, Latvian jurisprudence on corporate liability is only beginning to emerge. Although these provisions were enacted in 2005, they were not applied in practice until after their amendment during the process of Latvia's accession to the Convention. The lead examiners therefore recommend that the Working Group follow up the application of these provisions as practice develops. The lead examiners also recommend that Latvia provide guidance to practitioners on the interpretation of the corporate liability regime in Section 70¹, such as through interpretive manuals and training.

(d) Jurisdiction over Legal Persons

226. The Phase 1 Report (para. 61) expressed concerns that Latvia could not prosecute a Latvian company for extraterritorial foreign bribery committed by company employees or agents who are not Latvian nationals or residents. This was because Latvia had jurisdiction to prosecute a legal person only if it also had jurisdiction over the natural person who committed the offence. Jurisdiction over natural persons for extraterritorial offences is in turn limited to Latvian nationals and residents.

227. An October 2014 legislative amendment resolved this concern. Under a new CL Section 4(1¹), Latvia has jurisdiction over a legal person for extraterritorial offences if the legal person is registered in Latvia. Registration in this context refers to the Registry of Enterprises, *i.e.* not the Commercial Registry (see p. 57), according to Latvian officials. CL Section 4(1¹) has not been applied in practice.

(e) Proceedings against Legal Persons in the Absence of Proceedings against Natural Persons

228. Parties to the Convention are required to ensure that the conviction or prosecution of a natural person is not a precondition to the liability of a legal person for foreign bribery (2009 Anti-Bribery Recommendation Annex I.B). In Latvia, the *liability* of a legal person does not depend *per se* on the liability of a natural person. However, the Phase 1 Report (paras. 36-38) expressed concerns that *proceedings* against a legal person for foreign bribery cannot be commenced when proceedings against the natural person who bribed an official are precluded.

229. In Latvia proceedings against a natural person are a precondition for bringing proceedings against a legal person for corporate liability. CPL Section 439 governs the opening of proceedings against legal persons. Proceedings to apply “coercive measures” to a legal person can be initiated only when grounds for applying such measures are “ascertained during the course of criminal proceedings” (*i.e.* proceedings against natural persons):⁷⁶

439(1) If it has been ascertained during the course of criminal proceedings that, most likely, there are grounds for the application of a coercive measure, a person directing the proceedings shall take a reasoned decision that proceedings are initiated for the application of a coercive measure to a legal person. The person directing the proceedings shall notify the relevant legal person by sending a copy of the decision, as well as informing regarding the rights and duties thereof.

230. Under CPL Section 377(6), proceedings against natural persons cannot be initiated when the offender has been held criminally liable regarding the same criminal offence (*i.e.* double jeopardy). As a consequence, Latvia cannot launch proceedings against legal persons in the same case. This would be the case if an individual bribes a foreign official, is convicted in the country of the official for the crime, and Latvia recognises the conviction for the purposes of double jeopardy.⁷⁷

231. Latvian authorities’ attempts to address this concern are not convincing. In Phase 1 (para. 38) and Phase 2, they argued that CPL Section 370(1) allows criminal proceedings against a natural person⁷⁸ to be opened whenever there is a possibility that a criminal offence has taken place. If this test is met, then criminal proceedings against a natural person can be started, even if that natural person has been convicted. Proceedings against the legal person would then be started afterwards, immediately separated from those against the dead or convicted natural person, and continued on their own. This argument is highly doubtful, however, because it directly contradicts the clear language of CPL Section 377 prohibiting the opening of proceedings against a convicted individual. CPL Section 370(1) must be read in conjunction with – not in isolation from – CPL Section 377(6).

232. A further impediment to launching corporate proceedings – which is vigorously contested by Latvian authorities – is when a natural person who committed foreign bribery is deceased. Under CPL Section 377(5), proceedings against natural persons also cannot be initiated – or have to be terminated if already initiated – if “a person who is to be held or is held criminally liable has died, except for cases where proceedings are necessary in order to exonerate a deceased person”. During and after the on-site visit, Latvian authorities made numerous arguments that proceedings can be commenced against a deceased natural person. Some Latvian officials stated that criminal proceedings can be commenced even when the identity of the natural person perpetrator is unknown. That is hardly surprising, since the very purpose of criminal proceedings is often to identify the perpetrator. This case, however, is factually distinct from situations where the authorities know the identity of the perpetrator and the perpetrator has died or been convicted. Other officials argued that criminal proceedings can be opened and conducted just until the point before the indictment stage solely for gathering evidence and ascertaining whether the offender is

⁷⁶ The term “criminal proceedings” in the CPL refers to proceedings against *natural* persons. Proceedings against *legal* persons are defined as “proceedings regarding the application of a coercive measure to a legal person”.

⁷⁷ CPL Section 25(6) states that *non bis in idem* applies where a person has been convicted or acquitted for the same offence in a foreign state with which Latvia has an agreement regarding mutual recognition of criminal judgments or an agreement regarding the observance of the principles of *ne bis in idem*.

⁷⁸ As explained above, the term “criminal proceedings” in the CPL refers to proceedings against natural and not legal persons.

dead. However, this approach does not appear plausible since a conclusive factual determination can only be made by a court after an indictment and trial, which Latvian authorities concede cannot occur when the offender is dead. Latvian authorities later added that under CPL Section 59(2) a person who has probably committed a crime can have different statuses. This provision, however, does not deal with the question of when criminal proceedings may be initiated, but only when there are grounds for an individual to conduct a defence.

233. Latvian private sector lawyers at the on-site visit tended to agree with the concerns that double jeopardy and death of the natural person would prevent corporate proceedings. One lawyer stated that the provisions “look a little contradictory”. Some of the lawyers initially gave some weight to the government’s arguments described above. Support for these arguments disappeared as the private sector lawyers’ attention was drawn to the clear language of CPL Sections 377(5) and (6) prohibiting natural person proceedings in cases of death and double jeopardy.

Commentary

The lead examiners are seriously concerned that Latvia cannot initiate proceedings against a legal person if the natural person who has committed foreign bribery has been convicted in a foreign state and Latvia recognises the conviction for the purposes of double jeopardy. This scenario can often arise in foreign bribery cases, based on the experience of other Parties to the Convention. Latvia’s inability to launch corporate proceedings in these circumstances is thus a serious impediment.

The lead examiners are concerned as well that Latvia also cannot initiate proceedings against a legal person if the natural person who has committed foreign bribery is deceased. The lead examiners are not convinced by Latvian authorities’ arguments on this point, given the plain language in CPL Section 377(5). An amendment to the CPL would settle this issue conclusively.

For these reasons, the lead examiners recommend that Latvia amend the CPL to ensure that proceedings against a legal person for foreign bribery can be initiated where the natural person who committed the bribery has died or has been convicted.

4. Offence of Money Laundering

234. This section considers Latvia’s money laundering offence and its enforcement. The prevention and detection of foreign bribery and related money laundering is discussed at p. 26.

(a) Elements of the Money Laundering Offence

235. Latvia’s money laundering offence is defined in CL Section 195(1). The provision covers the “laundering of criminally acquired financial resources or other property”. All crimes (including foreign bribery) qualify as predicate offences, according to Latvia.

236. The Prevention of Money Laundering and Terrorism Financing Law (AMLTFL) is used to interpret the money laundering offence in CL Section 195(1). As noted in Phase 1 (paras. 90-91), Section 195(1) CL does not define the acts which amount to laundering. In interpreting this provision, Latvian courts have applied the definition of laundering in AMLTFL Section 5.⁷⁹ Latvian courts have also

⁷⁹ Riga City Latgale Urban District Court (13 July 2010); Madona District Court (17 May 2010); Kurzeme Regional Court (13 February 2009); Riga City Vidzeme Suburb Court (11 June 2010) No. K30-

applied the definition of “proceeds of crime” in AMLTFL Section 4, which covers property “owned or possessed by a person in the result of a direct or indirect criminal offence”.⁸⁰ Money laundering is also a criminal offence if the proceeds originate from acts committed outside Latvia and such acts constitute a criminal offence at the place where they were committed (*i.e.* dual criminality) (AMLTFL Section 5). Latvia states that the money laundering offence covers self-laundering, *i.e.* such as when a bribe-giver, intermediary or bribed official launders his/her own instrumentalities or proceeds of crime.

237. Latvia stated at the on-site visit that it can exercise territorial jurisdiction to prosecute non-residents who launder money through the Latvian banking system.

(b) Enforcement of the Money Laundering Offence

238. In practice, Latvia has not adequately enforced its money laundering offence. The number of money laundering investigations has increased from approximately 50 per year in 2010-2012 to 77 in 2013 and 95 in 2014. This number is still low considering that the FIU transmits approximately 5 600 suspicious transaction reports to law enforcement annually (see p. 29) and that Latvian banks are significantly exposed to the risk of money laundering (see p. 26). In addition, relatively few of these investigations have led to charges and convictions. In 2010-2014, there were on average fewer than 30 prosecutions per year. Cases resulting in convictions have decreased from ten per year in 2010-2011 to only six in 2014. These statistics are particularly low given that there are an average of 2 500 convictions annually for bribery, theft, fraud, and misappropriation. The figure would be even higher if other proceeds-generating offences like tax evasion and drug trafficking are included. While not all of these cases would involve money laundering, the discrepancy in the figures suggests that Latvia is not pursuing potential money laundering predicated on these offences. Moneyval is also concerned about under-enforcement.⁸¹

239. Information from specific cases also suggests that the money laundering offence is inadequately enforced. As mentioned at p. 27, bribes were allegedly channelled through non-resident bank accounts in Latvia in two foreign bribery cases (*Information Technology Contract* and *Gold Mining Cases*). Latvian authorities have not considered investigating individuals for money laundering in either case. The media has also reported several cases of foreign officials allegedly laundering the proceeds of corruption, fraud and embezzlement through Latvian bank accounts (see p. 27). None of these cases have produced money laundering charges in Latvia.

240. The Latvian authorities offered several explanations for the lack of enforcement. One reason may be a misplaced focus on seizing and confiscating the proceeds of crime. At the on-site visit, the police emphasised that Latvia’s priority is to freeze suspected proceeds. Court proceedings separate from those for money laundering or the predicate offence are then brought to confiscate the proceeds. The FIU stated flatly that the aim is to confiscate and not to prosecute. That said, there were no efforts to seize or confiscate proceeds in almost all of the alleged money laundering cases reported in the media described at p. 27. Confiscation may also be underused generally (see p. 69). Some officials blamed difficulties in obtaining MLA and the complexity of the cases for the lack of money laundering convictions. These two reasons, however, would not explain the wide discrepancy in the number of convictions in Latvia for money laundering versus those for economic offences such as bribery, theft, fraud, and misappropriation.

277/9/2010; Riga City Latgale Suburb Court (22 November 2011) No. 16870002609/K29-1540/11. See Annex 3 at p. 24 for the full text of AMLTFL Sections 4 and 5.

⁸⁰ Riga City Latgale Urban District Court (13 July 2010); Madona District Court (17 May 2010).

⁸¹ Moneyval (2012), *Report on Fourth Assessment Visit: Latvia*, paras. 129-139.

241. The lack of enforcement may be partly explained by the need for a conviction for the predicate offence to secure a conviction for money laundering. Money laundering requires proof that the property being laundered originated from a predicate offence. This can be quite difficult to prove without a conviction for the predicate, according to a prosecutor at the on-site visit. Without a conviction for the predicate, the prosecutor must prove the conduct that amounted to the predicate offence and that the laundered property originated from that offence. As Moneyval observed,⁸² this is a rather high standard of proof. Consequently, prosecutors tend to prosecute the predicate activity and money laundering together, but not standalone money laundering cases. However, the need for a conviction of the predicate offence would not explain why few of the 2 500 annual convictions for bribery, theft, fraud, and misappropriation have resulted in money laundering convictions.

Commentary

The lead examiners are concerned that Latvia does not sufficiently enforce its money laundering offence. As mentioned at p. 26, there are significant risks that the instruments and proceeds of corruption, including foreign bribery, are laundered in Latvia. The media has reported many cases of alleged corruption-related money laundering. Nonetheless, there have been relatively few prosecutions and convictions of money laundering. The lead examiners therefore urge Latvia to take immediate steps to increase the enforcement of its money laundering offence.

(c) *Sanctions for Money Laundering*

242. The current and proposed sanctions against natural persons for money laundering are as follows:

	Current Maximum Sanctions against Natural Persons for Money Laundering under CL Section 195⁸³	Proposed Amendment
Non-aggravated money laundering (CL Section 195(1))	<ul style="list-style-type: none"> • Deprivation of liberty not exceeding 3 years or temporary deprivation of liberty (<i>i.e.</i> incarceration up to 3 months) • Fine as basic punishment of 5-150 times the monthly minimum wage (MMW) (EUR 1 800-54 000) • Fine as additional punishment of 3-100 times MMW (EUR 1 080-36 000) • Confiscation as an additional sanction under CL Section 42 • Community service 	Fine as basic punishment of 5 – 1 000 times MMW (EUR 1 800 - 360 000)
Aggravated money laundering ⁸⁴ (CL Section 195(2))	<ul style="list-style-type: none"> • Deprivation of liberty not exceeding 5 years or temporary deprivation of liberty (<i>i.e.</i> incarceration up to three months) • Fine as basic punishment of 10-200 times MMW (EUR 3 600-72 000) • Fine as additional punishment of 3-100 times MMW (EUR 1 080-36 000) • Confiscation as an additional sanction under CL Section 42 • Community service 	Fine as basic punishment of 10 – 2 000 times MMW (EUR 3 600-720 000)

⁸² Moneyval (2012), *Report on Fourth Assessment Visit: Latvia*, paras. 108-112.

⁸³ The available sanctions include the basic punishment prescribed in CL Section 195 and the additional punishment prescribed in Sections 36-41. The fine pursuant to CL Section 41(2²) applies if the provision setting out the offence does not prescribe a fine (such as in CL Section 195(3)).

⁸⁴ The offence is aggravated if it is committed by a group of persons pursuant to a prior agreement.

	Current Maximum Sanctions against Natural Persons for Money Laundering under CL Section 195⁸³	Proposed Amendment
Further aggravated money laundering ⁸⁵ (CL Section 195(3))	<ul style="list-style-type: none"> • Deprivation of liberty of 3-12 years • Probationary supervision up to 3 years • Confiscation as an additional sanction under CL Section 42 • Fine pursuant to CL Section 41(2²) of 201-400 times MMW (EUR 72 360-144 000) • Fine as additional punishment of 3-100 times MMW (EUR 1 080-36 000) 	Fine pursuant to CL Section 41(2 ²) of 300-10 000 times MMW (EUR 108 000-3.6 million)
	Additional sanctions available for all three offences: deportation from Latvia; restriction of rights; probationary supervision; and confiscation under CPL Section 358.	No change

243. The maximum fines against natural persons for money laundering are not effective, proportionate and dissuasive, as the Working Group noted in Phase 1 (para. 150). The total maximum fine is the sum of the maximum fines as basic and additional punishments. The maximum fine is only EUR 90 000 for non-aggravated laundering, EUR 108 000 for aggravated laundering, and EUR 180 000 for further aggravated laundering. The availability of other sanctions such as incarceration ameliorates the problem. Nevertheless, an economic crime such as money laundering should attract sufficient economic sanctions. Confiscation of the proceeds of bribery and the offender's property is also available. A proposed legislative amendment would increase the maximum fines as basic punishment to EUR 360 000 for non-aggravated, EUR 720 000 for aggravated and EUR 3.6 million for further aggravated money laundering. Latvia is encouraged to enact this amendment.

244. There are also concerns that the sanctions imposed for money laundering in practice are inadequate. Of the 53 persons convicted of money laundering 2011-2014, only 3 custodial sentences were imposed, compared to 46 suspended jail sentences. The fines imposed were low, averaging EUR 12 500 in 2012 and substantially lower in the other years during the period. Confiscation was ordered 25 times, *i.e.* in less than half of the convictions, netting EUR 9.6 million. Officials of financial institutions have not been criminally sanctioned for involvement or assistance in money laundering.

245. Legal persons are punishable for money laundering by liquidation; limitation of rights; confiscation of property; or a monetary levy of 10-100 000 times MMW (EUR 3 600-36 million) (CL Section 70⁶(1)). These provisions have yet to be applied in an actual case of money laundering.

Commentary

The lead examiners recommend that the Working Group follow up whether the sanctions imposed in practice for money laundering in foreign bribery cases are effective, proportionate and dissuasive.

5. Offence of False Accounting

246. Article 8(2) of the Convention requires Parties to sanction the foreign bribery-related accounting misconduct described in Article 8(1). As noted in the Phase 1 Report (para. 101), Latvia implements Article 8(2) through CL Section 217. The section establishes an offence of "hiding or forging of accounting documents, annual accounts, statistical reports or statistical information prescribed by law for

⁸⁵ The offence is further aggravated if it is committed by an organised group or of a large scale (*i.e.* involving at least 50 times MMW (EUR 18 000)).

an undertaking (company), institution or organisation”. Legal persons can be held liable under CL Section 70¹ for accounting violations in breach of CL Section 217.

247. An additional offence in Section 166⁶ of the Administrative Violations Code concerns a failure to comply with accounting requirements specified in regulatory enactments, failure to submit financial statements on time, or providing incomplete submissions. Latvia stated that this provision only applies to minor violations not covered by criminal law and hence would not apply in foreign bribery cases (Phase 1 Report, para. 102).

(a) Sanctions for False Accounting

248. The table below describes the maximum sanctions against natural persons for false accounting under CL Section 217 and proposed amendments before Parliament:

	Current Maximum Sanctions against Natural Persons for False Accounting under CL Section 217⁸⁶	Proposed Amendment
Non-aggravated false accounting (CL Section 217(1))	<ul style="list-style-type: none"> • Deprivation of liberty of up to 1 year or temporary deprivation of liberty (<i>i.e.</i> incarceration up to 3 months) • Fine as basic punishment of 5-150 times MMW (EUR 1 800-54 000) • Fine as additional punishment of 3-100 times MMW (EUR 1 080-36 000) 	Fine as basic punishment of 5 – 1 000 times MMW (EUR 1 800 - 360 000)
Aggravated false accounting (CL Section 217(2)) ⁸⁷	<ul style="list-style-type: none"> • Deprivation of liberty of up to 3 years or temporary deprivation of liberty (<i>i.e.</i> incarceration up to three months) • Fine as basic punishment of 5-150 times MMW (EUR 1 800-54 000) • Fine as additional punishment of 3-100 times MMW (EUR 1 080-36 000) 	Fine as basic punishment of 10 – 2 000 MMW (EUR 3 600 - 720 000)
Further aggravated false accounting (CL Section 217(3)) ⁸⁸	<ul style="list-style-type: none"> • Imprisonment of up to 5 years • Fine as basic punishment of 10-200 times MMW (EUR 3 600-72 000) • Fine as additional punishment of 3-100 times MMW (EUR 1 080-36 000) 	Fine as basic punishment of 10 – 2 000 MMW (EUR 3 600 - 720 000)
	Additional sanctions available for all three offences: community service; deportation from Latvia; restriction of rights; probationary supervision; and confiscation under CPL Section 358.	No change

249. Sanctions against legal persons for false accounting are stipulated in CL Section 70¹, namely liquidation; restriction of rights; confiscation of property; or a monetary levy (*i.e.* fine) of 10-100 000 times the minimum monthly wage (EUR 3 600-36 million) (CL Section 70⁶(1)). These maximum sanctions are the same as those for foreign bribery. A company may also be liable to other natural and legal persons for damages caused by breaches of the LOA (LOA Section 17; Phase 1 Report, para. 103).

⁸⁶ The available sanctions include the basic punishment prescribed in CL Section 217 and the additional punishment prescribed in Sections 36-41.

⁸⁷ The offence is aggravated if it causes substantial harm to the State authority, local government order, or the interests of persons protected by law.

⁸⁸ The offence is further aggravated if it is committed for acquiring property.

250. The maximum sanctions available against natural persons for false accounting are not sufficient. The maximum jail sentence for non-aggravated false accounting (CL Section 217(1)) is only one year. Also insufficient are the maximum fines for all three forms of false accounting (non-aggravated, aggravated and further aggravated in CL Sections 217(1)-(3)). These range from EUR 90 000-108 000 depending on whether the offence is aggravated (Phase 1 Report, paras. 104 and 150). The current proposal would increase the maximum fine as a basic punishment to EUR 360 000 for non-aggravated and EUR 720 000 for aggravated and further aggravated false accounting. Latvia is encouraged to enact this amendment.

251. Given the inadequate maximum sanctions, the sanctions imposed in practice are also very low. Latvia's questionnaire responses referred to five convictions for false accounting. None resulted in actual incarceration. (Two custodial sentences were suspended conditionally.) In three of the cases in which false accounting was committed to evade taxes, the fines imposed were substantially lower than the amount of taxes evaded. In one case, two individuals received only community service.

Commentary

The lead examiners recommend that Latvia take steps to ensure that the sanctions imposed in practice for false accounting are effective, proportionate and dissuasive.

(b) Enforcement of the False Accounting Offence

252. Latvia does not appear to have actively enforced the false accounting offence. As noted above, Latvia states that convictions for false accounting are rare. KNAB has jurisdiction to investigate false accounting that is related to corruption offences (see p. 32) but its cases have not produced false accounting charges. In the major *Latvenergo* domestic bribery case, one of the briber's accounts incorrectly described alleged bribe payments as "consultant services". Nevertheless, KNAB concluded that this was insufficient for forgery or false accounting charges, while prosecutors found that the act was not technically a crime.

253. The lack of enforcement of related offences does not appear to be unique to false accounting in bribery cases. Bribery-related money laundering is also under-enforced (see p. 62). A 2013 Supreme Court summary of cases stated that, where an accused falsifies accounts in order to evade taxes, the accused is generally charged only with tax evasion and not false accounting. A prosecutor at the on-site visit stated that the summary is not binding but the same approach would be taken to bribery-related false accounting. That said, the practice described in the case summary does not appear to be uniform; Latvia referred to three cases that resulted in both false accounting and tax evasion convictions in 2014.

Commentary

The lead examiners recommend that Latvia take steps to ensure that false accounting related to foreign bribery is fully investigated and prosecuted where appropriate.

6. Sanctions for Foreign Bribery

(a) Sanctions against Natural Persons for Foreign Bribery

254. The following table summarises the current maximum sanctions available against natural persons for foreign bribery and proposed amendments:

	Current Maximum Sanctions against Natural Persons for Foreign Bribery under CL Section 323⁸⁹ (See also p. 69 for Confiscation)	Proposed Amendment
Non-aggravated foreign bribery (CL Section 323(1))	<ul style="list-style-type: none"> • Deprivation of liberty not exceeding 5 years or temporary deprivation of liberty (<i>i.e.</i> incarceration up to 3 months) • Fine as basic punishment of 10-200 times MMW (EUR 3 600-72 000) • Fine as additional punishment of 3-100 times the minimum monthly wage (EUR 1 080-36 000) 	Fine as basic punishment of 5-1 000 times MMW (EUR 1 800-360 000)
Aggravated foreign bribery ⁹⁰ (CL Section 323(2))	<ul style="list-style-type: none"> • Deprivation of liberty of up to 8 years • Ban up to 5 years on engaging in specific employment or holding a specific office • Fine pursuant to CL Section 41(2²) of 201-400 times MMW (EUR 72 360-144 000) • Fine as additional punishment of 3-100 times MMW (EUR 1 080-36 000) 	Fine pursuant to CL Section 41(2 ²) of 300-10 000 times MMW (EUR 108 000-3.6 million)
Further aggravated foreign bribery ⁹¹ (CL Section 323(3))	<ul style="list-style-type: none"> • Deprivation of liberty of 2 to 10 years • Probationary supervision up to 3 years • Ban up to 5 years on engaging in specific employment or holding a specific office • Fine pursuant to CL Section 41(2²) of 201-400 times MMW (EUR 72 360-144 000) • Fine as additional punishment of 3-100 times MMW (EUR 1 080-36 000) 	Fine pursuant to CL Section 41(2 ²) of 300-10 000 times MMW (EUR 108 000-3.6 million)
	Additional sanctions available for all three offences: community service; deportation from Latvia; restriction of rights; and probationary supervision	No change

255. The maximum fine available for foreign bribery is too low, as noted in the Phase 1 Report (paras. 44 and 150). The maximum is only EUR 108 000 for non-aggravated foreign bribery, and EUR 180 000 for aggravated and further aggravated foreign bribery. The value of the bribes and proceeds of crime in many foreign bribery cases greatly exceed these maximum fines. Latvia suggests that confiscation of the proceeds and the offender's property is also available to complement fines. Further penalties such as adequate fines are also necessary as deterrence. A draft amendment to CL Sections 41 and 41(2²) would increase the maximum fines as basic punishment to EUR 360 000 for non-aggravated foreign bribery, and EUR 3.6 million for aggravated and further aggravated foreign bribery. Latvia is encouraged to enact this amendment.

⁸⁹ The available sanctions include the basic punishment prescribed in CL Section 323 and the additional punishment prescribed in CL Sections 36-41. The fine pursuant to CL Section 41(2²) applies if the provision setting out the offence does not prescribe a fine (such as in CL Section 323(2) and (3)).

⁹⁰ The offence is aggravated if the bribe is at least 50 times MMW (EUR 18 000); is committed by a public official; or is committed by a group of persons pursuant to a prior agreement.

⁹¹ The offence is further aggravated if the bribe is at least 50 times MMW (EUR 18 000) and it is committed by an organised group.

256. Further draft legislative amendments address concerns involving intermediaries, which are subject to a different offence (see p. 52). Under CL Section 322, an individual who intermediates a bribery transaction is punishable by imprisonment of four years, or two to ten years if the intermediary is a Latvian official; community service; and a fine of 10-200 times MMW (EUR 3 600 – 72 000). The Phase 1 Report (para. 43) expressed concerns that the maximum four-year prison sentence for an intermediary is lower than that for the principal briber (five years). A draft legislative amendment would raise the maximum for intermediaries to five years.

257. The sanctions imposed in practice may also be insufficient. In the absence of foreign bribery convictions, domestic bribery cases offer some guidance. In 2010-2014, 231 persons were convicted for domestic active bribery but only 18 received custodial sentences. Of the others, 109 persons received community service, 61 persons received suspended prison sentences and 40 were fined. Likewise, 19 convictions of intermediating domestic bribery resulted in 2 prison sentences, 12 suspended prison sentences, 2 fines and 3 community service orders.

258. Specific cases illustrate the inadequacy of sanctions in practice. In the *Iberdrola* domestic corruption case, almost EUR 7 million in illicit payments were made to secure contracts worth over EUR 280 million. Yet, the company manager was fined just EUR 24 000 with no jail sentence. In another case,⁹² offenders offered to pay bribes of LVL 50 000 (EUR 71 144) plus LVL 1 000 (EUR 1 423) monthly to KNAB officials to terminate an on-going investigation. Most would consider the crime to be serious because it sought to interfere with the judicial process. Although one offender received a two-year prison sentence, the other received only a one-year suspended sentence. Latvia's questionnaire responses described two additional cases involving bribes of EUR 65 000 and EUR 80 000. The two bribers were each fined approximately EUR 34 300, just a fraction of the bribe payment.

Commentary

The lead examiners are concerned that the maximum fines available against natural persons for foreign bribery are too low. The maximum is only EUR 108 000 for non-aggravated foreign bribery, and EUR 180 000 for aggravated and further aggravated foreign bribery. Maximum fines for intermediaries are similar. These maximum fines are much lower than the values of the bribes and proceeds of crime in many foreign bribery cases. Latvia is encouraged to enact the current draft amendment to increase these sanctions.

Of even greater concern is that insufficient sanctions imposed domestic bribery cases suggest that punishment imposed in practice for foreign bribery would also be inadequate. Paying bribes to Latvian officials rarely results in custodial sentences. Fines that are imposed are often not proportionate to the gravity of the offence. Some bribers receive immunity from prosecution and hence are not punished at all (see p. 45). The result is that bribers escape with relative impunity. These light criminal sanctions are counter-productive to Latvia's wider efforts to fight domestic corruption and to enhance integrity in its civil service.

For these reasons, the lead examiners recommend that Latvia (a) take steps to ensure that sanctions imposed in practice against natural persons for active bribery, including in plea agreements, are effective, proportionate and dissuasive, and (b) enact the draft amendment to CL Section 322 and raise the maximum prison sentence for intermediaries to five years.

⁹²

Riga Regional Court (31 October 2006), Criminal Case KA-04-270-06/29.

(b) Sanctions against Legal Persons for Foreign Bribery

259. Legal persons are punishable for foreign (and domestic) bribery by liquidation; restriction of rights; confiscation of property; or a monetary levy (*i.e.* fine) of 10-100 000 times MMW (EUR 3 600-36 million) (CL Sections 70²(1) and 70⁶(1)). Apart from liquidation, these sanctions may be applied cumulatively (CL Section 70²(2)). The following factors are taken into account in determining the sentence: the actual offence (*i.e.* harm) caused; nature and consequences of the offence; the legal person's size, activities and financial circumstances; measures to prevent the offence that had been committed and to prevent future offences; settlement with a victim and providing compensation (CL Section 70⁸).

260. In the absence of foreign bribery cases, domestic corruption cases provide some guidance on the application of sanctions in practice. In the *AS Latvijas Investīcijas Case*,⁹³ a company agreed to pay EUR 8 520 in bribes so the government would offer an apartment to the tenant of a flat owned by the company. EUR 4 331 was ultimately paid in bribes before the scheme was halted. The company was eventually fined EUR 6 400, which was substantially less than the agreed bribe and possibly much less than the benefit that the company would derive from repossessing the flat vacated by the tenant. The fine was also just 1.2% of the company's annual turnover.

261. The *Iberdrola* domestic corruption case also suggests that sentences imposed in practice are insufficient. The company paid almost EUR 7 million to win contracts worth over EUR 280 million. The company was convicted of trading in influence and fined only EUR 1.6 million. Latvia explained that the sentence was imposed pursuant to a "prosecutor's injunction" (a form of out-of-court settlement) under CL Section 70⁶ (see p. 46) This caps the fine at half of the maximum (which was only 10 000 times MMW at the time). Why the prosecutor did not take the matter to court to seek a higher fine is wholly unclear. Prosecutor's injunctions are not available in foreign bribery cases because the offence is classified as a serious crime. Nonetheless, plea agreements with legal persons are available in foreign bribery cases (see p. 46). The *Iberdrola* case illustrates concerns that prosecutors may not fully consider the adequacy of sanctions before entering into plea agreements in corruption cases.

Commentary

The lead examiners are concerned that sanctions against legal persons in foreign bribery cases – including cases resolved through plea agreements – may not be adequate. Latvia states that these concerns are premature since it has not had foreign bribery cases against legal persons. Nevertheless, practice in two domestic bribery cases are sufficient cause for concern. The lead examiners therefore recommend that Latvia take steps to ensure that sanctions applied to legal person for foreign bribery, including through plea agreements, are effective, proportionate and dissuasive in practice.

(c) Confiscation

262. There are two confiscation regimes in Latvia that apply to foreign bribery. First, a *convicted* person's property may be confiscated to the State without compensation as a punishment. If the convicted person is a natural person, then confiscation under this regime is available only for aggravated and further aggravated foreign bribery but not non-aggravated foreign bribery (CL Section 42). If the convicted person is a legal person, then confiscation is available for non-aggravated, aggravated and further aggravated foreign bribery (CL Section 70⁵). Property that has been transferred to third parties may be confiscated (Phase 1 Report, paras. 51-54).

⁹³ Riga District Court (28 March 2014), Case K27-241-14/8.

263. Second, CPL Section 358 allows confiscation of “criminally acquired property”. Property is “criminally acquired” if it has “directly or indirectly come into the property or possession of a person as a result of a criminal offence” (CPL Section 355). This includes gains obtained from the realisation of property, and yield acquired from using criminally acquired property (CPL Section 355(4)). This definition covers a bribe and the proceeds of foreign bribery. If confiscation is not possible because the subject property has been alienated, destroyed, concealed or disguised, then the court may order the confiscation of other property of equivalent value (CPL Sections 358(2) and (3)). Confiscation under these provisions is available against natural and legal persons for non-aggravated, aggravated and further aggravated foreign bribery. A conviction of the person from whom property is confiscated is not a prerequisite. Confiscation proceedings can be conducted separately from criminal proceedings determining guilt (CPL Chapter 58).

264. Data provided by Latvia indicates that confiscation is used infrequently. In the absence of foreign bribery cases, domestic corruption cases again provide guidance. In 2010-2012, conviction-based confiscation under CL Section 42 was imposed against just 2 persons out of 81 convictions of active bribery and intermediation in bribery, and against 17 persons out of 41 convictions for passive bribery. Data for 2013-2014 were not available. Latvia added that non-conviction-based confiscation could have been ordered in corruption cases during this period but could not provide any supporting data. Latvia referred to 11 other non-conviction-based confiscation orders in 2011-2015 which relate to one case (*Latvenergo*). Non-conviction-based confiscation was sought in an additional on-going case.

Commentary

The lead examiners recommend that Latvia train investigators and prosecutors on confiscation, and take steps to ensure that law enforcement authorities and prosecutors routinely seek confiscation in corruption cases.

(d) Debarment from Public Procurement

265. Article 39¹(1)1(a) of Public Procurement Law (PPL) excludes from public procurement “a candidate, a tenderer or a person, who is proctor or member of the board of directors or council of tendered or candidate, or person, having the right to represent the candidate or tenderer”, who has been sanctioned for giving bribes or intermediating bribery. The provision covers both natural and legal persons who have been sanctioned by a court, including through a plea agreement, according to Latvia. These persons are excluded from obtaining public service and supply contracts exceeding EUR 42 000 and public works contracts exceeding EUR 170 000. Debarment applies for three years from final adjudication (PPL Article 39¹(4)1). (See pp. 15 and 16 for exclusion from export credits and ODA-funded contracts.)

266. Latvian authorities state that all procuring authorities are required to verify the Register of Punishment to determine whether participants in public procurement have a disqualifying conviction. The Register includes natural persons who have been convicted and legal persons who have been subject to coercive measures. Foreign natural and legal persons are required to provide separate proof that they do not have disqualifying convictions. The Public Procurement Bureau (PPB) under the Ministry of Finance and the Administrative Court oversee public procurement in Latvia. The PPB has conducted seminars and issued guidelines reminding procuring authorities of the verification requirement. Administrative sanctions have been imposed against at least three individuals for failure to verify. There is no information on whether natural and legal persons have been debarred because of involvement in bribery.

D. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

267. Based on its findings regarding Latvia's implementation of the Convention and the 2009 Recommendation, the Working Group (1) makes the following recommendations to Latvia under Part I; and (2) will follow up the issues in Part II when there is sufficient practice. Latvia will report to the Working Group orally within one year, i.e. by October 2016, on the steps taken to implement recommendations 3(a), 9(b), 10(a), 10(b), 15(a) Latvia will further report in writing within two years, i.e. by October 2017, on its implementation of all of the recommendations and on developments concerning the follow-up issues.

I. Recommendations

Recommendations for Ensuring Effective Prevention and Detection of Foreign Bribery

1. With respect to prevention and awareness-raising, the Working Group recommends that Latvia:
 - (a) ensure that the implementation of the Corruption Prevention and Combating Guidelines for 2015-2020 gives priority to addressing (i) KNAB's efforts and capacity to detect and investigate foreign bribery allegations; (ii) the process for appointing and dismissing the Director of KNAB; (iii) the prevention, detection and enforcement of corruption-related money laundering and false accounting; and (iv) the effectiveness of Latvia's foreign bribery offence (2009 Recommendation III);
 - (b) continue to significantly raise awareness of foreign bribery in the private sector, including among business associations and in important sectors such as SMEs and SOEs (2009 Recommendation III).

2. With respect to reporting of foreign bribery, the Working Group recommends that:
 - (a) the Ministry of Foreign Affairs (MOFA) continue to provide written guidance and training to MOFA staff on their obligation to detect and report foreign bribery (including through media monitoring), and on the assistance that foreign missions should give to Latvian companies about bribe solicitation (2009 Recommendation III, IX(ii) and Annex I.A);
 - (b) Latvia pursue its intention to put in place measures to require reporting by public officials, directly or indirectly through an internal mechanism, to law enforcement authorities of suspected acts of bribery of foreign public officials in international business transactions detected in the course of their work (2009 Recommendation III and IX(i)).

3. Regarding whistleblowing, the Working Group recommends that Latvia:
 - (a) ensure that appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery (2009 Recommendation III and IX(iii));
 - (b) take steps to encourage whistleblowing, including by conveying the importance of bona fide whistleblowing as a component of public and private integrity systems, raising awareness of the protections available to private sector whistleblowers, and ensuring that easily accessible channels are available for whistleblowers (2009 Recommendation III, IX(i) and (iii)).

4. With respect to officially supported export credits, the Working Group recommends that Latvia (a) ensure that Altum has sufficient human and financial resources to systematically conduct adequate due diligence on all applicants for support, (b) ensure that Altum's anti-bribery policy and practice meet the 2006 Recommendation, and (c) train Altum's staff on preventing, detecting and reporting foreign bribery (2009 Recommendation IX(i), X.C, and XII).
5. With respect to official development assistance (ODA), the Working Group recommends that Latvia adopt adequate measures to prevent, detect and report foreign bribery, and consider excluding companies convicted of this crime from ODA projects, if Latvia engages the private sector in future ODA-funded projects (2009 Recommendation XI).
6. Regarding taxation, the Working Group recommends that Latvia:
 - (a) enhance the detection of bribes by (i) amending SRS Internal Regulation 38 to ensure that it covers foreign bribery as defined in CL Section 323, (ii) considering incorporating additional material from the OECD Bribery Awareness Handbook for Tax Examiners into the Regulation, (iii) taking steps to ensure that taxpayers who are at risk of committing foreign bribery are identified for tax audits, and (iv) assessing whether bribes are effectively detected by tax authorities as per the 2009 Tax Recommendation I(ii) (2009 Recommendation VIII and 2009 Tax Recommendation I(ii));
 - (b) take steps to require that prosecutors request SRS to conduct an assessment of an alleged offender's tax return under Section 23(4¹) of the Law on Taxes and Fees in all foreign bribery cases (2009 Recommendation VIII);
 - (c) continue to raise awareness of foreign bribery among tax officials and taxpayers, and provide additional training to tax examiners on bribe detection (2009 Recommendation III, VIII and 2009 Tax Recommendation II).
7. With respect to accounting requirements, external audit and internal company controls, the Working Group recommends that Latvia:
 - (a) take steps to encourage companies to develop, adopt and effectively implement adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery; and encourage business and professional associations to develop similar programmes or measures in their efforts to assist companies, particularly SMEs (2009 Recommendation III and X.C(i));
 - (b) ensure that guidance on internal controls for SOEs in the anti-corruption area explicitly deals with foreign bribery (2009 Recommendation III and X.C(i));
 - (c) take further steps to raise awareness of foreign bribery among external auditors, including by providing training on detecting foreign bribery (2009 Recommendation III(i));
 - (d) take effective steps to encourage companies that receive reports of suspected acts of foreign bribery from an external auditor to actively and effectively respond to such reports (2009 Recommendation III(iv) and X.B(iv));
 - (e) enact the legislative amendment to require external auditors to report foreign bribery to competent authorities as soon as possible; and further amend its legislation to clarify that courts, prosecutors and investigators may require an auditor to provide information for use in foreign bribery investigations (2009 Recommendation III(iv) and X.B(v)).

8. With regards to money laundering, the Working Group recommends that Latvia:
- (a) amend the AMLTFL to ensure that all categories of politically exposed persons (PEPs) are covered (Convention Article 7; 2009 Recommendation III(ii));
 - (b) require all regulated entities to apply enhanced due diligence and other additional anti-money laundering measures when evaluating non-residents who pose money laundering risks (Convention Article 7; 2009 Recommendation II);
 - (c) enhance the detection of money laundering by (i) ensuring that the FIU has sufficient resources to analyse all STRs and UTRs and forward information related to foreign bribery to KNAB, and (ii) providing additional guidance, typologies and training to regulated entities that specifically address the reporting of money laundering related to corruption and foreign bribery, especially money laundering by non-resident bank clients (Convention Article 7; 2009 Recommendation III(i));
 - (d) take steps to ensure compliance with the AMLTFL by (i) increasing the FCMC's resources; (ii) ensuring that on-site inspections of regulated entities, including their overseas offices, are conducted at a frequency that is commensurate with an entity's risk of assisting or facilitating money laundering; (iii) giving greater priority to inspecting banks that specialise in non-resident deposits; (iv) examining why the FCMC and/or reporting entities failed to detect the instances of alleged money laundering that have been reported in the media and taking appropriate remedial action; and (v) commence proceedings against the relevant natural and legal persons when breaches of the AMLTFL are detected (Convention Article 7; 2009 Recommendation II);
 - (e) take immediate steps to increase enforcement of its money laundering offence (Convention Article 7; 2009 Recommendation III(ii)).

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery and related offences

9. With respect to the investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Latvia:
- (a) take steps to ensure that KNAB investigators systematically have in-depth discussions with the supervising prosecutor in all foreign bribery cases (Convention Article 5 and Commentary 27; 2009 Recommendation V and Annex I.D);
 - (b) (i) establish clear rules to ensure that all allegations of foreign bribery are systematically transmitted to KNAB for investigation, (ii) ensure that all credible foreign bribery allegations are proactively investigated, and (iii) make full use of the broad range of investigative measures available, as appropriate (Convention Article 5 and Commentary 27; 2009 Recommendation II, V and Annex I.D);
 - (c) provide regular training to KNAB, the PPO and the judiciary on (i) the foreign bribery offence and related offences, (ii) legal person liability; (iii) confiscation measures; (iv) investigative techniques, including forensic accounting and information technology and (v) the application of settlements in foreign bribery cases, including on the 2014 guidance on effective regret (Convention Article 5 and Commentary 27; 2009 Recommendation II, V and Annex I.D);

- (d) take steps to ensure that false accounting related to foreign bribery is fully investigated and prosecuted where appropriate (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (e) make public, where appropriate and in conformity with applicable rules, available information about the settlements in foreign bribery cases, including the facts, the reason for settlement, the terms of the settlement, and any sanctions imposed (Convention Article 5 and Commentary 27; 2009 Recommendation V and Annex I.D);
- (f) take steps to ensure that KNAB's investigations proceed without undue delay (Convention Article 6 and 2009 Recommendation V).

10. With respect to the capacity and independence of KNAB, the Working Group recommends that Latvia:

- (a) ensure that personnel issues do not interfere with KNAB's ability to investigate foreign bribery (Convention Article 5 and Commentary 27; 2009 Recommendation II, III(i), V and Annex I.D);
- (b) amend its legislation to (i) clarify the statutory grounds for dismissal of KNAB Director; and (ii) specify the composition of the committee on dismissal and (iii) permit dismissal only where the committee finds grounds (Convention Article 5 and Commentary 27; and 2009 Recommendation V and Annex I.D);
- (c) take steps to ensure that the government continues to refrain from comments that risk creating the perception of political interference in KNAB (Convention Article 5 and Commentary 27; 2009 Recommendation V and Annex I.D);
- (d) raise awareness of Article 5 of the Convention among KNAB and other relevant government officials (Convention Article 5 and Commentary 27; 2009 Recommendation V and Annex I.D).

11. Regarding statistics, the Working Group recommends that Latvia:

- (a) provide detailed enforcement data on KNAB's enforcement record, including on the number of complex cases and successfully concluded cases (Convention Article 5 and Commentary 27; and 2009 Recommendation V and Annex I.D);
- (b) maintain comprehensive statistics on (i) delay in proceedings and cases that are time-barred; and (ii) incoming and outgoing MLA and extradition requests, including on the offences involved, assistance requested, and time required for execution; (Convention Articles 5, 6, 9; 10 and Commentary 27; 2009 Recommendation V and Annex I.D).

12. With respect to MLA and extradition, the Working Group recommends that Latvia:

- (a) take all necessary measures to ensure that MLA can be provided in foreign bribery-related non-criminal proceedings against a legal person (Convention Article 9; 2009 Recommendation III(ix) and XIII(iv));
- (b) amend its legislation to expressly require the prosecution of Latvian individuals whose extradition has been refused solely on grounds of nationality, such as by revising the draft

amendment of the CPL currently being considered by Parliament (Convention Article 10; 2009 Recommendation III(ix) and XIII(iv)).

13. With respect to the foreign bribery offence, the Working Group recommends that Latvia amend its legislation to ensure that:

- (a) the requirement of direct intent as defined in Latvian law is consistent with Article 1 of the Convention (Convention Article 1);
- (b) the offence explicitly covers (i) the promise of a bribe, and (ii) bribery of officials of any organised foreign area or entity, such as an autonomous territory or a separate customs territory (Convention Article 1; 2009 Recommendation III(ii) and V).

14. With respect to the liability of legal persons, the Working Group recommends that Latvia:

- (a) provide guidance to practitioners on the interpretation of the corporate liability regime in CL Section 70¹, including through interpretive manuals and training (Convention Article 2; 2009 Recommendation Annex I.B);
- (b) amend the CPL to ensure that proceedings against a legal person for foreign bribery can be initiated where the natural person who committed the bribery has died or has been convicted (Convention Articles 2 and 3; 2009 Recommendation III(ii) and Annex I.B).

15. With respect to sanctions and confiscation for foreign bribery and related offences, the Working Group recommends that Latvia:

- (a) enact the draft amendment to (i) CL Section 322 and raise the maximum prison sentence for intermediaries to five years and (ii) raise maximum monetary sanctions for foreign bribery, false accounting and money laundering (Convention Article 3(1));
- (b) take steps to ensure that the sanctions imposed in practice for (i) false accounting, (ii) foreign bribery against natural and legal persons, including in plea agreements, are effective, proportionate and dissuasive (Convention Articles 3 and 8);
- (c) take steps to ensure that law enforcement authorities and prosecutors routinely seek confiscation in corruption cases (Convention Article 3(3)).

II. Follow-up by the Working Group

16. The Working Group will follow up the issues below, as practice develops, in order to assess:

- (a) The provision of tax information to foreign authorities for use in foreign bribery investigations (2009 Recommendation III(iii); 2009 Tax Recommendation I);
- (b) Whether future appointments of the Director of KNAB are based on competence and without any real or perceived political interference (Convention Article 5);
- (c) Whether Latvia can provide confiscation as MLA in foreign bribery cases (Convention Articles 3(3) and 9);
- (d) Whether factors listed in Article 5 of the Convention influence the granting of MLA or extradition by Latvia in foreign bribery cases (Convention Articles 5, 9 and 10);

- (e) Whether Latvia's foreign bribery offence covers bribes paid in return for any use of the public official's position, whether or not within the official's authorised competence (Convention Article 1);
- (f) The interpretation of the term "in the interest of the giver or person offering the bribe, or in the interest of other persons" in CL Section 323 (Convention Article 1);
- (g) The application of the corporate liability provisions in CL Section 70¹ (Convention Article 2);
- (h) The sanctions imposed in practice against natural persons for money laundering and breaches of the AMLTFL (Convention Articles 3, 7 and 8; 2009 Recommendation III(ii)).

ANNEX 1 PARTICIPANTS AT THE ON-SITE VISIT

Public Sector

- Ministry of Justice
 - Criminal Law Department
 - Department of Judicial Co-operation
 - Judicial Policy Department
- Corruption Prevention and Combating Bureau (KNAB)
- Public Prosecutor's Office
 - Division for Investigation of Especially Serious Cases, Prosecutor General's Office
 - Division for International Co-operation, Prosecutor General's Office
 - Prosecutor's Office, Riga District Court
 - Prosecutor's Office for Organised Crime and other specialised sector
 - Prosecution Office of Financial and Economic Crimes
- State Police
- Control Service (Financial Intelligence Unit)
- Ministry of Foreign Affairs, including Development Co-operation Policy Division
- Ministry of Finance
- State Revenue Service
 - Financial Police
 - Tax Control Department
 - Central Information Exchange Division
 - Direct Tax Department
 - Tax Administration and Accountancy Policy Department
- Financial and Capital Market Commission
- Ministry of Economics
- Investment and Development Agency of Latvia
- Bank of Latvia
- Public Procurement Bureau
- JSC Altum
- Prime Minister's Office
- State Chancellery

Judiciary

- Riga Regional Court
- Bauska City Court
- Riga City Latgale District Court Rīga City Vidzeme District Court
- Analytical Advisor, Criminal Law Department, Supreme Court
- Latvian Judicial Training Centre

Private Sector

Companies, Including State-Owned or State-Controlled Enterprises

- AS Latvenergo
- ABLV Bank
- Baltikums Bank AS
- Food Union
- Grindex
- Itera Latvija, SIA
- LDZ Cargo
- Nordea Bank AB
- Olainfarm
- Rietumu Banka
- Swedbank
- Valmieras stikla skiedra

Business Associations

- Employers' Confederation of Latvia
- Latvian Chamber of Commerce and Industry
- Institute for Corporate Sustainability and Responsibility

Legal Profession and Academics

- Deloitte Legal ZAB
- Latvian Council of Sworn Advocates
- Latvian University Law Faculty
- Rodel un partneri

Accounting and Auditing Profession

- Association of Accountants of the Republic of Latvia
- Audit Consultative Council
- Audit Oversight Council
- Ernst & Young
- KPMG

Civil Society

- Delna Society for Transparency (Transparency International Latvia)
- ELJA 50
- Free Trade Union Confederation of Latvia
- Latvijas Radio
- LETA
- LSM (Latvijas Sabiedriskie Mediji)
- Providus
- Žurnāls IR

Parliamentarians

- Members of *Saeima*

ANNEX 2 LIST OF ABBREVIATIONS AND ACRONYMS

AAL	Annual Accounts Law	LOA	Law on Accounting
AML	anti-money laundering	LPO	Law on Prosecution Office
AMLTFL	Prevention of Money Laundering and Terrorism Financing Law	MAAC	Multilateral Convention on Mutual Administrative Assistance in Tax Matters
CIL	Credit Institutions Law	MLA	mutual legal assistance in criminal matters
CIS	Commonwealth of Independent States	MMW	minimum monthly wage (EUR 360 at the time of this report)
CL	Criminal Law	MOF	Ministry of Finance
CPL	Criminal Procedure Law	MOFA	Ministry of Foreign Affairs
EAW	European Arrest Warrant	MOJ	Ministry of Justice
EU	European Union	MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Council of Europe)
EUR	euro	NGO	non-governmental organisation
FATF	Financial Action Task Force	ODA	official development assistance
FCMC	Financial and Capital Market Commission	PEP	politically exposed person
FIU	Financial Intelligence Unit of Latvia	PGO	Prosecutor General's Office
IAS	International Accounting Standards	PPL	Public Procurement Law
IFRS	International Financial Reporting Standards	PPO	Public Prosecutor's Office
IOL	Investigatory Operations Law	SOE	state-owned or state-controlled enterprise
ISA	International Standards on Auditing	SRS	State Revenue Service
KNAB	Corruption Prevention and Combating Bureau	UN	United Nations
LASA	Latvian Association of Sworn Auditors	WGB	OECD Working Group on Bribery in International Business Transactions
LEIT	Law on Enterprise Income Tax		
LIAA	Investment and Development Agency of Latvia		
LSA	Law on Sworn Auditors		

ANNEX 3 EXCERPTS OF RELEVANT LEGISLATION

Criminal Law (CL)

Section 70¹. Basis for the Application of Coercive Measures to Legal Persons

For the criminal offences provided for in the Special Part of this Law, coercive measures may be applied by a court or in the cases provided in law by a public prosecutor to a private law legal person, including a state or a municipal capital company, as well as a partnership, if the criminal offence has been committed in the interests or for the benefit of the legal person or as a result of a lack of supervision or control by a natural person acting as an individual or as a member of the collegial institution of the relevant legal person:

- (1) on the basis of a right to represent the legal person or to act on behalf of such legal person;
- (2) on the basis to take decisions in the name of such legal person,
- (3) realising control within the scope of the legal person.

Section 195. Laundering of the Proceeds from Crime

(1) For a person who commits laundering of criminally acquired financial resources or other property, the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.

(2) For a person who commits the same acts, if they have been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.

(3) For a person who commits the acts provided for by Paragraph one of this Section, if commission thereof is on a large scale, or if commission thereof is in an organised group, the applicable punishment is deprivation of liberty for a term of three and up to twelve years, with or without confiscation of property and with or without police supervision for a term up to three years.

Section 217. Violation of Provisions Regarding Accounting and Statistical Information

(1) For a person who commits hiding or forging of accounting documents, annual accounts, statistical reports or statistical information prescribed by law for an undertaking (company), institution or organisation, the applicable punishment is deprivation of liberty for a term not exceeding one year or temporary deprivation of liberty, or community service, or a fine.

(2) For a person who commits the same acts if they have caused substantial harm to the State authority or local government order, or the interests of persons protected by law as a result thereof, the applicable punishment is deprivation of liberty for a term not exceeding three years or temporary deprivation of liberty, or community service, or a fine.

(3) For a person who commits the criminal offence provided for in Paragraph two of this Section, if it has been committed for acquiring property, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service, or a fine.

Section 316. Concept of a State Official

- (1) Representatives of State authority, as well as every person who permanently or temporarily performs his or her duties in the State or local government service and who has the right to make decisions binding on other persons, or who has the right to perform any functions regarding supervision, control, investigation, or punishment or to deal with the property or financial resources of the State or local government, shall be considered to be State officials.
- (2) The President, members of the Saeima, the Prime Minister and members of the Cabinet as well as officials of State institutions who are elected, appointed or confirmed by the Saeima or the Cabinet, heads of local government, their deputies and executive directors shall be considered to be State officials holding a responsible position.
- (3) As State officials shall also be considered foreign public officials, members of foreign public assemblies (institutions with legislative or executive functions), officials of international organisations, members of international parliamentary assemblies, as well as international court judges and officials.

Section 322 Intermediation in Bribery

- (1) For a person who commits intermediation in bribery, that is, acts manifested as the handing over of a bribe or the offering thereof from the giver of the bribe to a person accepting the bribe, the applicable punishment is deprivation of liberty for a term not exceeding four years or temporary deprivation of liberty, or community service or a fine.
- (2) For a person who commits the same acts, if they have been committed by a State official, the applicable punishment is deprivation of liberty for a term of not less than two and not exceeding ten years, with or without confiscation of property.

Section 323. Giving of Bribes

- (1) For a person who commits giving of bribes, that is, the handing over or offering of material values, properties or benefits of other nature in person or through intermediaries to a State official in order that he or she, using his or her official position, performs or fails to perform some act in the interests of the giver or person offering the bribe, or in the interests of other persons, irrespective of whether the bribe offered is for this State official or for any other person, the applicable punishment is deprivation of liberty for a term not exceeding five years or temporary deprivation of liberty, or community service or a fine.
- (2) For a person who commits the same acts, if commission thereof is on a large scale or if they have been committed by a State official, or also if they have been committed in a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term not exceeding eight years, with or without confiscation of property and with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years.
- (3) For the acts provided for in Paragraph one of this Section, if committed in an organised group, the applicable punishment is deprivation of liberty for a term of not less than two and not exceeding ten years, with or without confiscation of property, with deprivation of the right to engage in specific employment or to take up a specific office for a term not exceeding five years and with probationary supervision for a term not exceeding three years.

Section 324 Release of a Giver of a Bribe and Intermediary from Criminal Liability

- (1) A person who has given a bribe may be released from criminal liability if this bribe is extorted from this person or if, after the bribe has been given, he or she voluntarily informs of the occurrence. A person who has given a bribe may be released from criminal liability if he or she voluntarily informs of the occurrence and has actively furthered the disclosure and investigation of the offence.
- (2) Extortion of a bribe shall be understood to be the demanding of a bribe in order that legal acts be performed, as well as the demanding of a bribe associated with threats to harm lawful interests of a person.
- (3) An intermediary or abettor respecting a bribe may be released from criminal liability if, after commission of the criminal act, he or she voluntarily informs of the occurrence and has actively furthered the disclosure and investigation of the offence.

Criminal Procedure Law (CPL)

Section 370. Grounds for the Initiation of Criminal Proceedings

- (1) Criminal proceedings may be initiated, if the actual possibility exists that a criminal offence has taken place.
- (2) Criminal proceedings may also be initiated if information contains particulars regarding a criminal offence that has possibly taken place, and the examination of such information is possible only with the resources and methods of criminal proceedings.

Section 377. Circumstances that Exclude Criminal Proceedings

The initiation of criminal proceedings shall not be permitted, and initiated criminal proceedings shall be terminated, if:

- 1) a criminal offence has not taken place;
- 2) the committed offence does not constitute a criminal offence;
- 3) a limitation period has entered into effect;
- 4) an accepted act of amnesty that prevents the application of a punishment regarding the relevant criminal offence;

- 5) a person who is to be held or is held criminally liable has died, except for cases where proceedings are necessary in order to exonerate a deceased person;
- 6) a judgment, or a decision of a person directing the proceedings, on termination of criminal proceedings in the same prosecution against a person who has previously been held criminally liable regarding the same criminal offence;
- 7) such criminal proceedings are directed against a foreign national or stateless person regarding illegal crossing of the State border, and such foreign national or stateless person has been forcibly deported from the Republic of Latvia regarding such criminal offence;
- 8) an application of a victim does not exist in criminal proceedings that may be initiated only on the basis of an application of such person;
- 9) a settlement between a victim and a suspect or accused has taken place in criminal proceedings that may be initiated only on the basis of an application of a victim;
- 10) the circumstances that exclude criminal liability referred to in The Criminal Law have been determined.

Section 439.¹ Decision to Initiate the Proceedings Regarding the Application of a Coercive Measure to a Legal Person

- (1) A person directing the proceedings shall indicate the following in the decision to initiate the proceedings regarding the application of a coercive measure to a legal person:
 - 1) the circumstances of committing the criminal offence;
 - 2) the legal qualification of the criminal offence;
 - 3) the justification for the assumption that the criminal offence under investigation has been, most likely, committed in the interests for the benefit of, or due to insufficient monitoring or control by, the legal person;
 - 4) the name, registration number and legal address of the legal person.
- (2) The decision to initiate the proceedings regarding the application of a coercive measure to a legal person shall not be subject to appeal.
- (3) If any of the circumstances referred to in Paragraph one, Clauses 1, 2 and 3 of this Section have changed during the investigation, the person directing the proceedings shall take a decision. The legal person shall be notified regarding taking of such decision. The decision on changes in the circumstances established during the proceedings regarding the application of a coercive measure shall not be subject to appeal.

Law on the Prevention of Money Laundering and Terrorism Financing (AMLTFL)

Section 1. Terms Used in This Law

The following terms are used in this Law:

- 18) **politically exposed person** – a person who:
 - a) is or has been entrusted with prominent public functions in another Member State or third country during the past year, including a person entrusted with one of the following prominent public functions in another country: a Head of State, a Member of Parliament, a Head of Government, a Minister, a Deputy Minister or an Assistant Minister, a State Secretary or another senior government official, a Judge of the Supreme Court or other senior member of court institution whose decisions are not appealed, a Judge of the Constitutional Court, a board or a council member of the Court of Auditors, a member of the council or of the board of the Central Bank, an ambassador, a chargé d'affaires, a high-ranking officer of the armed forces, a member of the council or board or another senior person of a State capital company, a prominent official of a political party;
 - b) is a parent, a spouse or a person equivalent to a spouse, a child, his or her spouse or a person equivalent to a spouse of the persons specified in Clause "a" of this Paragraph. A person shall be considered equivalent to a spouse only in the case if he or she is given such a status pursuant to the legislation of the relevant state;
 - c) is publicly known to have a business relationship with any of the persons specified in Clause "a" of this Paragraph or a joint ownership with the above person of the share capital in a commercial company, as well as a natural person who is a sole owner of such a legal arrangement that is known to be actually established for the benefit of any person specified in Clause "a" of this Paragraph;

Law on Enterprise Income Tax (LEIT)

Section 5(9) The expenses which are not directly related to economic activity shall include material values, properties or benefits of other nature, used for committing a criminal offence, including those ones given to a State official as a bribe or given to the state authority or local government employee, who is not a State official, or to the same kind of person authorised by the state authority for committing illegal activities, as well as to a private person for commercial bribery purposes.