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Costa Rica - Phase 2 Report

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EXECUTIVE SUMMARY

The Phase 2 Report on Costa Rica by the OECD Working Group on Bribery evaluates and makes recommendations to Costa Rica on its implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. Costa Rica has taken significant legislative steps to implement the Convention and address key recommendations since its previous evaluation. However, there are serious concerns about Costa Rica's foreign bribery offence and in the detection of this crime. Foreign bribery enforcement also raises significant issues.

Costa Rica's foreign bribery offence does not cover some of the most common *modus operandi* of this crime. The offence requires proof of direct intent; recklessness or wilful blindness is not enough. This could leave most cases of foreign bribery committed through intermediaries unpunished. Furthermore, the notion of *concusión* allows an individual to escape liability if he/she is solicited for a bribe by a foreign official. Regarding the detection of foreign bribery, Costa Rican authorities do not make full use of the available sources of allegations, including the media. An onerous evidentiary threshold in practice and absence of comprehensive whistleblower protection hinder the reporting of foreign bribery. Costa Rica also needs to encourage companies to adopt anti-corruption compliance programmes, including by providing guidance. External audits of companies should be increased.

In terms of enforcement, Costa Rica did not proactively investigate foreign bribery allegations, or prioritise the enforcement of this crime in practice, due to among other things a lack of resources. The Public Prosecution Service and the Attorney General's Office are both involved in foreign bribery matters, which wastes resources and jeopardises cases. Factors prohibited by Article 5 of the Convention, such as national economic interest, may influence the sanctioning and termination of foreign bribery cases. Better transparency is needed for collaboration agreements with co-operating offenders and for non-trial resolutions. Companies should not receive sentence reductions for reporting crimes already known to the authorities. Provisions on special investigative techniques should be explicitly extended to foreign bribery cases. The freezing of bank accounts must be used more frequently. When property subject to confiscation is not available, authorities should be permitted to confiscate other property of equivalent value. Extradition should not be limited to crimes committed outside Costa Rica and which produced effects in the foreign state. Nationals should be prosecuted in lieu of extradition without a request by a foreign state.

The report also notes positive aspects in Costa Rica's efforts to fight foreign bribery. Recent legislation on corporate liability comprehensively addresses issues such as the standard of liability, sanctions and procedure. Costa Rica commendably enacted a new false accounting offence; it now needs to ensure that the offence applies to all legal persons, including state-owned enterprises. The available sanctions against natural and legal persons (apart from small- and medium-sized enterprises) have increased. The provision of mutual legal assistance to foreign countries has largely been prompt and effective.

The report and its recommendations reflect findings of experts from Latvia and Peru. The report is based on legislation and other materials provided by Costa Rica, and on information from a five-day on-site visit to San José on 14-18 October 2019 during which the evaluation team met representatives of Costa Rica's public administration, law enforcement, parliamentarians, private sector, and civil society. Costa Rica will provide an oral report by March 2021 on its implementation of certain recommendations, and a written report by March 2022 on its implementation of all recommendations.

A. INTRODUCTION

1. This document reports on the Phase 2 evaluation of Costa Rica conducted by the OECD Working Group on Bribery in International Business Transactions (Working Group). The purpose of the evaluation is to study the structures in place in Costa Rica to enforce and to apply the laws and policies implementing the OECD anti-bribery instruments, namely 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 Recommendation); 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation); 2016 Recommendation of the Council for Development Co-operation Actors on Managing Risks of Corruption; and 2019 Recommendation of the Council on Bribery and Officially Supported Export Credits.

1. The on-site visit

2. An evaluation team composed of lead examiners from Latvia and Peru, and the OECD Secretariat,¹ visited San José, Costa Rica on 14-18 October 2019. 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 Costa Rican public and private sectors, judiciary, parliamentarians, civil society, and media. (See Annex 1 for a list of participants.) Prior to the on-site visit, Costa Rica provided written responses to the Working Group's standard and supplementary Phase 2 questionnaires. Further information was provided before and after the on-site visit. The evaluation team also conducted independent research to gather additional information.

3. The evaluation team appreciates the co-operation of Costa Rican authorities at all stages of the Phase 2 evaluation. The evaluation team is also 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. Costa Rica is a democratic republic. Article 9 of the Constitution states that the Government of the Republic "is exercised by three distinct and independent branches: Legislative, Executive, and Judicial." The legislative branch consists of a unicameral Legislative Assembly with 57 deputies who are elected to four-year terms. The President is the head of state and head of government who is elected to a four-year term. Governments are at the national and local levels.

5. Costa Rica's legal system is based on civil law. In criminal matters, the judiciary consists of four levels: Courts (*Juzgados Penales*), Trial Courts (*Tribunales de Juicio*),

¹ [Latvia](#) was represented by Ms. Dina Spūle, Ministry of Justice; and Mr. Andrejs Lisenko, Corruption Prevention and Combating Bureau. [Peru](#) was represented by Ms. Silvana Carrión Ordinola, Attorney General's Office; Ms. Mónica Paola Silva Escudero, Prosecutor Specialised in Corruption Cases; and Ms. María Elsa Fuentes Montenegro, Secretariat of Public Integrity of the Presidency of the Council of Ministers. The OECD Secretariat was represented by Mr. William Loo, Mr. Apostolos Zampounidis and Ms. Maria Xernou, Anti-Corruption Division.

Courts of Appeal (*Tribunales de Apelación*) and the Third Chamber of the Supreme Court of Justice (*Sala Tercera de la Corte Suprema de Justicia*) (Article 3 Law 7 333 of the Judiciary). The Criminal Court of the Treasury and the Civil Service (*Jurisdicción Penal de Hacienda y de la Función Pública* or JPHFP) is the first and second instance court in corruption and foreign bribery cases. JPHFP has 30 judges, 12 on the Criminal Court (*Juzgado Penal*) and 18 on the Trial Court (*Tribunal Penal*) from the Second Judicial Circuit of San José. JPHFP decisions are appealed to the Third Chamber of the Supreme Court which hears criminal matters (Article 2 of Law 8 275). The Judicial branch also includes subsidiary bodies such as the Public Prosecution Service, Judicial Investigation Body, and the Public Defendants Service.

(b) Economic background

6. Costa Rica has a population of approximately 5 million and the 6th smallest economy among the 44 Parties to the Convention. Incomes are at upper-middle levels after significant increases in GDP per capita over the past 30 years. An agricultural-based economy has transformed to one that increasingly relies on open trade and foreign direct investment (FDI). Nevertheless, roughly 43% of workers hold informal jobs and inequality remains high.²

7. In terms of trade, Costa Rica ranks only 43rd and 37th among the 44 Working Group members in exports of merchandise and services respectively. The export sector has seen strong foreign investment and features high-value-added manufacturing and services. The major destinations in 2018 were the United States (39.1%), Netherlands (6.0%), Belgium (5.9%), Panama (5.3%) and Guatemala (5.2%). Medical devices were by far the largest category of exports (28%), followed by various agricultural and food products. The major import sources were the United States (38.9%), China (13.7%), Mexico (7.0%), Guatemala (2.5%) and Germany (2.5%). The main imports were fuels and mineral oils (10.4%), motor vehicles (3.9%), medication (2.9%), medical devices (2.3%) and telephones (1.9%).³

8. Compared to other WGB members, Costa Rica's exports are concentrated in a relatively small number of firms. At the end of 2018, 7 400 private companies were active in Costa Rica. Approximately 3 800 of these firms registered sales abroad, but 2% of firms accounted for 67% of exports in 2017. Some exporters, such as many of those manufacturing electronic and medical devices, are subsidiaries of multinational companies. The Ministry of Foreign Trade (COMEX) supervises companies operating in Free Trade Zones (*Zonas Francas*, FTZs). One quarter of companies in FTZs account for 85% of the Zones' exports. FTZ companies receive benefits such as tax incentives and employee training.⁴

² Instituto Nacional de Estadística y censos (2018), [Costa Rica en cifras](#), p. 4; OECD (2018), [Economic Survey: Costa Rica](#), pp. 26, 28 and 32; IMF data, 2017/2018.

³ COMEX; Instituto Nacional de Estadística y censos (2018) [Costa Rica en cifras](#), p. 9; World Trade Organisation [Trade profile](#); International Monetary Fund (15 April 2019), [Article IV Consultation](#).

⁴ Instituto Nacional de Estadística y censos (2018), [Encuesta Nacional a Empresas 2018: Resultados Generales](#), pp. 15-16; La Nación (21 July 2017) "[67% de ventas de Costa Rica al extranjero se concentra en 2% de firmas exportadoras](#)"; Park, Mulder and Park, Economic Commission for Latin America and the Caribbean (ECLAC) (2018), [Export Innovation of SMEs through the Extensive Margin in Latin America](#), p. 8; Procomer, [Anuario estadístico 2017](#), p. 21; Costa Rica News (8 December 2018) "[Learn about the Free Trade Zone Regime in Costa Rica](#)"; Lang & Asociados, "[Free Trade Zone Regime in Costa Rica](#)".

9. Costa Rica ranks 42nd out of 44 Working Group countries in terms of outward foreign direct investment (FDI) stocks. Investment is highly concentrated in three destinations: Nicaragua (33%), Guatemala (31%) and Panama (20%). All three countries have high perceived levels of corruption. As for inward FDI, the US is by far the largest source, accounting for 54% of the inward FDI stock.⁵

10. Small- and medium-sized enterprises (SMEs) and state-owned enterprises (SOEs) play important roles. Some 60% of the exporting firms (i.e. approximately 2 280) were SMEs in 2017. In 2000-2015, SMEs accounted for 48% of exports. Exporting SMEs also tend to remain in the export sector for an extended period of time. State-owned enterprises (SOEs) dominate key sectors such as electricity, transport infrastructure, banking, insurance and petroleum products. Even liberalised sectors, such as telecommunications and insurance, retain a dominant incumbent SOE.⁶

(c) Implementation of the Convention and recent legislative developments

11. Costa Rica has taken several steps to implement the Convention leading up to this Phase 2 evaluation. Costa Rican law requires treaties to be approved by the Legislative Assembly. The law ratifying the Convention was adopted by the Legislative Assembly on 11 May 2017, and signed by the President and published in the Official Gazette on 15 May 2017. On 24 May 2017, Costa Rica deposited its instrument to accede to the Convention. In June 2017, it underwent a [Phase 1 evaluation](#) which analysed its legislative framework for implementing the Convention. The evaluation identified several deficiencies and many issues for follow-up. In June 2019, Costa Rica enacted the Corporate Liability Law 9 699 to address many of these deficiencies.

(d) Cases involving the bribery of foreign public officials and related offences

12. The media has reported at least two allegations of Costa Rican companies bribing foreign public officials. Costa Rica opened “preparatory investigations” into these allegations only after the October 2019 on-site visit. The media has also reported at least three allegations of money laundering predicated on foreign bribery.

13. *Case #1 Construction (Guatemala)*: Company J is a construction company with an office in Costa Rica. It is also a member of the country’s Federated College of Engineers and Architects. According to media reports,⁷ an individual JA represented the company in Guatemala and is a relative of AS, the then-Guatemalan Minister of Communications. AS

⁵ UNCTAD (2016) Outward FDI Stock; Nicaragua, Guatemala and Panama are ranked 152nd, 144th and 93rd respectively on Transparency International’s Corruption Perception Index 2018.

⁶ Procomer, [Anuario estadístico 2017](#), p. 220; Park, Mulder and Park, Economic Commission for Latin America and the Caribbean (ECLAC) (2018), [Export Innovation of SMEs through the Extensive Margin in Latin America](#), pp. 5 and 21; OECD (2018), [Economic Survey: Costa Rica](#), pp. 69-70.

⁷ DW (12 June 2016), [“Former Guatemala cabinet ministers arrested on corruption charges”](#); Prensa Libre (14 July 2017), [“Sinibaldi habría recibido millonarios sobornos por pagos del CIV”](#); El Periódico (16 July 2017), [“Al menos 123 contratos recibieron constructoras que pagaron sobornos a empresas ligadas a Sinibaldi”](#); El Periódico (18 July 2017), [“Alejandro Sinibaldi se defiende de cargos en su contra”](#); El Periódico (20 September 2017), [“Capturan en Argentina al prófugo Jaime Ramón Aparicio Mejía por el caso “Construcción y Corrupción”](#); Soy 502 (20 September 2017), [“Capturan a primo de Sinibaldi en Argentina por caso de corrupción”](#); Prensa Libre (23 November 2017), [“Argentina expulsa a Jaime Ramón Aparicio Mejía primo de Alejandro Sinibaldi”](#); Soy 502 (4 December 2017), [“La confesión de Jaime Aparicio, un capo ‘emergente’](#); Republica (29 January 2018), [“Lo que debes saber del caso Construcción y Corrupción”](#).

allegedly created three fictitious cardboard-manufacturing companies that provided fake contracts for goods in return for bribes. One of the companies issued 27 invoices in February-July 2013 to JA for payment by Company J and a Guatemalan company. GTQ 8.235 million (USD 1.1 million) was paid under the invoices. In return, the Ministry of Communications cancelled a GTQ 100 million debt owed by Company J. Company J was also said to have won many government contracts during this period. JA is under arrest in Guatemala and reportedly co-operating with the authorities. The Minister AS is at large.

14. A substantial amount of time passed before Costa Rican authorities learned of the case. The Guatemalan media has reported the allegations since at least June 2016. The Working Group also circulated the allegations to its members in August 2018 via its Matrix of Foreign Bribery Allegations. Nevertheless, Costa Rica's prosecutor's office for corruption cases (Integrity, Transparency and Anti-Corruption Unit of the Public Prosecution Service, *Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción*, FAPTA) found out about the case only just before the October 2019 on-site visit. The Attorney General's Office (PGR) has concurrent jurisdiction with FAPTA in foreign bribery cases (see Section C.1(d) at p. 31). It learned of the case only in March 2019.

15. Costa Rican authorities did not take any investigative action for three years after the publication of the allegations. FAPTA acted only after the October 2019 on-site visit. It informally asked the prosecutor's office in Guatemala to provide more information, and expected an answer in the first semester of 2020. FAPTA has also instructed an investigator to verify the identity of the company in the allegations. Costa Rica states that proceedings cannot be taken under the Corporate Liability Law (CLL) which was enacted only in June 2019. The previous administrative regime of corporate liability was repealed in June 2019 and hence also cannot be applied (see Section C.3(a) at p. 6). The PGR also asked Guatemalan authorities for information on 11 June 2019. It states that the sole purpose of the request was to obtain information for updating the Working Group's Matrix of Foreign Bribery Allegations. This explanation, however, appears at odds with the PGR's earlier position that it plays a prominent role in foreign bribery enforcement actions. It is also unclear why the PGR would contact Guatemala instead of FAPTA to seek information for updating the Matrix.

16. *Case #2 Construction (Panama)*: Company M is one of the largest construction companies in Central America. It is headquartered in Costa Rica and has offices in several Latin American countries, including Panama. According to media reports in January 2018,⁸ several companies won public infrastructure contracts in Panama in 2011-2012 and later paid bribes to streamline administrative procedures and to secure payments under the contracts. This included Company M, whose president agreed to pay USD 9.4 million to a senior official in Panama's Ministry of Public Works and Housing. Three payments totalling USD 1.8 million were made to accounts in Panama. Company M and its president C reportedly resolved the matter with the Panamanian authorities through a "collaboration agreement" in December 2017.

17. FAPTA initially suspended its investigation into the case but restarted its efforts after the on-site visit. It learned of the allegations through the national media and obtained information about the case from its Panamanian counterpart in March 2018. No further steps were then taken. At the on-site visit, FAPTA initially first stated that it did not have

⁸ Panamá Today (16 January 2018), "[33 people linked to the Blue Apple Services case](#)"; La Prensa (16 January 2018), "[Suárez, Ford y 7 constructoras en investigación de Blue Apple](#)"; La Nación (13 April 2018), "[Constructora MECO negoció con Fiscalía panameña para evitar juicio por pago de dádivas](#)".

competence over the case. It then stated that it has postponed seeking evidence from Panama till the end of 2019 to avoid jeopardising proceedings in Panama. When asked why these proceedings could be jeopardised, FAPTA indicated that its inaction was due to a lack of resources. After the on-site visit, FAPTA learned from Panamanian authorities through informal channels that the case was before the Panamanian courts. In January 2020, FAPTA began a re-examination of the media reports on the case. It opened a preparatory investigation and in February 2020 sent a formal MLA request to Panama.

18. The PGR provided a different version of events. It only learned of the case in March 2019. The PGR requested information from Panama in June 2019. On 23 July 2019, Panama replied asking whether the information was sought “for investigations, prosecutions or judicial proceedings other than those which have given rise to the request”. The PGR again states that it has not opened an investigation because the CLL was only enacted in June 2019. It does not explain why it has not investigated natural persons. After the on-site visit, it added that it requested information from Panama for the purposes of updating the Working Group Matrix of Foreign Bribery Allegations.

19. *Case #3 Money Laundering (Peru)*: According to allegations reported in the media,⁹ a Brazilian engineering company paid over USD 20 million in bribes to AT who was the President of Peru in 2001-2006. The bribes were to win contracts to build parts of a highway between Peru and Brazil. In 2006-2010, the bribes were transferred to three Costa Rican shell companies. In 2012, Costa Rican lawyer MR created a fourth shell company ECG in the name of AT’s mother-in-law. ECG then opened two accounts in a Costa Rican bank IB which received the alleged bribe money. ECG later used the funds to provide a USD 3 million loan to the mother-in-law of the ex-President AT, and also to pay for AT’s properties and mortgages in Peru. At present, USD 6.5 million remains frozen in Costa Rica. Ex-President AT was initially charged in Peru in 2014 and ordered to stand trial in April 2016. In 2017 he fled to the US where he awaits extradition to Peru.

20. According to the media, Costa Rica opened and then closed a brief investigation.¹⁰ In 2013, Costa Rica’s financial intelligence unit UIF issued a report that identified the two accounts in the name of AT’s mother-in-law. UIF also reported that funds from the accounts had been used to acquire real estate. In August 2013, Costa Rican prosecutors dismissed the investigation against the country’s then Vice-President LL. At the relevant time, LL was a manager and director on the board of the bank IB. He also reportedly met the ex-Peruvian President AT in person. The media also reported that investigations of other individuals ended in June 2015 for three reasons: the Peruvian authorities were investigating the allegations, even though it was unclear whether Costa Rican individuals and entities were the target of the investigation; a Costa Rican investigation would require efforts be taken in Peru; and Costa Rican nationals and territory were not involved. It is unclear why this last factor was considered despite the role of the Costa Rican shell

⁹ Peru Reports (29 March 2015), “[Alejandro Toledo indicted for money laundering](#)”; Peru Reports (26 April 2016), “[Peru: former President Toledo to face trial for money laundering](#)”; CRHoy (10 February 2017), “[Caso Toledo: ¿Qué es Ecoteva y por qué Costa Rica suena en escándalo del Perú?](#)”; La Nación (15 November 2017), “[Costa Rica reabre caso contra expresidente de Perú Alejandro Toledo](#)”; Xinhua (1 September 2019), “[Peru’s ex-president Toledo requests fair trial in his country, lawyer says](#)”.

¹⁰ CRHoy (28 August 2013), “[Fiscal general descarta participación de Liberman en caso contra expresidente de Perú, Alejandro Toledo](#)”; Peru Reports (18 April 2017), “[Judge in Peru orders former President Alejandro Toledo jailed](#)”; CRHoy (21 February 2019), “[Allanan Scotiabank por caso de Alejandro Toledo](#)”.

companies, bank accounts, and lawyer MR. The application of the opportunity principle in terminating this case is discussed in Section C.1(e) at p. 33.

21. Costa Rica has re-opened the case, according to media reports.¹¹ A new Prosecutor General who took office in November 2017 re-started the investigation because the case “requires further analysis”. However, the investigation reportedly only targeted AT, his mother-in-law and two other non-Costa Ricans. Proceedings against Costa Rican individuals were said to be time-barred. In January 2019, it was reported that Costa Rican authorities were still waiting for important evidence from their Peruvian counterparts. During this Phase 2 evaluation, Costa Rican authorities decline to comment on this case because Article 295 of the Code of Criminal Procedure stipulates that the ongoing preliminary phase of the investigation is confidential.

22. *Case #4 Money Laundering (Ecuador)*: LM is the current President of Ecuador and the country’s Vice-President in 2007-2013. Media reports¹² allege that in 2012-2016 LM deposited bribes that he had received into accounts at BB Bank in Panama. LM later allegedly used some of the funds from the accounts to acquire real estate and luxury goods for him and his family. In 2016, Panamanian regulators took over control of BB Bank. BCT, a Costa Rican company, began negotiations in 2017 and eventually acquired BB Bank. Ecuadorean authorities opened an investigation in April 2019.

23. Unlike their Ecuadorean counterparts, Costa Rican authorities have not opened an investigation. They learned of the allegations in the media in April 2019 but decided not to investigate because the media articles suggested that Panamanian authorities had taken control of BB Bank when it was acquired by the Costa Rican company BCT. More importantly, Costa Rican authorities have not ascertained whether the proceeds of corruption continue to be deposited at BB Bank. After reviewing a draft of this report, Costa Rican authorities added that Ecuador and Panama have not sought MLA from Costa Rica, which shows that BCT’s involvement occurred after the alleged crimes.

24. *Case #5 Money Laundering (Venezuela)*: Media reports since June 2018¹³ have alleged that beginning in 2016 Mexican drug cartels shipped large amounts of cash to AL, a Venezuelan state-owned company that operated a terminal in Puerto Limón, a Free Trade Zone in Costa Rica. The cash was deposited into AL’s bank accounts in Costa Rica. According to the media reports, the number and pattern of deposits reportedly could not

¹¹ La Nación (15 November 2017), “[Costa Rica reabre caso contra expresidente de Perú Alejandro Toledo](#)”; El Mundo (15 November 2017), “[Costa Rica reabre causa penal contra expresidente de Perú. Alejandro Toledo y otras 4 personas](#)”; Monumental (24 January 2019), “[Fiscalía lleva un año solicitando pruebas a Perú para avanzar investigación contra Alejandro Toledo](#)”; CRHoy (21 February 2019), “[Allanan Scotiabank por caso de Alejandro Toledo](#)”.

¹² Periodismo de Investigación (19 February 2019), “[El Laberinto Offshore Del Círculo Presidencial](#)”; Tercera Información (31 March 2019), “[La Fiscalía General de Ecuador abre una investigación contra el presidente Moreno](#)”; Orinoco Tribune (1 April 2019), “[The Attorney General of Ecuador Opens an Investigation Against President Moreno: INA Papers Affaire](#)”; Diario Extra (15 April 2019), “[Escándalo de corrupción en Ecuador salpica la banca tica](#)”.

¹³ CRHoy (15 June 2018), “[ICD entregó a Fiscalía informe sobre posible lavado de dinero en Alunasa](#)”; El Mercurio (15 June 2018), “[Fiscalía de Costa Rica recibió denuncia sobre supuesto lavado de dinero por Diosdado Cabello](#)”; ABC Internacional (updated 16 September 2019), “[Líderes chavistas recibieron dinero del narco mexicano via Costa Rica](#)”; Panam Post (updated 16 September 2019), “[Dictadura de Maduro camufló dinero de narcos en cajas CLAP](#)”; Que Torta (15 September 2019), “[Costa Rica sirvió de puente para que líderes chavistas recibieran plata del narco mexicano](#)”.

have corresponded to AL's normal business activity or payments by its customers. The funds were then transferred to accounts in Russia controlled by TEA, a former Vice-President of Venezuela, and DC, a parliamentarian and former Speaker of Venezuela's legislature. The payments were for the two Venezuelan officials' assistance in facilitating drug shipments to the Mexican cartels.

25. Media reports indicate that Costa Rican authorities did not consider the evidence to be sufficient for opening a criminal investigation.¹⁴ In May 2018, it received an alert from US authorities about the allegations. In June 2018, the National Bank of Costa Rica closed all of AL's accounts in Costa Rica. That same month, the UIF forwarded the US alert to the Costa Rican Public Prosecution Service (PPS). The PPS reportedly stated that it could not "deepen the scope of the report" and hence did not open an investigation or freeze any property. In September 2019, PPS reportedly stated again that it had not opened an investigation because "it requires substantial evidence to assess the opening of a file". The Costa Rican government also stated that there was no evidence to support the allegations.

26. During this evaluation, Costa Rican authorities confirm that they have not opened an investigation into this case. They stated that financial and police intelligence indicates that the information contained in the media article was false. On 1 October 2019, Costa Rican authorities wrote their US counterparts seeking evidence to support the allegations in the media. At the request of the US, Costa Rica provided additional information on 17 January 2020. The request is now in progress.

Commentary

The lead examiners commend Costa Rica for enacting the Corporate Liability Law 9 699 to address many of the deficiencies identified in the Working Group's Phase 1 Report. However, they are seriously concerned that Costa Rica is now unable to hold legal persons liable for foreign bribery committed before June 2019 under the Corporate Liability Law or the predecessor administrative liability regime. They are also seriously concerned about Costa Rica's inability to detect foreign bribery allegations. Even after learning of such allegations, Costa Rican authorities have not proactively investigated these matters. As explained later in this report, the lead examiners also have significant concerns about other issues such as the foreign bribery offence and the role of the PGR in foreign bribery investigations.

B. PREVENTION, DETECTION AND AWARENESS OF FOREIGN BRIBERY

1. General efforts to raise awareness of foreign bribery

(a) Government strategy to fight foreign bribery and awareness-raising initiatives

27. Costa Rica has not adopted an overall strategy to fight foreign bribery. The PGR is developing a national action plan that will broadly address all anti-corruption issues. The plan will explicitly refer to the Convention and foreign bribery risks, according to the

¹⁴ El Observador (17 September 2019), "[Gobierno baja el tono a denuncias sobre lavado de dinero por parte del régimen venezolano en el país](#)"; El Observador (18 September 2019), "[Fiscalía requiere nuevos indicios para investigar supuesto lavado de dinero del régimen venezolano en Costa Rica](#)".

Ministry of Justice and Peace and PGR. Civil society representatives at the on-site visit referred to a high-level ministerial meeting that launched consultations on the action plan.

28. In the meantime, the government has made efforts to raise awareness of foreign bribery in the public and private sectors. The Convention was referred to annually in the International Anti-corruption Congresses in 2017-2019, and in an event with parliamentarians in 2018. Additional events covered corporate liability. Other government initiatives address domestic corruption only, e.g. the Framework Commitment for the Strengthening of the Open State and National Dialogue, the anti-corruption policy of the Controller General of the Republic to strengthen control actions in the public sector,¹⁵ and the Institutional Management Index which assesses the implementation of the legal framework by public institutions.

(b) Private sector initiatives to raise awareness

29. Some Costa Rican companies are exposed to the risk of foreign bribery. As described in Section A.2(b) at p. 7, Costa Rican exports and outward foreign direct investment (FDI) are low compared to other Working Group members. However, much of the outward FDI, and to a lesser extent its exports, are destined for countries with perceived high levels of corruption. Approximately half of Costa Rica's companies registered sales abroad in 2018, many of which were SMEs. There are five known allegations of Costa Rican companies implicated in foreign bribery or the laundering of the proceeds of this crime (see Section A.2(d) at p. 8).

30. Despite this risk, the Costa Rican private sector has also not raised awareness of foreign bribery. None of the business associations that attended the on-site visit referred to any efforts to raise awareness of foreign bribery specifically. Costa Rica argues that several business associations referred to the recently enacted CLL which imposes corporate liability for foreign bribery. But raising awareness of the CLL is not the same as raising awareness of foreign bribery. Just before the adoption of this report, Costa Rica stated that the private sector had taken additional steps.

31. Costa Rican companies are also not aware of their exposure to foreign bribery. At the on-site visit, only subsidiaries of foreign multinationals and one US-listed Costa Rican company demonstrated substantial awareness. (As explained in Section B.7(c) at p. 25, these were also the only companies whose compliance programmes address foreign bribery.) Most on-site visit participants stated that Costa Rican companies are not at risk of committing this crime. One company with many cross-border activities did not consider foreign bribery a risk. Another company with substantial overseas operations did not express concern about potential contact between its overseas sales agents and foreign officials. SMEs are even less aware of their foreign bribery risks, according to on-site visit participants.

Commentary

The lead examiners are seriously concerned by the low level of awareness of foreign bribery within the Costa Rican private sector. They therefore recommend that Costa Rica (a) adopt a national strategy and action plan for fighting foreign bribery, which could be part of a broader national strategy covering all types of corruption. A single public body should be tasked with overseeing the implementation of the national strategy and action plan; and (b) raise awareness of foreign bribery, especially among SMEs that export or

¹⁵ [Plan Estratégico Institucional](#), 2013-2020, pp. 12-13.

invest overseas. Such efforts should involve civil society, business associations, and government bodies that interact with the private sector, such as the Ministry of Foreign Trade and Ministry of Economy, Industry and Commerce.

2. Reporting and whistleblowing

32. This section deals with reporting of foreign bribery by Costa Rican officials and private individuals generally. Subsequent parts of the report cover reporting by accountants and auditors as well as by officials in export credit agencies, official development assistance, overseas diplomatic missions, and tax authorities. Other information sources for opening investigations are discussed in Section C.1(b) at p. 29.

(a) Reporting by public officials

33. The 2009 Recommendation IX.ii asks Member countries to ensure that “appropriate measures are in place to facilitate reporting by public officials, in particular those posted abroad, 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, in accordance with their legal principles”.

34. Article 281(a) of the Code of Criminal Procedure (CCP) requires Costa Rican officials to report offences that are prosecutable *ex officio*, which includes foreign bribery, of which they become aware in the exercise of their duties. Officials at the on-site visit mostly stated that they would report to the Public Prosecution Service (PPS), though reports may also be made to the Judicial Investigation Body (OIJ), Attorney General’s Office (PGR) and the courts. Costa Rica states that some public institutions are implementing internal reporting channels in line with ISO 37 001, an international standard for anti-bribery management systems.

35. A public official is obliged to report when there is “likely” a criminal offence, according to Constitutional Court Judgment 2015-10254:

The obligation of the public official culminates in raising the complaint when [he/she] becomes aware of the realisation of a fact that is likely to be a criminal offence. The certainty about the criminal adequacy or the existence of guilt, or about the concurrence of other determinant aspects of the concretion of the crime, are the competence, as the case may be, of the Public Ministry or the Jurisdictional Body.

36. However, in practice the threshold for triggering a public official’s duty to report foreign bribery is too high. Some officials at the on-site visit stated that an allegation must have “a certain degree of certainty” before it would be reported. Some expressed concern about legal liability if they reported. The Ministry of Foreign Relations stated that it was aware of the foreign bribery allegations in the *Construction (Guatemala)* and *Construction (Panama)* cases. But it did not report the matters to law enforcement partly because it decided that additional supporting evidence was necessary.

37. Costa Rica states that a failure to report amounts to a criminal offence of breach of duties which is punishable by disqualification from office for one to four years (Criminal Code Article 339). Costa Rica cannot confirm whether convictions that have been recorded under this provision resulted from a failure of public officials to report crimes. Costa Rica

also refers to Article 9 of Executive Decree 32 333, but this provision only requires the reporting of corruption in the Costa Rican public service.

Commentary

The 2009 Recommendation IX.ii recommends that “appropriate measures be in place to facilitate reporting by public officials, in particular those posted abroad, 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, in accordance with their legal principles”. Costa Rican law requires public officials to report “likely” acts of foreign bribery. In practice, the threshold is much higher, requiring near certainty in an allegation before reporting is mandatory. The absence of statistics also makes it impossible to determine the effectiveness of the system in practice.

The lead examiners therefore recommend that Costa Rica take steps to ensure that Article 281(a) CCP requires public officials to report all suspected acts of foreign bribery, including those reported in the media, and that in practice certainty in the veracity of the allegation is not required.

(b) Reporting by private individuals

38. Private individuals are not obliged to report foreign bribery or other crimes. Those who choose to do so can report to the Public Prosecution Service (PPS), Attorney General’s Office (PGR), Judicial Investigation Body (OIJ), Comptroller General, or the criminal courts. Reports may be oral or written, including on-line (Article 279 CCP). The OIJ and FAPTA also have complaint hotlines. One civil society representative stated that actual reporting rates are low. However, statistics provided by Costa Rica show that in 2012-2018 the PPS and OIJ received annually on average over 2 600 complaints of corruption offences under the Criminal Code and Law 8 422 against Corruption and Illicit Enrichment in the Civil Service (LAC). Almost 2 000 of these complaints concerned “abuse of authority”, however. There were no complaints of foreign bribery.

39. Whether complaints may be anonymous is unclear. Article 279 CCP states that a complaint must be submitted personally or by a proxy who has a power of attorney. It also states that “the official receiving the complaint will verify the identity of the complainant.” These provisions thus suggest that anonymous complaints are not accepted. However, Costa Rica states that the requirement to verify identity only applies if the complainant wants to be identified; otherwise, a complaint would be accepted on an anonymous basis. FAPTA states that in 2016-2019 anonymous complaints led to the opening of 36 preliminary and preparatory investigations. However, without knowing the total number of anonymous complaints received, it is not possible to assess whether FAPTA readily accepts anonymous complaints as a source of cases.

Commentary

The lead examiners recommend that the Working Group follow up the use of anonymous reports for opening preliminary and preparatory investigations in foreign bribery cases in Costa Rica.

(c) Whistleblowing and whistleblower protection

40. The 2009 Recommendation IX.iii asks countries to 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”.

41. Costa Rica does not have specific laws to comprehensively protect whistleblowers from reprisals. As the Working Group has repeatedly stated,¹⁶ witness protection measures such as Laws 8 720 and 8 422 are not the same as whistleblower protection. Witness protection addresses threats or harm to life or physical integrity, not workplace reprisals frequently faced by whistleblowers. Furthermore, reprisals may occur before a whistleblower becomes a witness. Costa Rica further refers to Article 244 CCP on precautionary measures. However, these measures are available only when a criminal procedure has commenced. They also only provide for bail conditions that normally apply to an accused, e.g. no contact or house arrest. Costa Rica also refers to Article 8 LAC, but this provision only protects the confidentiality of a complainant. The duty of confidentiality also only applies to the Comptroller General, Costa Rican Administration and state-owned enterprises, not private companies. The recently enacted Corporate Liability Law introduces corporate models (i.e. compliance programmes) which address whistleblower protection, but companies are not obliged to adopt corporate models (see Section C.3(e) at p. 61).¹⁷ Certain companies may have some measures to protect whistleblowers, but the practice is far from uniform. Finally, Costa Rica also refers to the Labour Code (Law 2) Articles 404-407, but these provisions deal with discrimination not on grounds of whistleblowing but race, sex, sexual orientation, religion etc.

42. The lack of whistleblower protection has a chilling effect on reporting. A survey conducted by civil society suggests that 67% of Costa Ricans would fear reprisals if they reported corruption.¹⁸

Commentary

The lead examiners are seriously concerned at the absence of comprehensive whistleblower protection in Costa Rica. They therefore recommend that Costa Rica, as a matter of priority, adopt legislation that provides clear and comprehensive protection from retaliation to whistleblowers in the public and private sectors.

3. Officially supported export credits

43. Costa Rica does not provide officially supported export credits and does not have an export credit agency or import-export bank. Technically, Costa Rica has adhered to the 2019 Recommendation of the Council on Bribery and Officially Supported Export Credits and its predecessor. It has agreed to inform the OECD if it were to create any export credit programmes, and to ensure that such programmes would conform to the relevant OECD instruments.

Commentary

The lead examiners recommend that the Working Group follow up whether Costa Rica has created an export credit programme.

¹⁶ For example, please see Turkey Phase 3 para. 162, Mexico Phase 4 para. 50, Brazil Phase 3 para. 166, Argentina Phase 3 para. 224-226 and Phase 3bis para. 211, Colombia Phase 2 para. 46, and Austria Phase 3 para. 131.

¹⁷ Costa Rica states that an upcoming regulation will deal with this issue.

¹⁸ Data on Costa Rica in Transparency International’s Global Corruption Barometer 2019.

4. Official development assistance

44. Costa Rica technically does not have an official development assistance (ODA) programme but provides some forms of “development co-operation”. It provides technical assistance to other countries in areas such as health, education, elections, bio-diversity, migration, science and technology. In 2018, Costa Rica provided USD 4.5 million of such support through triangular, South-South, bilateral and multilateral co-operation. The Ministry of National Planning and Political Economy (MIDEPLAN) formulates, negotiates, co-ordinates technical assistance programmes. The Directorate General for International Co-operation within the Ministry of Foreign Affairs evaluates MIDEPLAN’s proposals and presents them to the relevant foreign government.

45. Given its lack of an ODA programme, Costa Rica does not have anti-corruption measures in this area. Costa Rica delivers technical assistance to other countries with its own public officials. It does not contract with private sector companies or non-governmental organisations for this purpose. Accordingly, it does not have standard contracts with anti-corruption clauses, or a policy of examining these entities’ anti-foreign bribery compliance systems before engaging their services. Nor does it have a policy of banning such entities from its co-operation programme as a sanction for foreign bribery. Costa Rica has not trained its officials involved in development co-operation on foreign bribery. These officials are subject to the general duty on all Costa Rican officials to report crimes to the PPS (see Section B.2(a) at p. 14). MIDEPLAN has not created hotlines or other channels for such reports. Costa Rica also makes financial contributions to multilateral organisations but does not provide direct financial support to other countries.

Commentary

The lead examiners recommend that the Working Group follow up whether Costa Rica has created an ODA programme.

5. Foreign diplomatic representations

46. Diplomatic missions abroad play an important role in fighting foreign bribery. They can raise awareness of companies that operate abroad, and provide advice and assistance on dealing with bribe solicitations. They can also monitor the media for foreign bribery allegations and report them to law enforcement authorities in the home country. The Ministry of Foreign Relations (*Ministro de Relaciones Exteriores*, MRE) is responsible for Costa Rica’s overseas embassies and consulates.

(a) Awareness-raising efforts

47. At the time of the on-site visit, the MRE had not raised awareness in the private sector and had made limited efforts among its officials. The MRE developed a training module for its diplomats and officials in fall 2019. The module, however, referred only to cases of foreign companies bribing Costa Rican officials. A detection and reporting manual dated January 2020 focuses on foreign bribery,¹⁹ which is a positive step. However, neither the manual nor the training module addresses the information and guidance that should be given to Costa Rican companies from whom bribes have been sought. Companies at the

¹⁹ MRE (January 2020), *Manual De Procedimientos Internos Dirigido a Personas Funcionarias Diplomáticas y Consulares en el Extranjero para la Detección y Notificación a las Autoridades Costarricenses Competentes de Posibles Casos de Soborno y Cohecho Transnacional*.

on-site visit stated that they would not turn to Costa Rican diplomatic missions for help to deal with bribe solicitations.

(b) Detection and reporting of foreign bribery

48. At the time of the on-site visit in October 2019, MRE efforts to detect foreign bribery were lacking. Overseas missions “usually” monitored the local media, according to the MRE. There was, however, no written policy or rule requiring all missions to monitor the media for foreign bribery allegations implicating Costa Rican companies. The MRE states that it was nevertheless aware of the foreign media reports on the *Construction (Guatemala)* and *Construction (Panama)* foreign bribery cases.

49. As mentioned at para. 36, the MRE did not inform Costa Rican law enforcement of these two foreign bribery cases. MRE officials must report crime under Article 281(a) CCP (see Section B.2(a) at p. 14). However, the MRE stated at the on-site visit that the provision does not require the reporting of allegations that are based merely on media reports; additional supporting evidence is needed. (The MRE admits that a general lack of awareness of the foreign bribery offence also contributed to the non-reporting.)

50. The manual adopted in January 2020 addresses some of these issues but also raises others. The manual requires overseas missions to monitor the media for foreign bribery allegations, which is a positive development. Officials in overseas missions must report foreign bribery allegations to the MRE’s legal department which then forwards the report to the Technical Advice and International Relations Office (OATRI) of the Public Prosecution Service (PPS). However, OATRI is the PPS unit responsible for mutual legal assistance. It is unclear why the MRE’s legal department would not forward foreign bribery allegations directly to FAPTA, the PPS unit responsible for investigating such allegations.

51. The manual also does not require the reporting of all relevant foreign bribery allegations. It only requires the reporting of allegations of foreign bribery committed by (a) Costa Rican nationals, (b) legal persons registered in Costa Rica, and (c) Costa Rican nationals working for legal persons registered outside of Costa Rica. This excludes foreign bribery committed by a non-Costa Rican national working for a locally incorporated subsidiary of a Costa Rican company, even though the Corporate Liability Law provides for jurisdiction over such cases (see p. C.3(c)(v) at p. 60).

Commentary

The lead examiners welcome the MRE’s foreign bribery training module and the manual on detection and reporting. The two documents, however, have yet to be used to train all MRE officials. They do not address some matters such as information and guidance to companies. The manual does not require direct reporting to FAPTA or the reporting of all relevant foreign bribery allegations. The threshold for reporting foreign bribery in practice is too high. There is also no awareness-raising within the private sector, which the Working Group has recommended to other countries in the past.²⁰

The lead examiners therefore recommend that the MRE (a) raise awareness of foreign bribery within the private sector, (b) train MRE officials on detecting and reporting foreign bribery, and on the information and guidance to be given to Costa Rican companies on bribe solicitation, and (c) amend its foreign bribery detection and

²⁰ Phase 3 Greece Recommendation 13.

reporting manual to cover all relevant foreign bribery allegations and require direct reporting of allegations to FAPTA.

As mentioned at p. 14, the lead examiners also recommend that Costa Rica take steps to ensure that in practice certainty in the veracity of a foreign bribery allegation is not required before the allegation is reported under Article 281(a) CCP. The MRE should take steps to implement this recommendation.

6. Tax authorities

52. This section examines Costa Rica’s treatment of the tax deductibility of bribes, the prevention, detection and reporting of foreign bribery by tax authorities, and the sharing of tax information for use in foreign bribery investigations. The General Directorate of Taxation (*Dirección General de Tributación*, DGT) in the Ministry of Finance (*Ministerio de Hacienda*) is the responsible authority.

(a) Non-deductibility of bribes and financial penalties

53. The 2009 Anti-Bribery Recommendation VIII urges member countries to fully and promptly implement the 2009 Tax Recommendation. This includes explicitly disallowing the tax deductibility of bribes to foreign public officials for all tax purposes in an effective manner.

54. Costa Rica continues to expressly deny deductions only for bribes that expedite or facilitate a “transaction”. The Phase 1 Report (paras. 118-121) expressed concerns about this limit in Article 12(n) of the Regulation of the Law on Income Tax (Decree 18 445-H). The same wording is now found in Article 9(1)(l) of the Income Tax Law 7 092 (ITL) enacted in 2018. Costa Rica confirms that deductions are allowed for bribes that do not expedite or facilitate a transaction, e.g. those paid so that a public official does not conduct a safety inspection. Parliamentarians at the on-site visit agreed that the existing provisions could be improved. The DGT proposes to address the problem through a by-law. It is doubtful, however, that a by-law can override a deficiency that is now codified in primary legislation. The DGT adds that it has never disallowed the deduction of a bribe in practice.

55. After reviewing a draft of this report, Costa Rica referred to a third provision on the non-tax deductibility of bribes, namely DGT’s “Institutional Criterion” [DGT-CI-01-2015](#). The document is not limited to bribes that expedite or facilitate a transaction but instead quotes the foreign bribery offence in Article 55 LAC. The text of the offence is outdated, however. It is unclear why Costa Rica did not refer to this document earlier in this evaluation or even in Phase 1. In any event, because of the hierarchy of norms, this “institutional criterion” cannot override Article 9(1)(l) ITL or Article 12(n) ITL Regulation.

56. A further issue is that the existing provisions on non-tax deductibility do not apply to companies in Free Trade Zones or banana exporters. A separate income tax regime outside the ITL applies to these companies.²¹ Costa Rica states that there are no companies subject to the regime that applies to banana exporters. For Free Trade Zones, companies are tax-exempt for a limited time, after which they are subject to the regular tax regime.

57. Costa Rican authorities add that fines for foreign bribery are not tax deductible under Article 9(c) ITL. Confiscated property is not tax deductible because it is not among the eligible expenses listed in Article 8 ITL. It also does not meet the requirement in the

²¹ Articles 3(c) and 63 ITL; Decree 9 330-HA; Law 7 210.

provision that an expense must be necessary to obtain taxable income. Supporting jurisprudence was not provided.

Commentary

The lead examiners are seriously concerned that Costa Rica does not explicitly deny the tax deduction of all bribes to foreign public officials, but only those that expedite or facilitate a transaction. They therefore recommend that Costa Rica amend its legislation to (a) expressly deny on an urgent basis the tax deduction of all bribes to foreign public officials, and not only those that expedite or facilitate a transaction, and (b) consolidate its laws, regulations and “institutional criteria” that deal with the non-tax deductibility of bribes.

(b) Post-conviction enforcement of non-deductibility of bribes

58. The DGT does not systematically re-examine the tax returns of taxpayers who have been convicted of bribery. Tax authorities may examine and re-examine a tax return four years after the return has been filed. This limitation period is extended to ten years for taxpayers who submit fraudulent statements, have not registered with the tax authorities, or have not submitted required affidavits. A return cannot be examined if a prior “definite” audit has been conducted.²² Some companies (e.g. large taxpayers) are subject to “definite” audits at least once every four years. The DGT states that it does not re-examine the returns of taxpayers convicted of bribery because it is not informed of such convictions.

Commentary

In most cases when a taxpayer is convicted of (domestic or foreign) bribery, any bribes that have been disguised as a business expense will have been so proven, thereby eliminating the need for tax authorities to re-prove this fact. The lead examiners therefore recommend that the DGT be routinely informed about foreign bribery convictions.

(c) Detection of bribes, training and awareness-raising

59. Costa Rican authorities have made only limited efforts to enhance the capacity of tax officials to detect bribes. They have translated and disseminated the [OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors](#) (Directorate-General of Taxation Directive DGT-D-22-2017). The Handbook lists numerous indicators of suspicion and risk areas that tax examiners should be aware of when trying to detect foreign bribery during tax audits. But in practice tax officials look for not all but only five of the indicators in the Handbook, according to Costa Rica’s questionnaire responses. Beyond one presentation of the Handbook, tax officials have not been trained to use the Handbook regularly. No case of domestic or foreign bribery has ever been detected. This is due to a lack of training and awareness, according to DGT.

Commentary

The lead examiners recommend that Costa Rica regularly train its tax officials on the detection of foreign bribery during audits and disseminate the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors.

²² Code of Tax Rules and Procedures, Articles 51-52, 103 and 126.

(d) Reporting foreign bribery

60. The 2009 Anti-Bribery Recommendation VIII.i urges countries to “establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties, to the appropriate domestic law enforcement authorities”.

61. Costa Rican tax officials are subject to the general obligation on all public officials to report crimes in Article 281 CCP. An internal instruction setting out the reporting procedure for DGT staff refers specifically to the foreign bribery offence.²³ Tax authorities should report the matter to PPS without ascertaining all elements of the offence. The report should include a description of the taxpayer, relevant evidence including information received from financial institutions, and records of previous non-compliance.

(e) Tax secrecy and providing information to law enforcement

62. Information obtained by tax authorities from taxpayers, responsible parties and third parties is confidential. It may be released to Costa Rican law enforcement only with judicial authorisation (Article 117 Law 4 755). However, a court order is not required for general information such as a taxpayer’s date of registration, or its related companies and representatives, according to the DGT.

63. Foreign law enforcement authorities may use tax information provided by Costa Rica in a foreign bribery investigation only if allowed under an applicable international treaty. Judicial authorisation is not required (Article 115bis Law 4 755). Costa Rica is party to the multilateral Convention on Mutual Administrative Assistance in Tax Matters. Article 22.4 of the Convention allows tax information to be shared for use in foreign bribery upon consent. Only 2 of the 20 bilateral Tax Information Exchange Agreements (TIEAs) signed by Costa Rica (with France and Guernsey) and 1 of 3 DTAs (Mexico) contain a similar provision. Costa Rica undertakes to seek such provisions in future bilateral tax agreements.

Commentary

The lead examiners commend Costa Rica for acceding to the Convention Mutual Administrative Assistance in Tax Matters. The Convention will substantially increase Costa Rica’s ability to seek and share tax information for use in foreign bribery investigations.

7. Accounting and auditing, and corporate compliance, internal controls and ethics programmes**(a) Accounting standards**

64. Article 8(1) of the Anti-Bribery Convention requires that each Party within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards 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

²³ General Instruction 01-2017, Protocol for Action in Cases of Offences other than Tax Offences Established in Article 92 of the Code of Tax Rules and Procedures; and Procedure for the processing of dissident crimes to those typified in Article 92 of the Law on Tax Rules and Procedures (DGT-DF-SIRFT-PRO11-02-2019).

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.

65. Costa Rica implements Article 8 through the Commercial Code (Law 3 284) and the International Financial Reporting Standards (IFRS). Articles 234 and 251 of the Code require all companies to keep accounting records that clearly reflect the company's operations and economic situation. In addition, the financial statements of all taxable persons since 2001 must be prepared using the International Financial Reporting Standards (IFRS) (CCPA Circular 06-2014). IFRS for SMEs was adopted in 2009 and reiterated in CCPA Circular 21-2018.

66. Banks and financial institutions are subject to a slightly different regime. The Phase 1 Report (para. 94) noted that banks and financial institutions are required to prepare financial statements in accordance with a framework established by SUGEF which differs slightly from the IFRS. In Phase 2, Costa Rica explains that this framework is only used for reporting to SUGEF and that IFRS applies for all other purposes.

67. The public sector is implementing the International Public Sector Accounting Standards (IPSAS). IPSAS seek convergence with the IFRS. Costa Rica expects full implementation of IPSAS by 2022.

(b) External auditing

(i) Entities subject to external audit

68. The 2009 Anti-Bribery Recommendation X recommends countries 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 are fully used to prevent and detect foreign bribery, according to their jurisdictional and other basic legal principles.

69. In Phase 1 (paras. 93 and 132), the Working Group recommended that Costa Rica require companies to be systematically externally audited, regardless of their size or whether they are listed. Costa Rican SOEs and financial institutions were externally audited annually. For the remaining companies, tax authorities may require an external audit of the financial statements of "Large National Taxpayers" and "Large Territorial Companies", which are defined based on a company's revenues, assets and past taxes paid.²⁴ Entities in these categories were selected for external audit depending on whether they were considered fiscal risks (i.e. tax evaders). In 2016-2018, there were 953 Large National Taxpayers and/or Large Territorial Companies, of which an average of only 139 (14.59%) were externally audited annually. This is equivalent to less than 2% of all companies in Costa Rica (excluding SOEs and financial institutions).

70. Costa Rica has not implemented the Working Group's recommendation. The system described in the Phase 1 Report remains in place: apart from SOEs and financial institutions, external audits are conducted only for entities chosen by tax authorities. Article 8(2)(d) CLL states that submission to external audit is one of the minimum elements for an acceptable corporate model of organisation, crime prevention, management and

²⁴ DGT-R-46-2014 (as modified by DGT-R026-2015) and Article 104 of Law 4 755 on Tax Rules and Procedure.

control (see Section C.3(e) at p. 61). But there is no obligation to implement a corporate model. Costa Rican authorities state that they are working on a proposal to implement the Working Group's recommendation.

Commentary

In 2016-2018, an average of only 139 Costa Rican entities representing less than 2% of all companies were externally audited annually (excluding SOEs and financial institutions). The lead examiners therefore reiterate the Phase 1 Report and recommend that Costa Rica increase the use of external audits, having regard to the individual circumstances of a company, including its size, type, legal structure, and geographical and industrial sector of operation, in order to prevent and detect foreign bribery.

(ii) External auditing standards and detection of foreign bribery

71. The College of Public Accountants (*Colegio de Contadores Públicos de Costa Rica*, CCPA) adopted the International Standards of Auditing (ISAs) in 1998 and agreed in 2005 to incorporate automatically all future updates to ISAs. This includes ISA 240 on fraud as well as ISA 250 on non-compliance with laws and regulations that could lead to material misstatements in a company's financial statements.

72. Costa Rican external auditors do not appear to take fully into account indicia of foreign bribery when auditing companies. The CCPCR states that it has provided training on foreign bribery. External auditors at the on-site visit were well aware of ISA 240 and 250. They stated that they have procedures and indicators on detecting fraud and money laundering when conducting financial audits, e.g. payments with no support, volume and amount of transactions etc. None of the indicia that they described was specific to foreign bribery, however. The auditors referred briefly to the new Corporate Liability Law but not Costa Rica's foreign bribery legislation. There was no mention of any foreign bribery-related training or awareness-raising activities. The CCPCR admitted that the Costa Rican accounting and auditing profession needed training in these matters. External auditors have not detected any cases of foreign or domestic bribery.

Commentary

The lead examiners recommend that Costa Rica continue to work closely with the accounting and auditing profession and the CCPA to raise awareness of foreign bribery and provide guidance and training to external auditors on the detection and reporting of this crime.

(iii) Audit quality and auditor independence

73. The 2009 Anti-Bribery Recommendation X.B.ii urges Parties to the Convention and professional associations to maintain adequate standards to ensure the independence of external auditors which permits them to provide an objective assessment of company accounts, financial statements and internal controls.

74. The CCPCR has developed a Code of Ethics based on the 2012 Code of Ethics of the International Ethics Standards Board for Accountants. Under Article 11 of the Code, external auditors must practise their profession with independence and free from conflicts of interest. The provision contains a lengthy list of situations where an external auditor is prohibited from auditing a legal entity, e.g. when the entity is for-profit and the auditor owns more than 10% of its shares; the auditor has a direct or indirect financial interest in the entity; or when the auditor's income from the entity prevents the auditor from acting

independently or exceeds 60% of the total income. An external auditor who breaches this provision is punishable by suspension for three to five years and expulsion for up to ten years.

75. With regard to quality assurance (QA), the CCPA has established a mandatory QA review system in line with the requirements of the Statements of Membership Obligation 1. It has also adopted the International Standard on Quality Control 1 and ISA 220. In addition, SUGEF, SUPEN, and SUGESE, under the co-ordination of CONASSIF, are authorised to establish a QA review system for all audits of financial statements of regulated entities in the financial sector.²⁵

(iv) Reporting foreign bribery and sharing information by external auditors

(1) Reporting foreign bribery to company management

76. The 2009 Anti-Bribery Recommendation X.B.iii urges Parties to the Convention to require an external auditor who discovers indications of a suspected act of bribery of a foreign public official to report this discovery to management and, as appropriate, to corporate monitoring bodies.

77. Costa Rican external auditors are required to report material misstatements due to fraud and non-compliance with laws to management (ISA 240(40) and (43), and ISA 250(19) and (28); see also Phase 1 Report para. 95). Costa Rica also refers to ISA 260 which deals with “communication with those charged with governance” of the company.

(2) Encouraging companies to respond to an auditor’s report

78. The 2009 Anti-Bribery Recommendation X.B.iv urges Parties to the Convention to encourage companies that receive reports of suspected acts of bribery of foreign public officials from an external auditor to actively and effectively respond to such reports. Costa Rica states that Article 12 CLL implements this Recommendation by providing a sentence reduction of up to 40% to companies that self-report foreign bribery. However, this provision may be overbroad (see Section C.6(b)(iv) at p. 72).

(3) Reporting foreign bribery and providing information to competent authorities

79. The 2009 Anti-Bribery Recommendation X.B.v asks Parties to the Convention to consider requiring an external auditor to report suspected acts of foreign bribery to competent authorities independent of the company, such as law enforcement or regulatory authorities. Countries should also ensure that auditors who make such reports reasonably and in good faith are protected from legal action.

80. External auditors in Costa Rica are not obliged to report foreign bribery to competent authorities. ISAs 240 and 250 state that external auditors should report if required by local law to do so. No such law exists in Costa Rica. Nor has Costa Rica issued guidance on this issue.²⁶ Costa Rica refers to Article 8(k) CLL. This provision merely states that an obligation for an auditor to report is one of the minimum elements for an acceptable corporate model of organisation, crime prevention, management and control (see

²⁵ [IFAC Costa Rica](#).

²⁶ In 2017, the International Federation of Accountants (IFAC) amended the notes on the application and explanation of ISA 250, indicating that reporting to competent authorities involve complex considerations and professional judgments, and that countries may provide guidance to auditors on this issue.

Section C.3(e) at p. 61). However, there is no obligation to implement a corporate model. External auditors are required to report suspected money laundering transactions to competent authorities, however (Article 67 MLFT; Phase I Report para. 95).

Commentary

The lead examiners recommend that Costa Rica consider requiring an external auditor to report suspected acts of foreign bribery to competent authorities independent of the company, such as law enforcement or regulatory authorities, and ensure that auditors who make such reports reasonably and in good faith are protected from legal action.

(c) Corporate compliance, internal controls and ethics programmes

81. The 2009 Anti-Bribery Recommendation X.C.i asks Parties to the Convention to encourage companies to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. Recommendation X.C.ii adds that Parties should encourage business organisations and professional associations to promote these measures.

82. Costa Rican companies generally do not have adequate anti-corruption compliance programmes. As mentioned at para. 31, at the on-site visit only subsidiaries of foreign multinationals and one US-listed Costa Rican company were aware of the risks of foreign bribery. These are the only companies whose compliance programmes address this crime. Other Costa Rican companies at the on-site visit had limited compliance programmes at best despite having substantial international activities. The problem may be especially acute among SMEs because of their limited resources. Companies were unaware of the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance (2009 Recommendation Annex II). Private sector representatives at the on-site visit stated more training on corporate compliance is needed.

83. Costa Rica intends to promote anti-corruption compliance programmes by implementing the provisions on corporate models in the Corporate Liability Law (CLL). Corporate models are essentially compliance programmes. As further described in Sections C.3(e) and C.6(b)(i) at pp. 61 and 70, companies that have a corporate model may benefit from sentence reductions under the CLL. The CLL specifies 11 minimum elements for an acceptable corporate model. Additional elements may need to be included if corporate models are to be effective in preventing and detecting foreign bribery. Costa Rica states that it is developing a regulation for this purpose.

Commentary

The lead examiners are concerned about the lack of compliance programmes in Costa Rican companies that are not subject to foreign bribery legislation in other Parties to the Convention. To promote compliance programmes, the CLL provides for sentence reductions for companies that have implemented corporate models. This is a step in the right direction. However, it is unlikely that these legislative provisions and regulations alone will convince companies to implement compliance programmes. A track record of successful prosecutions under the CLL would also be necessary.

The lead examiners therefore recommend that Costa Rica take steps to (a) encourage companies to adopt anti-corruption compliance programmes, including by providing guidance on this issue, and (b) encourage business organisations and professional associations to promote compliance programmes. These efforts should especially target SMEs that are active internationally.

8. Prevention and detection through anti-money laundering measures

84. Costa Rica's anti-money laundering (AML) system involves multiple government authorities. The country's financial intelligence unit is the UIF (*Unidad de Inteligencia Financiera*) within the Institute against Drugs (*Instituto Costarricense sobre Drogas*, ICD) (Article 105 Law 7 786). The National Council for Supervision of the Financial System (CONASSIF) issues AML rules. Four superintendencies oversee these rules' implementation in the companies that they regulate: Superintendency of Financial Institutions (SUGEF) for banks and other designated entities; Superintendency of Securities (SUGEVAL) for listed companies; Superintendency of Pensions (SUPEN) for pension funds; and Superintendency of Insurance (SUGESE) for insurance companies. The relevant criminal enforcement authorities are described in Section C.4(b) at p. 66.

(a) Costa Rica's exposure to corruption-related money laundering

85. Costa Rica is updating its assessment of its exposure to corruption-related money laundering. Its 2014 National Risk Assessment developed a National Strategy to implement policies and actions against money laundering in which corruption was addressed. The Assessment identified money laundering related to drug trafficking as the main threat. Accordingly, Costa Rica has directed most of its resources to mitigate risks in this field. There were few initiatives to fight money laundering predicated on other offences. Of the 43 money laundering cases in 2010-2013, almost all were related to drug trafficking. The risk of corruption-related money laundering in Costa Rica is real, as the three such allegations described in Section A.2(d) at p. 8 show. The UIF also states that foreign authorities have provided information about corruption-related money laundering.

Commentary

The lead examiners recommend that Costa Rica update its assessment of its exposure to corruption-related money laundering and take appropriate measures to address those risks.

(b) Customer due diligence and politically exposed persons (PEPs)

86. Before entering into a client relationship, financial institutions must conduct customer due diligence. This includes obtaining beneficial ownership information, i.e. the identity of the persons for whose benefit an account is opened or a transaction is made (Article 16(a) MLFT).

87. Financial institutions must also determine whether a potential or existing client is a politically-exposed person (PEP). Article 22 of Executive Regulation 36 948 (AML Regulation) defines PEPs. The definition lists specific Costa Rican officials, e.g. parliamentarians, President and Vice-Presidents of the Republic, ministers etc. Foreign PEPs are non-Costa Ricans who occupy or have held positions similar to the listed Costa Rican officials. A person remains a PEP for eight years after leaving office, with the exception of heads of state who remain PEPs indefinitely (Article 24 AML Regulation).

88. Costa Rica has not rectified deficiencies in the definition of PEPs that were identified in the Phase 1 Report (para. 87). PEP's spouses are considered PEPs, but not their close associates or other family members. Senior officials of international

organisations are also not covered. GAFILAT shares these concerns.²⁷ The ICD, central bank, Comptroller General (CGR) and SUGEF are discussing an amendment.

89. In practice, some Costa Rican banks may already address this deficiency. Financial institutions at the on-site visit stated that they go beyond a list of Costa Rican PEPs provided by the CGR. All rely on commercial services and databases to identify additional Costa Rican and foreign PEPs. One bank stated that it considers close relatives, spouses, parents, and siblings of PEPs to also be PEPs.

90. Once identified, PEPs are subject to enhanced due diligence. The financial institution's management must approve the establishment and maintenance of a customer relationship with a PEP (Article 23 AML Regulation). SUGEF, the financial institution regulator, has additional measures. Article 15 of its Agreement 12-10 requires regulated entities to establish a policy to identify PEPs. SUGEF intends to require these entities to have risk management systems to identify PEPs and to take reasonable steps to establish the source of wealth and the origin of the funds. Intensified continuous monitoring of the commercial relationship would also be required.

Commentary

The lead examiners reiterate the Working Group's comments in Phase 1, and recommend that Costa Rica expand its definition of PEPs to include close associates and family members of PEPs, as well as senior officials of international organisations.

(c) Suspicious transaction reporting

91. The MLFT sets out requirements to report suspected money laundering transactions. Entities required to report include financial institutions (Article 14) as well as designated non-financial businesses and professions (Articles 15 and 15bis). Entities must identify "unusual transactions", which are defined as operations that do not conform to a customer's usual transaction pattern. Unusual transactions must be examined to determine whether they are "suspicious transactions", which are defined as those that do not have an obvious material, economic or legal justification, or are of unjustified complexity.²⁸ Since 2016, reporting entities send STRs directly to the UIF with a notification to the entity's regulating authority.²⁹ Reporting entities must keep the documents relevant to an STR and provide them to the authorities upon request.³⁰ Entities must also report transactions of USD 10 000 or more to their supervising authority.³¹

92. Guidance and typologies on STR reporting are available but they do not specifically refer to foreign bribery. The UIF states that it has a document on suspicious transactions that includes definitions from international conventions. SUGEF indicates that it held meetings with regulated entities during which typologies were discussed. These measures did not specifically refer to foreign bribery, however. After the on-site visit, the UIF provided a draft Compilation of 34 Typologies of Money Laundering and Terrorism Financing 2018-19. The document contained six cases of "international corruption (PEPs and public officials). However, the document describes the suspected acts of corruption-related money laundering and the steps taken by UIF to investigate. It does not identify the

²⁷ GAFILAT (2015), [Mutual Evaluation Report of the Republic of Costa Rica](#), p. 139.

²⁸ Articles 34-35, AML Regulation; Article 22, SUGEF Agreement 12-10.

²⁹ Article 25 MLFT and Article 35 AML Regulation.

³⁰ Article 23, SUGEF Agreement 12-10; Article 18, Law 8 754 on Organised Crime.

³¹ Articles 20-21 MLFT; Article 29, Executive Decree 36 948.

indicia of suspicion that financial institutions should be alert to. The document therefore may not be the most useful guide for reporting entities to identify suspicious transactions.

93. The UIF provides some general feedback to financial institutions. On-site visit participants attended presentations by UIF on the effectiveness of STRs, including figures on the number of reports that led to criminal cases. There is no feedback on the outcome of specific STRs, however.

94. Despite these efforts, the STR system's effectiveness in detecting corruption and foreign bribery is unproven. From 2014 to June 2019, the UIF received on average 326 STRs annually and forwarded 119 (37%) to the Money Laundering Unit (MLU) of the Public Prosecution Service. None of the STRs related to foreign bribery. Statistics on STRs related to domestic corruption were not provided. But in *Case #5 Money Laundering (Venezuela)*, a company based in Costa Rica allegedly laundered large amounts of bribe payments through banks in the country. The number and pattern of deposits reportedly could not have corresponded to the company's normal business activity or payments by its customers. Nevertheless, STRs were not generated. In *Case #3 Money Laundering (Peru)*, the UIF generated a report but it is not clear whether the bank through which bribes were allegedly laundered filed an STR. The bank was eventually fined CRC 1.1 billion (USD 2 million) for breaching AML laws and has challenged the decision.³²

Commentary

The lead examiners recommend that Costa Rica provide further guidance to reporting entities on identifying suspicious transactions of money laundering predicated on foreign bribery, including typologies that specifically address foreign bribery.

(d) UIF resources and training

95. The UIF appears to be adequately resourced. It has 22 staff of which 10 are STR analysts. Given that the UIF receives on average 326 STRs annually, each analyst would be responsible for 32.6 STRs per year on average. This appears to be a reasonable workload. GAFILAT noted in 2018 that the UIF had sufficient resources after substantial increases in recent years.³³

96. Foreign bribery-related training could be beneficial. The four superintendencies state that they constantly train their officials but have yet to cover international bribery. The UIF and the other financial regulators did not refer to any training activities.

Commentary

The lead examiners recommend that Costa Rica train officials at UIF, SUGEF, SUGEVAL, SUPEN and SUGESE on money laundering related to foreign bribery.

³² Forbes Centroamérica (24 June 2019), "[Scotiabank paga multa por violar normativa antilavado](#)".

³³ GAFILAT (2018), [Fifth Enhanced Follow-Up Report of Costa Rica](#), paras. 24-27; GAFILAT (2017), [Technical Analysis of FATF Recommendations – Rating of Costa Rica](#), paras. 78-85.

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

1. Investigation and prosecution of foreign bribery

(a) Relevant law enforcement authorities

97. The Integrity, Transparency and Anti-Corruption Unit (*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción*, FAPTA) is responsible for foreign bribery and domestic bribery enforcement.³⁴ Under Costa Rican law, the Public Prosecution Service (*Ministerio Público*, PPS) is responsible for criminal investigations and prosecutions. FAPTA has prosecutors in the capital San José and in regional offices. Costa Rica states that each FAPTA office has conduct of foreign bribery cases that occur within its geographical jurisdiction. An exception is complex foreign bribery cases which may be transferred from regional offices to the FAPTA head office in San José, according to PPS Circular 03-ADM-2020. All PPS prosecutors have been also instructed to transfer foreign bribery cases to FAPTA.

98. The Anti-Corruption Unit (ACU) of the Judicial Investigation Body (*Organismo de Investigación Judicial*, OIJ) supports FAPTA in foreign bribery investigations (Law 5 224, OIJ Law). The OIJ is the judicial police established under the Supreme Court. The OIJ ACU conducts corruption investigations under the direction of FAPTA. The OIJ may also receive and investigate complaints.

99. The Attorney General's Office (*Procuraduría General de la República*, PGR) is part of the Ministry of Justice and Peace. It is the highest advisory, technical-legal body of Costa Rica's public administration, and the legal representative of the State in matters falling within its competence. The roles of FAPTA and the PGR are considered in detail in Section C.1(d) at p. 31.

(b) Sources of information for opening investigations

100. A range of sources can provide information for opening investigations. The authorities may rely on information contained in incoming mutual legal assistance requests. They may also rely on complaints filed by public officials or private individuals. It is unclear, however, whether anonymous complaints are permissible (see Section B.2(b) at p. 15). The recent Corporate Liability Law introduced sentence reductions as an incentive for companies to self-report wrongdoing (see Section C.6(b)(i) at p. 70).

101. Media reports can also be relied upon to start investigations, though in practice better use of this source should be made. The OIJ Press Office monitors the national but not foreign media. One PPS official monitors both the national and international media and sends daily reports to the Prosecutor General. Nevertheless, the PPS did not notice reports of the *Construction (Guatemala)* case. At the on-site visit, FAPTA stated that the PPS media monitor has a multitude of other functions and does not have sufficient resources to monitor the foreign media. FAPTA states that it commenced 12 (non-foreign bribery) cases based on media reports in 2019. After the on-site visit, FAPTA indicated its intention to monitor foreign media more actively. It is unclear, however, if this will translate into more resources for monitoring.

³⁴ Prosecutor General Circular 03-PPP-2010; FAPTA Memorandum 01-2011.

102. A failure to rely on the Working Group’s Matrix of Foreign Bribery Allegations exacerbates the problem. The Matrix compiles allegations in the media of foreign bribery committed by individuals and companies from Parties to the Convention. It is updated and circulated to all Parties to the Convention quarterly. Virtually all Working Group members rely on the Matrix as an information source for opening investigations. But this was not the case in Costa Rica. At the on-site visit, FAPTA stated that it had not received a copy of the Matrix since 2017. The *Construction (Guatemala)* case was added to the Matrix in August 2018, but FAPTA did not learn of the allegations until just before the on-site visit over a year later. Other Costa Rican officials who received the Matrix did not forward the document to FAPTA each quarter, despite their obligation to report allegations of crime to law enforcement (see Section B.2(a) at p. 14). But by the same token, FAPTA has also not proactively sought copies of the Matrix from other Costa Rican officials. After the on-site visit, FAPTA stated that it has started using the Matrix systematically.

Commentary

The lead examiners are concerned that FAPTA has not made full use of the Working Group’s Matrix of Foreign Bribery Allegations. Officials who receive the document have not provided it to FAPTA. FAPTA has also not actively asked for copies of the document. A key source for detecting foreign bribery allegations is therefore completely untapped.

The lead examiners also welcome FAPTA’s initiatives after the on-site visit on the use of the Matrix and on monitoring international media. They therefore recommend that (a) Costa Rica ensure that FAPTA obtains all copies of the Working Group’s Matrix of Foreign Bribery Allegations, and (b) FAPTA make full use of available sources of information for opening foreign bribery investigations, including by monitoring not only national but also international media more actively and by systematically consulting the Matrix.

(c) Commencement of investigations and lack of proactivity

103. In response to an allegation of a crime, Costa Rican authorities may open a preliminary investigation, or proceed directly to a preparatory investigation. The PPS may open a preparatory investigation where it “becomes aware of a crime” (Article 289 CCP). Costa Rica states that this threshold is low and there are no minimum requirements. When even this low threshold is not met, the PPS may conduct a preliminary investigation to gather more information. Investigative steps requiring judicial authorisation are not available in preliminary investigations, unlike preparatory investigations. The OIJ may also receive complaints and conduct preliminary investigations. The Phase 1 Report (para. 63) expressed concerns that the may OIJ dismiss complaints unilaterally, but Costa Rica asserts that the OIJ does not have such authority. Article 283 CCP obliges the OIJ to inform the PPS within six hours of its first intervention.

104. Despite the low evidentiary threshold, Costa Rican authorities did not promptly open a full investigation in the *Construction (Panama)* case. After learning of the allegations in the national media, FAPTA spoke with the Panamanian authorities in March 2018 and decided not to proceed. At the October 2019 on-site visit, FAPTA first explained that Costa Rica was not competent to investigate the case. It then stated that it was competent but that proceeding would jeopardise the investigation; why this was so is not clear. By the end of the discussion, FAPTA stated that it was not proceeding because of a lack of resources. It then added that cases of political corruption and political financing were its priority. After the on-site visit, FAPTA re-examined the media reports on the case

and sought further information from Panama through informal channels. It opened a preparatory investigation and in February 2020 sent a formal MLA request to Panama.

105. The PGR's explanation for its inaction in the *Construction (Panama)* and *Construction (Guatemala)* cases was also unsatisfactory. After inquiring with Panamanian authorities, the PGR decided not to open an investigation because the alleged bribery occurred before the Corporate Liability Law was enacted in June 2019. But this does not explain why proceedings were not taken under the previous administrative corporate liability regime, or against natural persons. An academic at the on-site visit also rightly pointed out that foreign bribery was an offence in Costa Rica at the time of the alleged bribery. Costa Rican authorities can therefore launch proceedings against the companies for laundering the proceeds of the bribery-tainted contracts that were obtained after the enactment of the CLL. After the on-site visit, the PGR stated that the case falls within FAPTA's competence, and that it sought information from Panama only to update the Working Group's Matrix of Foreign Bribery Allegations. This would seem at odds with the PGR's position that it "can exercise criminal action for ... the foreign bribery offence in Article 55 LAC" (see para. 110). It is also unclear why the PGR would contact Panama instead of FAPTA to seek information for updating the Matrix.

Commentary

The lead examiners are concerned about FAPTA's lack of resources and proactivity in opening foreign bribery investigations. They therefore recommend that Costa Rica take all necessary steps to ensure that FAPTA thoroughly investigates all credible allegations of foreign bribery and proceeds proactively against both natural and legal persons.

The lead examiners are also concerned that FAPTA stated at the on-site visit that it lacked resources and that its priority was political corruption and political financing cases. Costa Rica later pointed out that PPS Circular 13-ADM-2019 gives foreign bribery cases the same priority as other serious corruption and financial crimes. The lead examiners therefore recommend that Costa Rica take steps to ensure that investigations and prosecutions of foreign bribery are given equal priority in practice as those of other serious corruption and financial crimes. As discussed at p. 43, the lead examiners also recommend that Costa Rica ensure that FAPTA have sufficient resources.

(d) Roles of FAPTA and PGR

106. The Attorney General's Office (PGR) plays a prominent role alongside FAPTA in domestic corruption cases. The PGR is part of the Ministry of Justice and Peace (MJP). Article 16 CCP gives PGR concurrent jurisdiction with FAPTA over corruption offences. The principal rationale for this arrangement is that the Costa Rican state is considered a victim in domestic corruption cases. As the Costa Rican state's legal representative, the PGR participates in domestic corruption prosecutions to protect the state's interest, such as by seeking restitution from and sanctioning the offender.

107. The same justifications do not exist for the PGR's involvement in foreign bribery matters. In these cases, Costa Rican law considers the foreign state to be the victim of the crime. But the PGR does not represent the foreign state. Some on-site visit participants (including the PGR) stated that foreign bribery is an international crime, and hence the PGR's participation in these cases is necessary to protect Costa Rica's international reputation. This reasoning is not entirely convincing, however. In any event, it is difficult to see how the PGR could protect Costa Rica's international reputation by taking part in foreign bribery proceedings. The PGR or other bodies from the executive branch of

government also do not participate in proceedings involving other transnational crimes, e.g. international drug trafficking.

108. The absence of justifications aside, a prominent PGR enforcement role in foreign bribery cases raises concerns about independence under Article 5 of the Convention. The PGR is within the MJP. It is hence part of the executive branch of government. The PGR states that it enjoys “functional independence” (Article 1 PGR Law). However, PGR lawyers do not have the full array of Constitutional and statutory independence safeguards that PPS prosecutors enjoy, e.g. on case assignment, removal and terminations (see Section C.1(j)(ii) at p. 43). Foreign bribery enforcement actions conducted by the PGR may therefore not be sufficiently independent. They may also be more vulnerable to influence by considerations prohibited by Article 5, namely national economic interest, potential relations with another state, and identity of the persons involved. The Working Group expressed the same concern in Phase 1 (para. 129).

109. Concurrent jurisdiction for FAPTA and the PGR can also be detrimental to foreign bribery cases. FAPTA states that the two bodies may proceed in parallel, at least initially. The *Construction (Panama)* case provides a good example of the dangers when this happens. As described at Section C.1(c) at p. 30, FAPTA decided to suspend its investigation since taking further steps at that time could jeopardise the case. But taking further steps was precisely what the PGR did, by seeking more information from Panama without informing FAPTA. If FAPTA was correct, then the PGR’s actions could have had disastrous consequences for the investigation. Mandatory information sharing between the PGR and FAPTA may not be a viable solution for co-ordination. According to FAPTA, the law on investigative secrecy prohibits it from sharing such information with a body in the executive branch of government.

110. Throughout this evaluation, the PGR has taken inconsistent positions regarding its role in foreign bribery matters. As noted above, it states that Article 16 CCP allows the PGR to “exercise criminal action for ... the foreign bribery offence in Article 55 LAC.” But it also states that in practice it plays a secondary role in corruption cases and only “contributes an element” to the prosecution. However, this is based on the PGR’s restrictive interpretation of Article 16 CCP. Furthermore, the PGR states that it cannot conduct a criminal investigation. But it may assess the evidence gathered by FAPTA and ask a judge to issue an indictment or order FAPTA to take further investigative steps. The PGR can also conduct administrative investigations.

111. The PGR also stated at the on-site visit that in foreign bribery cases, it would conduct a preliminary administrative investigation only if the briber is a state-owned enterprise. However, this was not true in the *Construction (Panama)* case, where the company was a private enterprise and the PGR took a lead role in seeking information from Panama. The PGR also later stated that FAPTA, not the PGR, has competence over the *Construction (Panama)* investigation.

Commentary

The lead examiners recognise that the PGR may have a role to play in domestic corruption cases, but the same justifications do not apply to foreign bribery investigations. Foreign bribery enforcement actions conducted by the PGR (which is part of the MJP) would raise significant concerns under Article 5 of the Convention. Concurrent jurisdiction for FAPTA and the PGR can lead to parallel and uncoordinated investigations that at best leads to a waste of resources. At worst, it can seriously jeopardise the investigation.

For these reasons, the lead examiners recommend that Costa Rica amend its legislation to give FAPTA exclusive jurisdiction to conduct foreign bribery preliminary and preparatory investigations, as well as prosecutions.

(e) Termination of investigations

112. When a preparatory investigation is completed, the PPS may terminate the proceedings based on grounds listed in Article 311 CCP, e.g. an offence has not been committed or not by the accused; the evidence is insufficient and obtaining additional evidence is impossible; or the statute of limitations has expired (see Section C.1(g) at p. 39). A judge must approve the decision to terminate the proceedings. Otherwise, the prosecutor proceeds with the case by presenting an accusation (indictment) to a pre-trial judge and requesting a trial (Articles 303-309 CCP). Non-trial resolutions are also available (see next Section).

113. Proceedings may also be terminated through the “opportunity principle” under Article 22(a) CCP for “insignificant” crimes or an accused with minimal culpability:

Article 22. [W]ith the authorisation of the hierarchical superior, the representative of the [PPS] may request that all or part of the criminal prosecution ... be waived, when

(a) It is an insignificant event, of minimal culpability of the author or the participant or with a small contribution from the latter, unless there is violence over the people or force over things, the public interest is affected or the fact has been committed by a public official in the exercise of the office or on his occasion.

114. Costa Rica states that this provision cannot be used to terminate foreign bribery cases. The provision explicitly states that it does not apply to proceedings for an offence committed by a “public official”. Presumably, Costa Rica considers that this term includes a “foreign public official”. It also considers that the provision applies not only to proceedings against the foreign public official, but also to proceedings against an individual who bribes the official. Costa Rica adds that foreign bribery would not be considered “an insignificant event”. Even if this were true, the provision could still be used to terminate proceedings against an accused that had minimal culpability or had made only a small contribution towards the bribery.

115. At the time of the on-site visit, an issue of further concern was that the interpretation of the term “public interest” in Article 22(a) CCP may contravene the Convention. Costa Rica stated that:

This term is extremely broad so from the interpretation of it can include terms such as national economic interest, the potential effects on relations with another state and the identity of the natural persons involved, of course, in the understanding that is spoken within the context of a regulation such as the Convention.

If applied to foreign bribery investigations and prosecutions, this interpretation of Article 22(a) would plainly infringe Article 5 of the Convention which prohibits the consideration of these factors. After reviewing a draft of this report, Costa Rica asserts that all foreign bribery investigations would be in the public interest. But in support of this position, it cites Article 113 of the General Law of Public Administration which deals with the public administration of Costa Rica, not a foreign country.

116. Just before the adoption of this report, the PPS issued Circular 03-ADM-2020. The Circular instructed prosecutors not to terminate foreign bribery investigations and prosecutions based on Article 22(a) CCP.

117. A second basis for applying the opportunity principle also raises questions. Article 22(d) CCP allows a case to be terminated if “foreign proceedings have resulted or may result in sanctions that would render the sanctions imposed in Costa Rica irrelevant”. On its face, the provision is broad. Any on-going foreign investigation into the same case would suffice. In the *Money Laundering (Peru)* case, a Costa Rican lawyer allegedly set up shell companies in Costa Rica to assist an ex-President of Peru launder the proceeds of foreign bribery. Costa Rican authorities reportedly closed their investigation initially because of an on-going investigation in Peru, even though there was no confirmation that the Peruvian investigation targeted Costa Rican individuals or entities.³⁵ Furthermore, Article 22(d) applies even if the potential sanctions in the foreign country are less severe than those in Costa Rica. FAPTA adds that the termination of the case in Costa Rica is definite. It cannot be reversed even if the foreign investigation or proceeding is ultimately dropped. FAPTA later also added that, before terminating its case, it would ascertain that a foreign investigation into the same case encompasses individuals and entities that are subject to Costa Rican jurisdiction.

118. A third provision raises further concerns about investigations into crimes committed abroad. The prosecutor may ask a court to dismiss a complaint when it is “impossible to proceed” (Article 282(1) CCP). Costa Rica states that an example of this situation is “when the acts were committed abroad and are not prejudicial to any national [interest] and had no effect in our country”. The provision could therefore conceivably be used to terminate investigations into foreign bribery committed by Costa Rican nationals extraterritorially. This position is particularly odd given that Costa Rica now has universal jurisdiction to prosecute foreign bribery (see Section C.2(c) at p. 56). After reviewing a draft of this report, Costa Rica states that Article 282(1) CCP only applies when it is impossible to proceed with a case because of *procedural* difficulties. It also reverses its earlier position and states that cases closed under this provision can be reopened if new evidence is gathered. Supporting case law or jurisprudence for these positions was not provided.

119. Just before the adoption of this report, the PPS specified through Circular 03-ADM-2020 that Article 282(1) CCP cannot be used to systematically terminate foreign bribery investigations. The term “impossibility to proceed” only allows for termination on procedural grounds, such as “lack of authority” or diplomatic immunity. The term cannot be used to terminate a case because evidence must be sought from abroad.

Commentary

The lead examiners are concerned that Article 22(d) CCP allows the termination of foreign bribery cases when a foreign jurisdiction investigates the same case. This provision may be routinely applied in foreign bribery cases since the briber is always prosecutable for domestic bribery in the foreign jurisdiction. There is merit in avoiding duplicative prosecutions in multiple jurisdictions. But Article 22(d) CCP is overbroad and may allow those who engage in foreign bribery to escape justice entirely.

³⁵ The case was later reopened when a new Prosecutor General took office. See the case summary at p. 10 for details.

The lead examiners therefore recommend that Costa Rica take steps to ensure that Article 22(d) CCP does not allow the termination of cases unless Costa Rican authorities consult with their foreign counterparts and ascertain that a foreign bribery investigation into the same case encompasses individuals and entities that are subject to Costa Rican jurisdiction. Where Costa Rica decides to defer to the foreign investigation, a Costa Rican investigation into the case should be suspended and not terminated definitively until the foreign jurisdiction has sanctioned the individuals and entities subject to Costa Rican jurisdiction.

(f) Non-trial resolutions

120. Proceedings for foreign bribery and related offences may be terminated through up to five types of negotiated non-trial resolutions: (i) effective collaboration agreements; (ii) abbreviated procedure; (iii) integral reparation of damage; (iv) conditional suspension of proceedings; and (v) conciliation. Items (iii) to (v) are often referred to as “alternative measures”, whose purpose is to “resolve the conflict from the perspective of restorative justice and the preponderant role of the victim”. This differs from the abbreviated procedure which seeks “procedural economy by avoiding the prolongation of the processes before the trial stage” (Prosecutor General Circular 10-ADM-2019). The first three non-trial resolutions raise several concerns, while the last two do not apply to foreign bribery cases.

(i) Effective collaboration agreements

121. Article 22(b) CCP allows a prosecutor to terminate proceedings in return for an offender’s “effective collaboration” in a serious or complex case:

In cases of organised crime, violent crime, serious crimes or complex processing and the accused collaborate effectively with the investigation, provide essential information to prevent the crime from continuing or to perpetuate others, help clarify the fact investigated or other related or provide useful information to prove the participation of other accused, provided that the behaviour of the collaborator is less reprehensible than the punishable acts whose persecution facilitates or whose continuation avoids.

122. The provision is available only before the prosecution files an accusation (indictment). A superior prosecutor and a judge must approve the collaboration agreement. An accused who upholds the agreement avoids conviction (Article 22-24 CCP). Confiscation of the proceeds of crime may be imposed under Article 110 of the Criminal Code, according to Costa Rican authorities. Collaboration agreements are available to natural but not legal persons (Article 15 CLL). (Collaboration by legal persons can mitigate sentence, however; see Section C.6(b)(v) at p. 72.) Statistics on the application of this provision in practice were not available.

123. Some of the terms in this provision are defined elsewhere. A case has “complex processing” if it has a multiplicity of facts or a high number of accused or victims, or if it involves organised crime (Article 376 CCP). Article 1 of the Organised Crime Law 8 754 defines a “serious crime” as one punishable by at least four years’ imprisonment. To “collaborate effectively”, an accused must provide essential information to prevent the crime from continuing, help clarify the facts investigated, or provide useful information to prove the participation of the other accused. In contrast, a legal person may benefit from a sentence reduction by merely “collaborating” with an investigation (Article 12(b) CLL; see

Section C.6(b)(v) at p. 72). In the *Alcatel* domestic bribery case,³⁶ the court held that there must be a “rational proportion” between the reprehensibility of the accused’s conduct and benefit from the accused’s collaboration.

124. The procedure for applying this provision and enforcing effective collaboration agreements could benefit from some clarification. FAPTA states that the collaboration agreement is always written and negotiated in the presence of defence counsel. This is not stipulated in statute, however. Article 23 CCP provides that the proceedings against the accused are temporarily suspended for up to 15 days to allow him/her to provide collaboration. The judge must then decide whether to terminate the proceedings definitively. FAPTA states that, in practice, this provision would guarantee that the accused benefits from the agreement only after he/she has effectively collaborated. If the accused’s collaboration is unsatisfactory, then the prosecution may request the judge to restore the proceedings.

Commentary

The lead examiners commend Costa Rica for enacting legislation to provide for effective collaboration by co-operating defendants. Similar provisions in other Working Group members have proven to be instrumental in foreign bribery enforcement. That said, the parameters of the provision need to be better defined to avoid challenges to effective collaboration agreements that could undermine public confidence in the provision.

The lead examiners therefore recommend that Costa Rica clarify effective collaboration agreements under Article 22(b) CCP by codifying the requirements for a collaboration agreement, such as that the agreement must be in writing and negotiated in the presence of defence counsel, and that there must be a “rational proportion” between the reprehensibility of the accused’s conduct and benefit from the accused’s collaboration.

(ii) Abbreviated procedure

125. The abbreviated procedure is essentially an agreement by the accused to plead guilty based on an agreed sentence without trial (Articles 373-375 CCP). The procedure is available to natural and legal persons at any time before a trial commences (Article 21 CLL). The accused and prosecutor (and the complainant and civil party, if there are any) must consent to the procedure. The accused may benefit from a reduction of up to one-third of the statutory minimum penalty for the offence. The procedure results in a conviction.

126. The scope of negotiations between the accused and the prosecution is not defined sufficiently clearly. Costa Rica states that the accused and the prosecutor may only negotiate the sentence. However, since the abbreviated procedure is before the accusation (indictment) is filed, there may be some room for negotiating the charge and alleged facts. Costa Rica states that the PPS cannot negotiate these matters. But there is no legal provision or written policy to this effect. On the contrary, guidance to prosecutors appears to contemplate such negotiations. Prosecutor General Circular 13-ADM-2019 notes that the abbreviated procedure “provides for the possibility of negotiating a reduction in the penalty of up to a third.” It therefore urges the prosecutor to “make an adequate formulation of the accusation, explain clearly the choice of the charge and provide a detailed analysis of the penalty sought” in order to “weigh and assess the [sentence reduction] or negotiate it within the said range taking into account the unique circumstances of each specific case”.

³⁶ Court of Appeal Judgment 2015-1620 and Supreme Court Judgment 2016-0862.

127. An agreement on the charge, alleged facts and sentence is subject to further approval. In corruption and foreign bribery cases, the prosecutor must consider the PGR's views on the agreed sentence if the PGR has filed an accusation or a civil lawsuit in the same case. The Deputy Prosecutor of FAPTA must approve the agreement (Circular 10-ADM-2019). The agreement is then submitted to the court which may request to hear the parties and victims. The provision does not indicate the factors that the court considers when deciding whether to approve the agreement. Costa Rica states that the judge may reject an agreement that contains insufficient evidence or if the sentence is too low. The court cannot alter the agreement; it either accepts the agreement or sends the matter back for prosecution (Article 375 CCP). The court's decision can be appealed. The abbreviated procedure was applied to 27 corruption cases in 2016-2019.

Commentary

The lead examiners commend Costa Rica for enacting legislation to provide for the abbreviated procedure. The procedure, like the effective collaboration provisions, are important tools in foreign bribery enforcement. However, the Working Group has emphasised the importance of detailed written guidance on matters such as the criteria for using non-trial resolutions and the scope of negotiations.³⁷ Without such guidance, prosecutors cannot point to a pre-defined official policy to defend their reasons for using non-trial resolutions, leaving their decisions more vulnerable to criticism of being arbitrary or improperly motivated. The lack of written guidance also increases inconsistency among prosecutors. PPS Circular 03-ADM-2020, which was issued shortly before the adoption of this report, does not address these concerns.

The lead examiners therefore recommend that Costa Rica issue written guidance to clarify (a) the scope of negotiations between the accused and the prosecution when the abbreviated procedure is used, including whether the charge and alleged facts may be negotiated, and (b) the factors that a prosecutor considers in deciding to use the abbreviated procedure, and in the choice of the charge, facts and sanctions that form the basis of the abbreviated procedure. The lead examiners also recommend that the Working Group follow up whether the abbreviated procedure results in effective, proportionate and dissuasive sanctions in foreign bribery cases.

(iii) Integral reparation of damage

128. Article 30(j) CCP allows a criminal action to be extinguished if the victim of the crime is satisfied that there has been "integral reparation" of the "social damage" caused by the crime. The measure is available to both natural and legal persons (Article 21 CLL) at any time before the oral trial. The accused must not have benefited from another alternative measure for the previous five years. Depending on the case, the victim or the prosecutor must agree to the procedure. The agreement of integral reparation requires judicial approval and is subject to an appeal by the prosecution.

129. Costa Rica states that the integral reparation of damage may apply as a non-trial resolution in foreign bribery cases. The measure applies to crimes with "patrimonial content" that do not involve violence. The provision has fallen into disuse in corruption cases because some prosecutors believe that corruption causes social damage that cannot be repaired. But a recent Prosecutor General Circular 10-ADM-2019 instructs prosecutors

³⁷ Chile Phase 4 para. 127 and Recommendation 3(b).

to reverse this position and begin applying this provision to corruption cases. Costa Rica states that this guidance concerns only domestic corruption cases.

130. The application of the integral reparation of damage in foreign bribery cases will not result in effective, proportionate and dissuasive sanctions. Forms of reparation include community work and restitution for financial loss. Costa Rica states that the judge may order any other measure accepted by the victim or the prosecutor. In a foreign bribery case, this could be an amount equivalent to the benefit obtained (or higher), or to the bribe. Supporting jurisprudence or case law for this position was not provided. Furthermore, in foreign bribery cases the victim is the foreign state whose governance and integrity could be less than ideal. Whether this state's consent to exonerating an accused through this provision is given in good faith could well be questionable.

131. Just before the adoption of this report, the PPS issued Circular 03-ADM-2020. The Circular confirms that integral reparation of damage would apply in foreign bribery cases. However, prosecutors are instructed to accept this measure only if it results in "effective, proportionate, rational and deterrent sanctions to the offender, as required by the Anti-Bribery Convention. Therefore, plans that only include a symbolic donation or repair cannot be accepted".

Commentary

The lead examiners recommend that the Working Group follow up whether the application of the integral reparation of damage in foreign bribery cases results in effective, proportionate and dissuasive sanctions.

(iv) Conditional suspension of proceedings and conciliation

132. A conditional suspension of proceedings can apply to an offence of false accounting but possibly not foreign bribery or money laundering (Articles 25-28 CCP). The measure is available for natural and legal persons (Article 21 CLL). It applies to crimes with "patrimonial content" that do not involve violence punishable by less than three years' imprisonment (Article 59 Criminal Code). Foreign bribery and money laundering generally do not qualify for conditional suspensions because they are subject to a minimum four-year sentence. Costa Rica states that a condition suspension would not apply to these offences even if an abbreviated procedure reduces the minimum penalty to under four years (see previous Section). Circular 10-ADM-2019 states that a conditional suspension applies to an entire proceeding; it therefore appears that a false accounting charge cannot be separated from a foreign bribery charge in the same case and then be suspended. The suspension is ordered by the court and can be revoked and the proceedings resume if the accused breaches the conditions that have been imposed (Article 28 CCP).

133. The same issues arise as to whether conciliation applies to foreign bribery cases. The measure is only available to offences that are also eligible for the conditional suspension of proceedings (Article 36 CCP). (Other categories of eligible offences are not relevant for present purposes.) The measure therefore generally applies to false accounting but not foreign bribery or money laundering. As well, the accused must not have benefited from another conciliation agreement (or other alternative measures) in the previous five years. A court approves the conciliation agreement.

134. If applied to foreign bribery, a conditional suspension of proceedings and conciliation may not result in effective, proportionate and dissuasive sanctions. Proceedings may be suspended for two to five years, during which the offender must comply with specified conditions. Article 26 CCP lists the available conditions that can be

imposed on the offender, most of which are not particularly relevant to foreign bribery cases (e.g. abstention from drugs and alcohol, medical treatment, community work). Under conciliation, an accused must also meet specific conditions within one year. Statistics on the use of conditional suspensions and conciliation in corruption cases are not available.

(v) Transparency of non-trial resolutions

135. The non-trial resolutions described above may not be sufficiently transparent to ensure public confidence. The effective collaboration agreement and abbreviated procedure are available in foreign bribery cases. The convictions resulting from these non-trial resolutions appear in the public criminal registry. The recently issued PPS Circular 03-ADM-2020 restates that the PPS would publish sanctions obtained by abbreviated procedures. However, the underlying facts of the case, reasons for the choice of charges, and terms of a resolution are not publicly available. Costa Rica also states that agreements for effective collaboration and abbreviated procedures are in writing but they are not publicly available. Non-trial resolutions are “exceptions to the rule of publicity, if this is agreed only between the parties.”

Commentary

The Working Group has repeatedly stated that non-trial resolutions must be sufficiently transparent to allow the public assess whether foreign bribery cases are resolved fairly and resulted in effective, proportionate and dissuasive sanctions.³⁸ The lead examiners therefore recommend that Costa Rica make public, where appropriate and in conformity with the applicable rules, as much information about non-trial resolutions as possible, for example the underlying facts of the case, reasons for the choice of charges, terms of a resolution, and copies of agreements with offenders.

(g) Statute of limitations

(i) Limitation periods for substantive offences

136. The statute of limitations for foreign bribery has increased since Phase 1. Time begins to run from the commission of the offence to when a court’s judgment is final (Article 31 CCP). The limitation period is ten years for both natural and legal persons. For proper and improper domestic bribery, the periods are eight and five years respectively, while those for money laundering and false accounting are eight and six years.

137. The limitation period is interrupted (i.e. reset) by certain procedural steps, e.g. when an accused makes an appearance to deliver a preliminary statement or when a corporate defendant is “cited” (summoned) (Article 33 CCP and Article 16 CLL). In foreign bribery cases, the period is also interrupted when an administrative action resulting from the act of corruption is cancelled or declared illegal (Article 62(b) LAC). The full length of the limitation period applies unreduced after an interruption (Article 62(a) LAC). (For most other offences, the limitation period is halved after an interruption.)

138. The limitation period is also suspended during certain events, e.g. extradition proceedings are on-going; proceedings cannot continue because of a constitutional or legal provision; the accused is a public official who is still in office; the case has been suspended through the opportunity principle or trial suspension (see Section C.1(f) at p. 35); or the “rebellion” of the accused. The suspension may be up to the length of the limitation period.

³⁸ For example, see Phase 3 UK Recommendation 5(c), Denmark Recommendation 3(c) and Belgium Recommendation 5.

Once the event causing the suspension has ended, the limitation period resumes from the point where it had been suspended (Article 34 CCP).

139. Organised crime cases enjoy more grounds for suspension and interruption. An outstanding MLA request in these cases suspends the limitation period. The limitation period may be interrupted by procedural events such as the start of an investigation or when the facts are formally imputed to an accused (Law 8 754 Articles 5-6).

140. The limitation period appears generous but Costa Rica cannot conclusively demonstrate that it is sufficient in corruption cases. It could not provide statistics on the duration of domestic corruption cases or on the number of cases that have been time-barred. But corruption cases in which the statute of limitations expires are not unheard of. In the *Alcatel/ICE* and *Infinito Gold* cases, foreign companies allegedly bribed senior Costa Rican officials (i.e. passive foreign bribery). Costa Rica's prosecution of the officials in both cases were ultimately time-barred.

Commentary

The lead examiners recommend that Costa Rica maintain statistics on the duration of foreign bribery and domestic corruption cases, and on cases that have been time-barred.

(ii) Limitation period for investigations

141. Under Articles 171-174 CCP, a preparatory investigation must be completed "within a reasonable time". When an accused considers that the investigation has been unduly prolonged, he/she may ask the court of preparatory procedure to set a deadline for the investigation to end. If the court, after considering a report from the prosecutor, agrees with the accused, it may set a deadline of up to six months for the conclusion of the investigation. (The maximum deadline is one year in complex or organised criminal cases.) The criminal action is extinguished if the investigation is not concluded by the deadline. Prosecutors at the on-site visit stated that they have not had cases that were barred under this provision.

(h) Investigative tools and techniques

(i) General and special investigative techniques

142. The Code of Criminal Procedure (CCP) provides general investigative tools for use in foreign bribery investigations. These include search (*registro*, Articles 193-194 CCP) and seizure (*secuestro*, Articles 198-200 CCP), questioning witnesses (Article 286 CCP), access to information of public authorities (Article 290 CCP), and the appointment of experts to analyse evidence (Article 213 CCP). Coercive measures require judicial approval (Article 277 CCP). In Phase 1 (para. 42), Costa Rica stated that a prosecutor can seize money – but not objects or documents – under Article 198 CCP prior to indictment and without a court order. There does not appear to be any legal basis for this statement.

143. Some special investigative techniques are not available in foreign bribery cases. The interception of communications is available for bribery, international crimes and aggravated corruption.³⁹ But controlled deliveries, and undercover operators and collaborators are available for drug trafficking cases, not domestic or foreign bribery (Articles 9bis to 13 of Law 7 786 MLFT). Freezing funds and accounts is possible in cases of money laundering and organised crime but not foreign bribery (Articles 18, 33 and 86

³⁹ Article 16 of Law 8 754; Article 201 CCP; and Article 9 of Law 7 425.

MLFT). An organised crime occurs when a “structured group of two or more people that exists for a certain time and acts in concert with the purpose of committing one or more serious crimes”.

144. Costa Rica states that these special investigative techniques are available in foreign bribery cases because they are not forbidden by law. This position seems doubtful, since it would mean that these techniques are available for investigations of all crimes regardless of gravity. It would also render the legislative provisions that expressly provide for such techniques redundant.

145. Freezing of assets and accounts is rarely used in practice. Costa Rica refers to only five freezing orders in 2014-2019. It explains that the low number is because “in cases where there is greater evidence at the time when the measure is requested, the confiscation of the money in financial products and their transfer to the accounts of the Costa Rican Drug Institute has been required.” This explanation seems odd, since in many cases assets will have been dissipated before confiscation can be ordered.

Commentary

The lead examiners recommend that Costa Rica (a) amend its legislation to make all special investigative techniques available in foreign bribery cases, and not only in cases of money laundering or organised crime, and (b) take steps to ensure that the freezing of funds and accounts is used whenever appropriate.

(ii) Banking and beneficial ownership information

146. The lifting of bank secrecy is more difficult in cases of foreign bribery than organised crime (Phase 1 Report para. 106). Article 1 of Law 7 425 allows the courts to seize or examine bank information when it is “absolutely essential” to an investigation. Article 2 similarly allows the seizure or examination of a private document when it is “essential to determine the truth” and the document is “indispensable proof of the commission of a crime”. The threshold in organised crime cases is lower. Article 18 of Law 8 754 allows a judge to lift bank secrecy but does not explicitly require the information sought to be “absolutely essential” or “indispensable”. At the on-site visit, FAPTA prosecutors agreed that this provision should be extended to corruption cases.

147. There is some evidence of delays in lifting bank secrecy. Costa Rica could not provide statistics in domestic corruption cases. It has, however, provided data on incoming requests from foreign countries for mutual legal assistance since 2014. The average execution time was 7.6 months for requests that sought banking and other information, and 9.5 months for requests that only sought banking information. These figures are considerably higher than the average execution times for all requests (4.2 months). Outstanding requests that seek bank information have also been on-going for much longer than those that do not seek such information. (See Section C.1(k)(vi) at p. 47 for details.)

148. Information on the beneficial ownership of bank accounts is available but not of shareholdings. As mentioned in para. 86, financial entities are required to ascertain the identity of the persons for whose benefit an account is opened or a transaction is made. Since September 2019, the Central Bank has maintained a national corporate register that contains information on shareholders and board directors but not on beneficial owners.

Commentary

The lead examiners recommend that Costa Rica amend its legislation to extend the provisions for lifting bank secrecy in organised crime cases to foreign bribery cases.

(iii) Investigative techniques in corporate investigations

149. It is not clear that all of the investigative techniques that can be used against natural persons are equally available against legal persons. Corporate proceedings are governed by the Corporate Liability Law (CLL). Article 25 CLL expressly states that Articles 198-200 of the Code of Criminal Procedure (CCP) on seizure apply to corporate proceedings. There are no references to other CCP provisions on investigative techniques, e.g. questioning witnesses (Article 286 CCP), access to information of public authorities (Article 290 CCP), and the appointment of experts to analyse evidence (Article 213 CCP).

150. Costa Rica argues that Article 33 CLL imports all CCP provisions into the CLL but this is doubtful. Article 33 states that “In a supplementary manner, refer as applicable to the provisions of the ... Code of Criminal Procedure”. However, the provision is under the heading “Rules of interpretation”, which suggests that the purpose of this provision is to allow the CCP to be used as tool for interpreting the CLL. Furthermore, if one accepts that all CCP provisions apply to the CLL, then Article 25 CLL (which expressly imports the CCP provisions on seizure) would be redundant, as would Article 15 CLL (which imports the procedural provisions in the CCP). This would be inconsistent with one of the basic rules of statutory interpretation.

151. In any event, the CLL does not refer at all to the MLFT Law 7 786 or Organised Crime Law 8 754 which provide special investigative techniques and the freezing of assets (see para. 143). These tools are therefore clearly unavailable in corporate investigations.

Commentary

The lead examiners recommend that Costa Rica amend the CLL to ensure that all investigative techniques are available in investigations against legal persons.

(i) Resources, specialised expertise and training

152. Despite recent budget increases, FATPA prosecutors have a fairly heavy caseload. After a cut in 2018, FATPA’s budget increased substantially in 2019 to CRC 1.85 billion (USD 3.20 million). This was approximately 12% above 2017 levels. FATPA has 2 Deputy Prosecutors, 6 Prosecutors, 22 Assistant Prosecutors, and 17 technical and support personnel. With 781 active cases at the time of the on-site visit, each Prosecutor and Assistant Prosecutor had conduct of an average of 27.9 cases, though many of these cases involve low-level corruption. FATPA initially suspended its investigation in the *Construction (Panama)* case partly because of a lack of resources (see para. 17).

153. The OIJ ACU’s resources may also be rebounding after recent cuts. The annual budget for human resources was reduced in 2018 by 3.4% to CRC 196 million (USD 340 000), and financial resources by 13% to CRC 43 million (USD 74 000). The unit was then reorganised in 2019 and had 18 investigators as of September 2019, with plans to increase to 30 by January 2020.

154. Some specialised expertise is available. FATPA staff includes a sociologist, communications specialist, legal assistants, and judicial technicians. The OIJ has units with special technical expertise in areas such as forensic accounting, electronic evidence, surveillance, criminal intelligence, and document, image and sound analysis. Other PPS units and non-governmental experts may provide additional expertise.

155. FATPA and OIJ ACU could benefit from further training on foreign bribery. FATPA prosecutors attended meetings on international co-operation and corporate liability in 2018 and 2019 organised by the OECD Latin America and Caribbean Anti-Corruption

Law Enforcement Network (LAC LEN). In October 2019, 23 FAPTA prosecutors attended a United Nations-facilitated course on criminal liability of legal persons. OIJ investigators received training on foreign bribery investigations, international co-operation and corporate investigations.

Commentary

The lead examiners recommend that Costa Rica (a) ensure that FAPTA and the OIJ ACU have sufficient resources, and (b) provide further training to FAPTA and the OIJ ACU on foreign bribery investigation and prosecution.

(j) Independence of judicial, prosecutorial and law enforcement bodies

(i) Judiciary

156. Article 154 of the Constitution and Article 5 CCP provide that judges are subject only to the Constitution and the law, and that their decisions on matters within their competence are subject only to the obligations set forth in legislation. In April 2019, the Supreme Court issued Circular 72-19 to strengthen the independence, integrity and impartiality of judges in the exercise of their functions. The Press and Communication Office of the judiciary has also conducted awareness raising campaigns and organised two conferences on judicial independence.

157. Judges in Costa Rica are selected through competition and appointed following a successful trial period (Article 18, Judicial Service Statute). Supreme Court judges are appointed by the Legislative Assembly to eight-year terms renewable once (Article 158 Constitution). The Full Supreme Court elects its President and the Presiding Judges of the four Chambers (Article 162 Constitution). The Court of Judicial Inspection can initiate disciplinary proceedings *ex officio* or based on a complaint. The Full Supreme Court can do so against its President and its judges. Costa Rica could not provide statistics on disciplinary measures against judges. It reports, however, the suspension and dismissal of several judges allegedly involved in the *Cementazo* case.⁴⁰

(ii) Public Prosecution Service (PPS)

158. Article 154 of the Constitution also applies to the PPS as it is part of the judiciary. Article 3 of Law 7 442 (PPS Law) adds that the PPS enjoys complete functional independence in the exercise of its powers and may not be impelled or curtailed by any authority other than the courts acting within the scope of their jurisdiction.

159. The Prosecutor General (PG) heads the PPS. The Full Supreme Court appoints the PG to a four-year term renewable once (Article 23 PPS Law). It initiates disciplinary proceedings against the PG with the Court of Judicial Inspection acting as an inspection body (Article 182(2) Law 7 333, Judiciary Law). A two-thirds majority of the Full Supreme Court is required to suspend the PG or to issue a recommendation to the Legislative Assembly for dismissal (Article 182 Judiciary Law). The PG is not immune from criminal prosecution.

160. These disciplinary procedures against the PG were applied recently. After a complaint by a judges' union, the PG was suspended on 13 October 2017 for three months

⁴⁰ [Acta de Corte Plena 2018-054](#).

for allegedly withholding evidence from the Supreme Court in the *Cementazo* case.⁴¹ After the suspension, the PG voluntarily retired and the disciplinary proceedings were discontinued.

161. Other PPS prosecutors are appointed by the PG who also decides on promotions (Article 27 PPS law). This includes the head of FAPTA, who is appointed to a renewable one-year term. Two procedures apply to disciplinary proceedings. The head of a prosecutor's office may impose a warning, written reprimand or a suspension of up to 15 days (Article 46 PPS Law). The Court of Judicial Inspection may also initiate proceedings *ex officio* or based on a complaint. A warning or a written reprimand requires a majority vote of the Court, while a suspension or dismissal requires a two-thirds majority. The Legislative Assembly must be informed of dismissals (Article 182 Judiciary Law). Suspensions imposed under either procedure are appealable to the PG (Article 46 PPS Law). In 2017-2018, PPS prosecutors received 13 warnings, 41 written reprimands and 88 suspensions. In addition, Article 44 of the Judicial Service Statute provides that judicial servants may be dismissed from service with "just cause" or where dismissal is "for the good of the public service". Costa Rica asserts that this provision has fallen into disuse and there is no case law interpreting these terms.

162. Circular 13-ADM-2019 states that FAPTA prosecutors are functionally independent, including *viz.* the PG. Cases are randomly assigned to FAPTA prosecutors. The Deputy Prosecutor who heads FAPTA may exceptionally appoint a specific prosecutor to a complex or urgent case (Article 30 PPS Law). He/she may also remove a prosecutor facing disciplinary proceedings or due to a conflict of interest under Circular 72-2019 of the Full Supreme Court. (The PG may also exercise these functions *viz.* prosecutors outside of FAPTA.) The head of FAPTA, but not the PG, may instruct FAPTA prosecutors in specific cases (Articles 14 and 30 PPS Law). However, the PG may instruct FAPTA to open a case (Articles 14 and 25(c) PPS Law). This power was exercised recently when the PG ordered the reopening of several corruption cases. The PG may also issue general or specific instructions on the interpretation and application of laws (Article 13 PPS Law).

(iii) Judicial Investigation Body (OIJ)

163. The OIJ is established under the Supreme Court (Articles 1-2 and 4 of Law 5 224, OIJ Law). The Supreme Court appoints a Director General who heads the OIJ on authority delegated by the Supreme Court (Articles 16 and 59 OIJ Law). The disciplinary process for PPS prosecutors also applies to OIJ investigators. The Court of Judicial Inspection can initiate disciplinary proceedings *ex officio* or based on a complaint (Article 184 OIJ Law). The Full Supreme Court of Justice can do so against the OIJ Director General or Deputy Director General (Article 182 OIJ Law). In 2017-2018, OIJ officers received 3 warnings, 11 written reprimands, 44 suspensions and 48 dismissals.

164. In specific investigations, OIJ investigators are subject to the instructions of the prosecutor who has conduct of the case (Articles 283 CCP) and the OIJ Director General (Article 17 OIJ Law). OIJ investigators are assigned to cases based on workload and experience. Foreign bribery cases are assigned to the OIJ Anti-Corruption Unit. The

⁴¹ El Periodico CR (14 October 2017), "[Corte Suprema suspende por tres meses al fiscal Jorge Chavarría](#)"; El Mundo (7 November 2017), "[Emilia Navas denuncia a Jorge Chavarría por desestimar causas contra Celso Gamboa](#)"; QCostaRica (11 November 2017), "[The Incorruptible Jorge Chavarría Linked to the 'Cementazo' Corruption Case is Looking for Early Retirement](#)".

Supreme Court may issue general instructions (e.g. circulars) regarding the OIJ's operation but cannot instruct the OIJ in a specific case.

(k) Mutual legal assistance

165. In the context of mutual legal assistance (MLA), Costa Rica's obligations under the Convention are twofold. First, Article 9 requires Costa Rica to co-operate with other Parties to the fullest extent possible in providing "prompt and effective" MLA in investigations and proceedings concerning offences within the Convention. Second, pursuant to Article 5, Costa Rican authorities must also be able to effectively seek MLA and other means of international co-operation for investigating and prosecuting foreign bribery cases.

(i) Legal framework for mutual legal assistance

166. Costa Rica may request and provide MLA based on bilateral and multilateral treaties, and based on reciprocity in the absence of a treaty. Costa Rica's legal framework for MLA remains unchanged since Phase 1.

167. Costa Rica has bilateral MLA treaties with France, Italy, Mexico and Paraguay that provide for MLA in foreign bribery cases. Multilateral treaties that apply to such cases include the OECD Anti-Bribery Convention; United Nations and Inter-American Conventions against Corruption (UNCAC and IACAC); United Nations Convention against Transnational Organised Criminal (UNTOC); Central American Treaty of Mutual Legal Assistance in Criminal Matters; and Inter-American Convention on Mutual Assistance in Criminal Matters. Central authorities handle requests under these treaties (see next Section).

168. Non-treaty-based MLA is available based on reciprocity. The Secretariat of the Supreme Court centralises outgoing requests and forwards them to the Ministry of Foreign Affairs for transmission to foreign authorities through diplomatic channels (Article 154 CCP). Costa Rican authorities may send an urgent request directly to foreign authorities followed by a formal request through diplomatic channels. Costa Rica states that incoming non-treaty-based requests are received through diplomatic channels and forwarded to the Secretariat of the Supreme Court.

169. Costa Rica is a member of the OECD Latin America and the Caribbean Anti-Corruption Law Enforcement Network (LAC LEN), the Ibero-American Association of Public Prosecutors, the Ibero-American Network for International Legal Cooperation, and the Central American and Caribbean Council of Public Prosecutors.

(ii) Central authorities

170. The Technical Advice and International Relations Office (OATRI) of the Public Prosecution Service (PPS) is Costa Rica's main central authority for MLA. It is the central authority for multilateral conventions on crimes such as drug trafficking and cybercrime. Among the treaties applicable to foreign bribery cases, OATRI is the central authority for three bilateral treaties (France, Italy and Mexico) and three multilateral treaties (OECD Anti-Bribery Convention, UNTOC, Inter-American Convention on MLA).

171. OATRI plays a central role in facilitating incoming and outgoing MLA requests. Upon receiving an incoming MLA request from a foreign state, OATRI verifies whether the request complies with the relevant treaty and contains sufficient evidence. It executes a request if possible (e.g. issuance of a summons); otherwise it forwards the request to a prosecutor's office for execution. OATRI also liaises with foreign authorities. It requests

additional information or evidence from foreign authorities if an incoming request is insufficient. It monitors and follows up Costa Rica's outgoing MLA requests.

172. Other MLA channels have different central authorities that serve largely a mailbox function. The Attorney-General's Office (PGR) is the central authority for three multilateral treaties that also apply to foreign bribery cases (UNCAC, IACAC, and Central American Treaty on MLA). Upon receiving a request, it conducts a cursory check of the formalities of the request before sending it to OATRI. The PGR does not check the request for sufficiency of evidence. This task is performed by OATRI, which also checks the request for treaty compliance and ensures the request's execution. Evidence gathered pursuant to the request retraces this route through OATRI and the PGR on its way to the requesting state. The Ministry of Justice and Peace (MJP) and the Supreme Court Secretariat are the central authorities for the bilateral MLA treaty with Paraguay and non-treaty-based requests. These bodies likely also rely largely on OATRI to check and execute requests, though specific information was not available.

173. This fragmentation of central authorities is not optimal. The involvement of the PGR, MJP and Supreme Court Secretariat add little apart from delay. Costa Rica argues that there is no evidence of delay in practice. However, the PGR was requested but did not provide the delay in forwarding incoming MLA requests to OATRI in three cases. Multiple central authorities may also result in a lack of co-ordination. While incoming requests find their way to OATRI, outgoing requests may be sent by different central authorities. This was the case in the *Construction (Guatemala)* and *Construction (Panama)* foreign bribery cases, in which the PGR sent requests to foreign states under UNCAC without informing OATRI or PPS. Fragmentation of central authorities is also confusing to Costa Rican and foreign law enforcement authorities who have to follow different procedures depending on the legal basis for MLA.

Commentary

The lead examiners are concerned that fragmentation in the central authorities for MLA inhibits Costa Rica's capacity to provide prompt and effective assistance. OATRI has extensive expertise and experience in MLA matters, but it is not the central authority for all MLA channels. The lead examiners therefore recommend that Costa Rica ensure that its central authorities are better co-ordinated in foreign bribery cases, and consider consolidating the multiple central authorities.

(iii) Types of assistance available

174. Costa Rica cannot provide some types of MLA contemplated in treaties to which it is Party. It states that all investigative measures available in domestic criminal investigations are also available to foreign states as MLA (Phase 1 Report para. 100). In support, it cites Articles 181-182 CCP. These provisions, however, merely state that all lawfully-obtained evidence, and all means of proof not expressly prohibited by law, are admissible. It is also not clear that these provisions apply to MLA requests and not only domestic criminal proceedings. In any event, the freezing of assets and some special investigative techniques are not available in Costa Rica's foreign bribery investigations. These measures therefore also cannot be provided as MLA. Costa Rica states that all special investigative techniques are available in corruption and other cases because they are not forbidden by law. This position is doubtful, as explained in Section C.1(h)(i) at p. 40.

175. Article 65 CCP provides for joint investigative teams with foreign authorities or international institutions. The measure is available to investigate criminal activities that

occur wholly or partly outside Costa Rica, or concern persons linked to a regional or international organisation, and to which Costa Rican criminal law applies. The Prosecutor General approves and supervises the joint investigation agreement.

Commentary

The lead examiners recommend that Costa Rica amend its legislation to (a) explicitly provide for the types of investigative measures available as MLA, and (b) ensure that it can provide all types of MLA that are available under a treaty to which it is party.

(iv) Grounds for denying MLA

176. Article 9(2) of the Convention states that where a Party makes MLA conditional upon the existence of dual criminality, the condition is deemed to be met if the offence for which the assistance is sought is within the scope of the Convention.

177. Costa Rica requires dual criminality only for MLA seeking coercive measures that require judicial authorisation. A specific treaty may also require dual criminality for additional measures. Costa Rica interprets dual criminality broadly and based on the conduct underlying a request. The wording or categorisation of the offence is not material (Constitutional Court Judgment 2002-7006).

178. Costa Rica denies MLA requests that could reasonably damage its sovereignty, security, or would compromise state secrets (Constitution Article 30). It states that it has not done so in practice. Costa Rica also denies MLA requests that have been made for the purpose of prosecuting an individual on account of nationality, race, religion, sex, political opinions or other infringements of fundamental human rights.

(v) MLA in Non-Criminal Matters

179. 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.

180. Costa Rica can only provide limited MLA to a foreign state for use in non-criminal proceedings against a legal person. MLA in non-criminal matters is available under the Bustamante Code and the Civil Procedure Code. However, these instruments do not provide for certain coercive investigative measures that are necessary in foreign bribery investigations (e.g. search and seizure). Costa Rica has not provided assistance to a foreign state in non-criminal proceedings against legal persons in practice.

Commentary

The lead examiners reiterate the Working Group's recommendation in the Phase 1 Report (para. 133) and recommend that Costa Rica take steps to ensure that it can provide the full range of assistance in non-criminal matters in conformity with requirements under the Convention. They further note that this is a horizontal issue among Parties to the Convention.

(vi) MLA in practice

181. In practice, Costa Rica largely provides MLA promptly and effectively. Data provided by OATRI indicate that 430 incoming requests were fully or partially executed in 2014-2019 with an average response time of 4.2 months. Another 90 requests were rejected. Execution times for requests in corruption cases were slightly above average (5 months)

although the sample size was very small (6 requests). FAPTA executed 10 requests with an average response time of 6.5 months. More concerning are 43 requests that have been outstanding for an average of 11.3 months, two of which relate to corruption, including one which was handled by FAPTA.

182. Execution times for MLA requests seeking bank information are substantially longer because lifting bank secrecy is subject to judicial approval (see Section C.1(h)(ii) at p. 41). In 2014-2019, the PPS executed 64 requests that sought banking and other evidence in 7.6 months on average. This is almost double the response time of 4.2 months for all requests. Five additional requests that sought only bank information took even longer, averaging 9.5 months. Of the 43 outstanding requests, 10 seek bank information and have been outstanding for an average of 19.2 months, again much longer than the average of 11.3 months for all outstanding requests.

183. As for outgoing requests, the PPS has made informal inquiries to foreign authorities in the *Construction (Panama)* and *Money Laundering (Venezuela)* cases. The PGR sent requests under UNCAC in the *Construction (Guatemala)* and *Construction (Panama)* cases to update the Working Group's Matrix of Foreign Bribery Allegations. In domestic corruption cases, Costa Rica has faced considerable difficulties in obtaining MLA. FAPTA has sent six MLA requests since 2014, all of which remain outstanding. One of these cases that has been outstanding since December 2016, despite efforts by Costa Rica to follow up with the relevant foreign authorities. A second case has been outstanding since October 2017. That said, it is unclear whether FAPTA has made full use of informal channels to follow up outstanding requests with foreign authorities. In the *Infinito Gold* domestic corruption case, FAPTA sent a non-treaty-based request in 2012 but could have done so under an applicable treaty.

184. Just before the adoption of this report, the PPS issued Circular 03-ADM-2020 which encourages prosecutors to use networks for informal international co-operation.

Commentary

The lead examiners commend Costa Rica for providing prompt and effective MLA. The delay in executing incoming requests are generally short, but requests for bank information take appreciably longer. Implementation of the lead examiners' recommendation on lifting bank secrecy (see Section C.1(h)(ii) at p. 41) could help address this concern.

The lead examiners are sympathetic to the difficulties that Costa Rica faces in obtaining MLA in corruption cases. They encourage Costa Rica to make better use of its MLA legal framework. They also recommend that Costa Rica use all available means to secure MLA, in particular through contact with foreign authorities via informal channels, regional networks, and the Working Group. In this respect, Costa Rica should take steps to ensure that prosecutors apply Circular 03-ADM-2020 in practice.

(l) Extradition

185. Article 10(1) of the Convention obliges Parties to include bribery of a foreign public official as an extraditable offence under their laws and the treaties between them. Article 10(2) states that where a Party that cannot extradite without an extradition treaty receives a request for extradition from a Party with which it has no such treaty, it may consider the Convention to be the legal basis for extradition in respect of the offence of bribery of a foreign public official.

(i) Legal framework for extradition

186. Costa Rica's legal framework for extradition is unchanged from Phase 1. Costa Rica has bilateral extradition treaties with Belgium, China, Colombia, Italy, Mexico, Nicaragua, Panama, Peru, Spain and the United States. It is also party to a number of multilateral treaties that provide for extradition in foreign bribery cases: OECD Anti-Bribery Convention, IACAC, UNCAC, UNTOC, Inter-American Convention on Extradition, and Central American Extradition Treaty.

187. Law 4 795 on Extradition provides for extradition without a treaty but also applies to treaty-based extradition on issues not addressed by the applicable treaty. Requests for extradition must be submitted through the diplomatic channel (Article 6 Extradition Law). The courts have the power to grant, offer and deny extradition (Article 5 Extradition Law).

(ii) Grounds for denying extradition

188. Article 3 Extradition Law lists the grounds for denying extradition. For example, Costa Rica denies extradition on grounds of dual criminality and double jeopardy. Extradition is also denied when the offence is time-barred, or punishable by deprivation of liberty of less than one year or the death penalty (unless the requesting state provides an assurance that the penalty would not be carried out). Denial also results when the fugitive is protected by political asylum or is sought for political offences.

189. Extradition without a treaty under the Extradition Law has at least two important limitations. First, the Law provides only for extradition for offences committed outside of Costa Rica (Article 2). This would not pose problems if Costa Rica prosecutes the person sought for crimes committed in Costa Rica. But if Costa Rica declines or discontinues its prosecution for reasons other than on the merits, then a foreign state would not be able to obtain the individual's extradition.

190. Second, Costa Rica will deny extradition for crimes not committed in or have not produced effects in the requesting state (Article 3(f)). If a Party to the Convention exercises nationality jurisdiction to prosecute its national for foreign bribery committed outside that country and that national seeks refuge in Costa Rica, then Costa Rica would not be able to extradite the individual to face prosecution. Indeed, Costa Rica concedes that it could extradite the individual in such a case only if a treaty so provides.

191. Just before the adoption of this report, Costa Rica stated that the Convention overrides national legislation and the grounds for denying extradition in the Extradition Law. Nevertheless, given that the Convention does not explicitly deal with the grounds for denying extradition, it is unlikely that the courts would rely on the Convention to override the Extradition Law. Furthermore, Costa Rica states that the Convention overrides its national law only if the Convention requires universal jurisdiction, which the Convention does not.

Commentary

The lead examiners are concerned that Articles 2 and 3(f) Extradition Law limit Costa Rica's capacity to extradite in foreign bribery cases. They therefore recommend that Costa Rica amend its legislation to clarify that there is not a bar to extradition for foreign bribery offences (a) committed outside Costa Rica, and (b) not committed in or have not produced effects in the requesting state.

(iii) Extradition of Costa Rican nationals

192. Costa Rica does not extradite its nationals (Constitution Article 32; Article 3(a) Extradition Law). The prohibition applies to Costa Rican nationals by birth or naturalisation, even if naturalisation takes place after the commission of the offence for which extradition is sought (Constitutional Court Judgment 1994-6780).

193. Costa Rica prosecutes its nationals in lieu of extradition only upon the demand of the requesting state. Under Article 10(3) of the Convention, if a Party declines to extradite a person for foreign bribery solely on the ground of nationality, then it must submit the case to its competent authorities for prosecution. Article 3(a) Extradition Law similarly provides that where extradition is refused on the ground of nationality, such cases “shall be judged by the domestic courts”. However, the Phase 1 Report (para. 112) noted that three of Costa Rica’s bilateral extradition treaties stipulate that a national would be prosecuted in lieu of extradition only upon the demand of the requesting state. In Phase 2, Costa Rica stated that the requirement of a demand applies in all cases, irrespective of whether an applicable treaty provision so requires. This practice would be inconsistent with Article 10(3) of the Convention.

194. Just before the adoption of this report, Costa Rica reversed its position from Phase 1 and the Phase 2 on-site visit. It states that it could prosecute its nationals in lieu of extradition regardless of whether a foreign state so requests.

Commentary

The lead examiners are concerned that Costa Rica does not fulfil its obligations under the principle of “extradite or prosecute”. They therefore recommend that Costa Rica take all necessary measures to ensure that, when it declines a request to extradite a Costa Rican national solely on the ground of nationality, it submits the case to its competent authorities for prosecution regardless of whether it has been asked to do so by the requesting state.

(iv) Extradition in practice

195. There have been at least two corruption-related extradition cases since 2014. Costa Rica received one request in 2018 from a non-WGB member to extradite a non-national for domestic bribery. The case ended when the requesting state withdrew the extradition request. In 2019, Costa Rica requested extradition from another WGB member in a case involving corruption and other offences. The request is outstanding.

2. Offence of foreign bribery

196. Article 55(1) of Law 8 422 against Corruption and Illicit Enrichment in the Civil Service (LAC) criminalises active foreign bribery:

A prison term of between four and twelve years shall apply to anyone who offers, promises or gives, directly or through an intermediary, to a public official of another state, irrespective of the level of government or public agency or company in which he is employed, or to an officer or representative of an international organisation or entity, directly or indirectly, any payment, in money, virtual currency, movable or immovable assets or values, gift, or undue advantage, be it for the official or for another natural or legal person, for that official, in the use of his position, to make, delay, or omit to perform

any action or to unduly bring to bear the influence derived from his position with respect to any other official.

(a) Elements of the offence

(i) Direct intent and bribery through intermediaries

197. The Phase 1 Report (paras. 7, 10 and 123) expressed concerns about the “direct intent” element of Costa Rica’s foreign bribery offence. The application of this requirement would be “closely monitored” in Phase 2 to ensure that it does not impede the effective enforcement of the offence of foreign bribery committed through intermediaries.

198. The foreign bribery offence in Article 55 LAC requires proof of “direct intent” as opposed to “eventual intent”. FAPTA prosecutors explained at the on-site visit that, under Article 31 of the Criminal Code (CC), an individual has “direct intent” if he/she desires the realisation of a fact in question. An individual has “eventual intent” if he/she does not want this result *per se*, but nevertheless accepts it as at least possible (*dolus eventualis*). “Eventual intent” is thus similar to the concept of recklessness or wilful blindness in many legal systems. The language of the foreign bribery offence in Article 55 LAC implies that the foreign bribery offence is one of only direct intent, according to FAPTA. “Eventual intent” does not lead to liability. Costa Rica took the same position in Phase 1 (para. 6), as did the PGR and private sector lawyers during the Phase 2 on-site visit.

199. The exclusion of eventual intent in Costa Rica’s foreign bribery offence is a significant loophole. For instance, it is well-known that individuals often commit foreign bribery by paying a consultant a large fee to secure a contract without asking how the money would be spent or what the consultant would do. To convict such an individual in Costa Rica, there must be proof that he/she is aware that the money would be used to bribe a foreign public official, according to judges, prosecutors, lawyers and the PGR. Mere acceptance that the consultant may eventually commit foreign bribery is not enough. Explicit instructions to the consultant to commit bribery, for example gathered through intercepted communications, may be necessary to establish liability. Given this high threshold, Costa Rican authorities could not provide any examples of an individual who had been convicted of bribing a domestic or foreign public official through an intermediary.

200. After the on-site visit, Costa Rican authorities added that the direct intent requirement would not impede its ability to hold legal persons liable for bribery through intermediaries, since legal persons have a duty to prevent crime (see Section C.3(g) p. 63). However, the issue concerning direct intent is the liability of natural, not legal, persons. But even in the case of a legal person, liability arises only for a failure to prevent a *crime*, and bribery through intermediaries would not be a *crime* because of the lack of direct intent.

201. Costa Rica also stated after the on-site visit that eventual intent does apply to the foreign bribery offence. This reverses Costa Rica’s own position going back to Phase 1 (see Phase 1 Report para. 7). It also contradicts the on-site visit statements of the PGR, FAPTA and private sector lawyers. Costa Rica did not provide case law showing that eventual intent applied to the domestic or foreign bribery offence.

Commentary

The lead examiners are seriously concerned that Costa Rica’s foreign bribery offence requires proof of direct intent. Dolus eventualis, recklessness or wilful blindness is not sufficient mens rea. Costa Rican authorities could not provide any examples of convictions for domestic or foreign bribery committed through intermediaries, even

though this is one of the most common modus operandi of this crime. The Working Group has recently recommended that other countries amend their legislation to rectify a similar deficiency in the intent requirement of the foreign bribery offence.⁴²

Costa Rican authorities argue that the Working Group should merely follow up future jurisprudence on the foreign bribery offence. However, it is clear that Costa Rica's foreign bribery offence covers only direct and not eventual intent. This was the position of Costa Rican authorities since Phase 1 as well as on-site visit participants. The complete absence of convictions for domestic bribery through intermediaries starkly illustrates the gravity of this loophole. Under these circumstances, mere follow-up by the Working Group would not seem appropriate. It would also be inconsistent with Working Group evaluations of other countries.

After seeing a draft of this report, the PPS issued a Circular stating that the foreign bribery offence in Article 55 LAC covers both direct and eventual intent. This would be a step in the right direction, since it would acknowledge the shortcomings of the present legislative provision. However, the Circular does not override legislation. Nor is it binding on judges or lawyers. The Circular also reverses the position long held by Costa Rica since Phase 1 and during the on-site visit, namely that only direct and not eventual intent applies to Article 55 LAC. The Circular also does not expressly refer to Article 31 CC.

The lead examiners therefore recommend that Costa Rica, as a matter of priority, amend its legislation to clarify that Article 55 LAC provides liability where an individual has "eventual intent" under Article 31 CC, i.e. where an individual accepts that foreign bribery is a possible consequence of his or her actions.

(ii) Bribes not received by a foreign public official

202. Costa Rica has clarified that its foreign bribery offence covers bribe offers that do not reach the public official. The Phase 1 Report (para. 8) had stated that this issue was unclear. Case law provided in Phase 2 shows that the mere giving, offer or promise of a bribe completes the active bribery offence; proof of the public official's acceptance is not required.⁴³ The same results where the official rejects or does not receive a bribe offer, according to Costa Rican authorities.

(iii) Non-pecuniary bribes

203. Costa Rica provided case law on whether its foreign bribery offence covers non-pecuniary bribes. The Phase 1 Report (para. 9) noted that Article 55 LAC covered any "payment, gift, or undue advantage" to an official, but there was no jurisprudence on the coverage of non-pecuniary bribes. In Phase 2, Costa Rica provided one judgment in which the court convicted an individual of influencing a judge to obtain an "undue advantage".⁴⁴ However, the court did not specifically consider whether the term "undue advantage" encompasses a non-pecuniary advantage.

Commentary

The lead examiners recommend that the Working Group follow up whether Costa Rica's foreign bribery offence covers non-pecuniary bribes.

⁴² For instance, see Latvia Phase 2 paras. 193-197 and Recommendation 13(a).

⁴³ Supreme Court Third Chamber, Judgments 1847-2014 and 1665-2012.

⁴⁴ Supreme Court Third Chamber, Judgment 967-2017.

(iv) Definition of a foreign public official

204. Article 55 LAC covers the bribery of “a public official of another state, irrespective of the level of government or public agency or company in which he is employed, or to an officer or representative of an international organisation”. Article 2 LAC provides a broad definition of an “official” that includes persons who perform “services in the organs and bodies of the State and non-State public administration”. Also included are “de facto officials and persons working for public companies in any form and for public bodies in charge of actions subject to ordinary law, as well as to agents, administrators, managers and legal representatives of legal persons who guard, manage or operate funds, goods or services of the Public Administration, by any title or mode of management”.

205. Case law further supports a functional definition of a public official that is consistent with the Convention. The Supreme Court has stated that a public official is an individual who performs “a function which is essentially public. It is then the nature of the activity and not its link with the Administration that, among other things, characterises the public official.”⁴⁵

206. One concern remains. A Supreme Court attorney stated at the on-site visit that the definition of a foreign public official does not cover an official of a state not recognised by international law or Costa Rica. The definition of a foreign public official in the Convention is not so limited. Furthermore, since Phase 1 Costa Rica has not provided jurisprudence or case law showing that the term “state” covers “any organised foreign area or entity” as required in Commentary 18 of the Convention.

Commentary

The lead examiners recommend that Costa Rica take steps to ensure that the definition of a foreign public official covers all persons who perform a public function for a foreign state, regardless of whether the state is recognised by Costa Rica.

(v) Third party beneficiary without legal personality

207. Article 55 LAC applies to bribes paid to a foreign public official “be it for the official or for another person”. In Phase 1 (para. 12), Costa Rica stated that a link between the official and the third party is not required. However, the official must know who receives the bribe. In Phase 2, Costa Rican authorities add that the “person” who receives the bribe may be an entity that does not have legal personality in a foreign country, e.g. a political party, or campaign for an election or a referendum. In their view, the definition of *de facto* legal persons in Article 2(5) CLL applies.

(b) Defences**(i) Concusión and bribe solicitations**

208. The 2009 Recommendation Annex I.A states that “Article 1 of the OECD Anti-Bribery Convention should be implemented in such a way that it does not provide a defence or exception where the foreign public official solicits a bribe.”

209. Under Costa Rican law, when a public official “abuses his/her quality or functions” and “obliges or induces an individual to give or unduly promise” an advantage, then the individual is not guilty of bribery. Instead, the public official alone would be liable for the

⁴⁵ Supreme Court Third Chamber, Judgement 1994-208. See also Supreme Court Third Chamber, Judgment 2012-1944.

offence of *concusión* in Article 355 CC. The Supreme Court Third Chamber Judgment 2016-45 held that in such cases, the official's conduct affects the individual's "free will". This reasoning follows the Supreme Court's earlier decisions:

The difference between bribery and [concusión] lies precisely in the agreement of wills. In bribery, both the giver and the receiver freely agree to the payment. That is why both acts are punished. In the case of a [concusión], the public official, taking advantage of his investiture, requests or demands a financial benefit. It may be that the taxable person "benefits" from the request, (in the case of a driver who drives without a license and is asked for money not to inform the authority of the infringement), however, it is not he who has freely determined to offer the payment, but is an act that comes from the person who holds the authority, and that consequently places the passive subject in an unequal and fearful position.⁴⁶

210. Put differently, when a public official requests or demands an advantage, the payer of the advantage does not have the necessary *mens rea* for the bribery offence under Costa Rican law. Costa Rican authorities explain that *concusión* is not a defence or exemption to the bribery offence *per se*, but an offence committed by the public official. But regardless of how it is characterised, it is clear that once a situation of *concusión* occurs, the payer of the advantage to the public official is not guilty of bribery.

211. Article 355 CC states that *concusión* occurs when an official "obliges or induces" an individual to pay, give or promise an advantage. According to the Supreme Court,⁴⁷ "to oblige" in this context means "any form of coercion of the individual's will". Examples include serious threats, or physical or psychological intimidation. "To induce" includes the use of deception. After the on-site visit, Costa Rican authorities provided dictionary definitions of these terms.

212. The concern is that when these concepts are applied in practice, the threshold for *concusión* is extraordinarily low. Almost any mere bribe solicitation by a public official would suffice. Several on-site visit participants agreed that a public official who demands a bribe as a condition for renewing a business licence is guilty of *concusión*. None disagreed with this position. A police officer who asks for money in return for overlooking a traffic violation also meets the threshold, as the above-mentioned Supreme Court case indicates. A more recent 2018 decision shows that coercion or threats are not essential; a mere suggestion by a public official "for a little something" or "to come to an arrangement" is enough for *concusión* to apply.⁴⁸ Not surprisingly, lawyers at the on-site visit stated that individuals accused of bribery frequently argue *concusión* as a defence.

213. *Concusión* also applies to both foreign and domestic bribery cases. At the on-site visit, a Supreme Court attorney, FAPTA prosecutors, PGR and private sector lawyers who opined on this issue were all of this view. This position seems logical. As noted in the quote from the Supreme Court above, *concusión* is based on the notion that an individual who pays a public official upon request has not "freely determined to offer the payment".

⁴⁶ Supreme Court Third Chamber, Judgment 2001-239.

⁴⁷ Supreme Court Third Chamber, Judgment 2016-45, citing Supreme Court Third Chamber Judgment 2013-48.

⁴⁸ Supreme Court Third Chamber, Judgment 2018-772. For additional examples of *concusión*, see Supreme Court Third Chamber, Judgments 2016-45, 2014-1734, 2014-1009; and Criminal Court of Appeal, Second Judicial Circuit of San José, Judgments 2014-695, 2018-689 and 2017-1288.

Whether the request comes from a domestic or foreign official would not affect the conclusion that the payer did not act out free will.

214. After the on-site visit, Costa Rican authorities argued that *concusión* applies to domestic but not foreign bribery because *concusión* is an offence and not a defence. They state that only Costa Rican and not foreign officials can be held liable for the offence of *concusión* under Article 355 CC. But the issue is not the liability of the foreign official who seeks the bribe, but the individual who pays it. Regardless of whether *concusión* is an offence or not, it does not change the conclusion that, under Costa Rican law, a bribe solicitation negates the necessary *mens rea* for the offence of bribery. Costa Rica also argues that *concusión* does not apply to foreign bribery because the briber has the option of conducting business without engaging in corruption, and because Article 55 LAC criminalises the conduct of both the briber and the official. But these observations are also true for domestic bribery, to which *concusión* nevertheless applies.

215. The Working Group has long held that the concept of *concusión* which applies to domestic bribery is not justified for foreign bribery.⁴⁹ In a domestic bribery case, the official who requested the payment will be prosecuted. With foreign bribery, the official may well evade justice since the foreign state may refuse to prosecute or because the conduct in question does not amount to an offence. A claim of *concusión* in the foreign bribery context will also be extremely difficult for the prosecution to challenge, since the bribed official is overseas and evidence will often be difficult to gather. Finally, the purpose of *concusión* is to protect the integrity of Costa Rica's public administration. The Convention's policy basis is much broader, encompassing the preservation of good governance and economic development, as well as preventing the distortion of international competitive conditions.⁵⁰

Commentary

The lead examiners are seriously concerned about the notion of concusión under Costa Rican law. Jurisprudence and on-site visit participants state that a mere demand of a bribe by an official to avoid a traffic ticket or to issue a licence amounts to concusión. An individual who pays the bribe under these circumstances is considered not to have acted freely and hence does not have the mens rea for the bribery offence. Costa Rica stated after the on-site visit that concusión applies only to domestic and not foreign bribery. But this contradicts the statements of lawyers, prosecutors, and a Supreme Court attorney at the on-site visit.

The lead examiners therefore recommend that Costa Rica, as a matter of priority, amend its legislation to ensure that a bribe solicitation is not a defence or exception to the foreign bribery offence.

(ii) Defence of necessity

216. Article 27 CC provides a general defence of necessity. A person who injures another does not commit an offence if the legal right of that or another person has been endangered, and the action avoids a greater evil. The danger in question must be unavoidable; current or imminent; and not caused by him/herself. At the on-site visit, a judge stated that the defence would not apply to foreign bribery because of a need to protect the integrity of the foreign state's public administration. The PGR took the same view

⁴⁹ Italy Phase 2, para. 139.

⁵⁰ OECD Anti-Bribery Convention, preamble.

because an individual can report a bribe solicitation to the authorities, and hence any danger to the individual's legal rights is avoidable.

(c) Jurisdiction over natural persons

217. The Convention Article 4(1) requires each Party to “take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.” Article 4(2) requires each Party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles.

218. Costa Rica now has universal jurisdiction over foreign bribery. Since Phase 1, Article 38 CLL has amended Article 7 CC to provide Costa Rica with jurisdiction over transnational bribery regardless of where the offence was committed or the nationality of the offender. Dual criminality is not required. Costa Rica states that it has jurisdiction over a foreign natural person employed by a Costa Rican company and who bribes a foreign public official abroad. The concerns about territorial jurisdiction in the Phase 1 Report (para 53) are moot.

3. Liability of legal persons

219. Article 2 of the Convention requires each Party to “take such measures as may be necessary [...] to establish liability of legal persons for the bribery of a foreign public official”. Annex I of the 2009 Anti-Bribery Recommendation provides further guidance on how to implement Article 2 of the Convention.

220. Law 9 699 on Corporate Liability (CLL) entered into force on 11 June 2019 and introduced criminal liability for foreign bribery and other offences. This Phase 2 evaluation is the Working Group's first opportunity to examine the new law. Sanctions against legal persons are considered in Section C.6(b) at p. 70.

Commentary

The lead examiners commend Costa Rica for enacting the CLL which introduces corporate criminal liability and comprehensively addresses issues such as the standard of liability, sanctions and procedure.

(a) Corporate liability for foreign bribery predating the Corporate Liability Law

221. The CLL repealed the previous regime of administrative corporate liability under Article 44bis LAC that had been in place since 2008. Costa Rica states that this administrative regime is no longer applicable to foreign bribery offences that took place prior to the law's repeal. The CLL is, understandably, not retroactive as this is prohibited by Costa Rica's Constitution. Costa Rican authorities thus state that they cannot prosecute the companies in the *Construction (Panama)* and *Construction (Guatemala)* cases. They will also be unable to prosecute other allegations of foreign bribery committed before the CLL's enactment that surface in the future. Costa Rica adds that a company could be liable for civil damages under Article 106 CC only when the natural person perpetrator is convicted.

Commentary

The lead examiners are strongly concerned that Costa Rica can no longer hold legal persons administratively or criminally liable for foreign bribery committed before

11 June 2019. When the CLL was enacted, Costa Rica did not ensure that the previous regime of administrative liability would continue to apply to foreign bribery that had been committed earlier. This could leave foreign bribery cases unpunished, given that foreign bribery is often detected only years after the offence has been committed, as the Construction (Panama) and Construction (Guatemala) cases demonstrate. The lead examiners therefore recommend that Costa Rica take all steps to detect, investigate, and hold legal persons liable for foreign bribery committed before the enactment of the CLL, and during the period in which Costa Rica was already a Party to the Convention. In particular, Costa Rica should use other avenues of liability such as civil action, or prosecutions for laundering the proceeds of bribery-tainted contracts that were generated after the CLL's enactment.

(b) Legal entities subject to liability

222. Article 2(1) CLL states that the CLL applies to two general categories of legal persons (a) private law legal persons, and (b) state and non-state companies and autonomous institutions:

Article 2(1) Scope - The provisions of this law shall be applicable to:

- (a) Legal persons under Costa Rican or foreign private law, domiciled, resident or with operations in the country;
- (b) State and non-state public companies and autonomous institutions, that are linked to international commercial relations and commit the crime of transnational bribery and the crimes of reception, legalisation or concealment of goods, product of transnational bribery.

(i) Legal persons under Costa Rican or foreign private law

223. The CLL applies to “legal persons under Costa Rican or foreign private law, domiciled, resident or with operations in the country” (Article 2(1)(a) CLL). A legal person under Costa Rican private law is one *established* and *domiciled* in the country, regardless of the capital of origin (Article 2(2) CLL). Under Article 19 of the Commercial Code (Law 3 284), a legal person is established if it is recorded in the National Registry. This occurs when a legal person is incorporated in Costa Rica, or incorporated elsewhere and then registered in the Registry. A legal person is domiciled in Costa Rica if it has a “current and true address within the Costa Rican territory, where notifications to the legal person can be validly delivered” (Article 18(10)). A foreign legal person is also presumed to be domiciled if it has an agent, subsidiary or branch in Costa Rica, or has contracts or business in the country (Article 2(3) CLL). Article 2(4) CLL further provides that the CLL applies to “legal persons or de facto [legal persons] that operate through the figure of trust, partnership, corporation or company of any kind, foundations and other associations of a non-commercial nature”. This definition appears wide enough to cover all types of non-profit and non-governmental organisations.

(ii) State and non-state public companies and autonomous institutions

224. The second category of legal persons under the CLL are “state and non-state public companies and autonomous institutions” (Article 2(1)(b)). According to the Ministry of Planning and Economic Policy, state public companies are legal entities of public or private law which the State uses to develop a business activity. The Constitutional Court (Judgment 2007-1556) explained that state and non-state public companies cover legal persons owned

or controlled to any degree by the Costa Rican State at the central or local level, and which serve a public purpose or provide a public service. Foreign SOEs operating in Costa Rica do not fall under this definition but the CLL applies to them if they meet the same requirements as foreign private companies under Article 2(1)(a).

225. Two additional conditions must be met. First, the CLL applies to state and non-state public companies and autonomous institutions only if they are “linked to international commercial relations”. Second, these legal persons can only be liable for foreign bribery and money laundering, not false accounting. However, Article 8(1) of the Convention requests all companies, including state-owned enterprises, to be held liable for false accounting.

Commentary

In Costa Rica, private companies can be held liable for false accounting, but state-owned enterprises cannot. They therefore recommend that Costa Rica amend the CLL to make state and non-state public companies and autonomous institutions liable for false accounting.

(c) Standard of liability

226. Annex I.B. of the 2009 Anti-Bribery Recommendation states that a regime of corporate liability for foreign bribery should take one of two approaches:

- a. the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons; or
- b. the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered:
 - A person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official;
 - A person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; and
 - A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures.

227. The standard of liability under the CLL resembles – but is not identical to – part (b) of Annex I.B. Article 4(1) CLL covers three different scenarios, namely crimes committed by (a) senior company managers, (b) lower level persons, and (c) intermediaries:

Article 4(1) Legal persons will be criminally liable:

- (a) Of the crimes committed in the name or on behalf, and for the direct or indirect benefit [of the legal person], by their legal representative or by those acting individually or as members of a body of the legal person, those who are authorised to make decisions in name of the legal person or have general powers of organisation or control within it.

(b) Of the crimes committed in the exercise of activities and on behalf of the legal person and for the direct or indirect benefit [of the legal person], by those who, being subject to the authority of the natural persons mentioned in the previous subparagraph, have been able to gravely breach the duties of supervision, monitoring and control of their activity, given the specific circumstances of the case.

(c) Of the crimes committed in the name or on behalf, and for the direct or indirect benefit [of the legal person], through intermediaries that are not related to the legal person, but have been contracted or instructed by the legal representatives or by those acting individually or as members of a body of the legal person, those authorised to make decisions in the name of the legal person, and have been able to gravely breach the duties of supervision, monitoring and control of their activity, given the specific circumstances of the case.

(i) Senior company managers authorising or directing bribery

228. Article 4 CLL does not expressly provide for corporate liability when a person with the highest level of managerial authority directs or authorises a lower level person to commit foreign bribery, as expressly required in the 2009 Anti-Bribery Recommendation Annex I.B. Costa Rica states that a manager who is aware of bribery committed by a lower level person would be complicit under Article 45 CC. There is no jurisprudence to support this position. Costa Rica also states that a manager who is complicit in bribery will trigger the liability of the legal person. Costa Rica adds that corporate liability for senior managers authorising or directing foreign bribery is covered by the concept of “reproach” which allows for *perpetration-by-means*. It did not provide any jurisprudence to support this position or to explain this concept.

Commentary

The lead examiners recommend that the Working Group follow up whether legal persons in Costa Rica can be held liable when a person with the highest level managerial authority directs or authorises a lower level person to commit foreign bribery.

(ii) In the name or on behalf of the legal person and in the exercise of the activities of the legal person

229. Articles 4(1)(a) and (c) CLL require that the offence be committed “in the name or on behalf of” the legal person. Costa Rica understands the term to mean that a natural person formally represents the company or acts in defence of its interests. Article 4(2) CLL further provides that the legal person is not liable if the natural person’s representation is false. Article 4(1)(b) CLL uses a different concept and requires that the offence be committed “in the exercise of the activities of the legal person”. Costa Rica explains that this refers to activities that are normal and ordinary for the undertaking of the legal person’s daily operations. There is no jurisprudence to support these interpretations.

(iii) Direct or indirect benefit of the legal person

230. In all situations under the Article 4 CLL, corporate liability arises only for an offence committed for the “direct or indirect benefit” of the legal person. Costa Rica states that a legal person benefits directly when, for example, it obtains a contract. The legal person benefits indirectly if the contract is awarded to its subsidiary, and the legal person

receives tax exemptions or part of the contract revenues because of the services provided between the two legal persons.

231. Corporate liability is further excluded if a natural person “committed the crime to their advantage or in favour of a third party” (Article 4(2) CLL). Costa Rica explains that a company would still be liable if it benefits coincidentally from that bribe. Costa Rica states that liability would also arise where an intended benefit does not materialise or the bribe results in a loss instead of a profit. There is no case law supporting these positions.

Commentary

The lead examiners recommend that the Working Group follow up whether a legal person is liable when natural persons commit foreign bribery to their advantage or that of a third party, and the legal person only benefits coincidentally from the crime.

(iv) Grave breach of duties of supervision, monitoring and control

232. Articles 4(1)(b) and (c) CLL impose corporate liability for a crime committed by a lower-level employee or an intermediary “who have been able to gravely breach the duties of supervision, monitoring and control of their activity”. Costa Rica states that the provision should be interpreted to mean that liability occurs when the offence is committed due to a grave breach by company management of its duty of supervision, monitoring and control.

233. Hence, on their face Articles 4(1)(b) and (c) CLL suggest that a legal person is not liable for all failures to prevent foreign bribery, but only those failures that are “grave”. But the 2009 Anti-Bribery Recommendation Annex I.B is not limited to “grave” failures to prevent. Costa Rica asserts that a legal person will be liable whenever foreign bribery is committed, regardless of the gravity of the failure. This is because Article 2(7) CCL imposes a legal duty on legal persons to avoid the commission of crimes (see Section C.3(g) at p. 63). But this does not explain why Articles 4(1)(b) and (c) CLL only impose liability for “grave” failures. Costa Rica adds that a “grave” failure is “a serious violation that is due to a failure to the duty to avoid criminal results, meaning it was of a malicious nature (intent)”. This would seem to be a rather onerous threshold. Costa Rica later added that a grave breach would occur when a legal person does not implement a corporate model correctly or does not have a model at all (see Section C.3(e) at p. 61).

Commentary

The lead examiners recommend that Costa Rica amend the CLL to provide for corporate liability for foreign bribery committed by a lower level person due to a failure by the highest level managerial authority to prevent the crime, regardless of the gravity of the failure.

(v) Liability for acts of related legal persons

234. Article 2(5) CLL provides for liability for the acts of a related legal person. A parent company is liable for an offence committed by a subsidiary or a company under its direct or indirect control when the parent company benefits directly or indirectly from the bribe or when the subsidiary committed the crime in the name or on behalf of the parent company.

235. Costa Rica states that the level of control necessary for liability is determined on a case-by-case basis. For example, a parent company will have direct control over a subsidiary when they share the same management or board of directors. A parent company, on the other hand, will have indirect control when the subsidiary has its own management and decision-making powers but the parent exerts indirect influence over the subsidiary by

supervising its activities. Costa Rica asserts that the same rules apply to a subsidiary incorporated in a foreign country.

(vi) Liability for acts of intermediaries

236. Article 4(1)(c) CLL imposes liability against a legal person for crimes committed through an intermediary who is instructed by or contracted to but is otherwise unrelated to the legal person. Costa Rica explains that whether the intermediary is actually held liable is immaterial. It provides the example of a legal person that sends a bribe to a foreign public official by post, without the postal service knowing the package's content. In addition, Article 2(6) CLL imposes liability against a legal person who acts as an intermediary in the commission of the crime.

(d) Successor liability

237. The Working Group has noted in previous evaluations that successor liability can prevent companies from evading responsibility through a corporate reorganisation. Article 3(1) CLL provides for successor liability in the event of a corporate merger, acquisition and split. Article 3(2) CLL further provides for liability where a culpable legal person is dissolved. The prosecution must then prove that the dissolved legal person's economic activities continue in the successor, according to Costa Rica.

238. One obstacle in practice may remain. A successor is liable only if the corporate reorganisation was performed "in order to try and evade criminal responsibility". In other words, the prosecution has the additional burden of proving that the purpose of reorganisation was to evade liability. Proof of the purpose of reorganisation could be difficult, since there are often multiple reasons for corporate restructurings.

Commentary

The lead examiners recommend that the Working Group follow up whether the burden of proof for successor liability is too onerous.

(e) Models of organisation, crime prevention, management and control

239. The CLL introduces the concept of corporate "models of organisation, crime prevention, management and control". Corporate models are essentially corporate compliance programmes. Article 6 CLL appears to state that corporate models are optional, i.e. companies are not obliged to have corporate models. But those that do at the time of an offence may be entitled to a sentence reduction, as explained below in Section C.6(b)(i) at p. 70. The only exception are state-owned enterprises, which must incorporate the minimum model requirements into their internal control systems (Article 9 CLL).

240. The CLL offers some guidance on the elements of an acceptable corporate model. Article 8(1) CLL provides that corporate models should be commensurate with the size, type of business, complexity and economic capacity of the legal person. They must, however, comprise at least 11 elements listed in Article 8(2). This includes things such as periodic risk analysis; internal and external audit; rules and procedures to prevent unlawful actions in bidding and executing government contracts and in other interactions with the public sector; training; and a disciplinary system for non-compliance. These elements were selected in consultation with several business associations.

241. These provisions on minimum model elements are not particularly onerous. Article 8(2)(c) states that a corporate model must "establish through protocols or procedures, the formation of the legal person's will in order to adopt and execute decisions

of the legal person”. Article 8(2)(g) requires “adequate management models of financial resources” which Costa Rica states merely requires “general models on how to manage financial resource through all of the organisation”. These elements seem trite. One would expect practically all companies to have rules for decision-making and financial management irrespective of the CLL.

242. Other mandatory elements are too general. Corporate models must have codes of ethics, rules and procedures, but there is no guidance on what they must cover. Article 8(2)(f) requires a legal person to determine the scope of its code of conduct and prevention policies for third parties and business partners, “when the possible risks deem it mandatory”. There is no indication that this should include important matters such as properly documented risk-based due diligence pertaining to the hiring of a third party, or appropriate and regular oversight of business partners. Article 8(2)(d) requires a legal person to have “procedures in the area of administration and audit of financial resources”. There is no further requirement to ensure the effectiveness of these measures, such as the independence and resourcing of auditors.

243. The list of mandatory corporate model elements also omits some important measures identified in the OECD’s Good Practice Guidance on Internal Controls, Ethics, and Compliance (2009 Recommendation Annex II). For example, Article 8(2) CLL does not require strong, explicit and visible senior management support for and commitment to the model. There is no duty on employees to report violations internally or on the company to provide reporting channels, as some on-site visit participants pointed out. Whistleblower protection is not mentioned. Nor are corporate models required to include policies in foreign bribery risk areas such gifts, hospitality, entertainment, customer travel, facilitation payments etc.

244. A further concern relates to small- and medium-sized enterprises (SMEs). The corporate model for SMEs may be overseen by the legal person’s owner, partner, shareholder or administrative body, rather than by an independent individual (Article 7(1)). In addition, only 7 of the 11 model elements are mandatory for SMEs (Article 10 CLL). Some of the omitted elements (such as systems for managing financial resources as well as periodic risk analysis and verification) are arguably essential for companies of any size. Furthermore, SMEs are defined using a formula based on an enterprise’s staff size, annual turnover, and net asset value.⁵¹ Some fairly large companies can in fact qualify as SMEs.⁵² In any event, the Working Group has noted that a reduction in compliance requirements should not be based on rigid thresholds, but should instead take into account all relevant features of a company, including its risk of committing foreign bribery.⁵³

245. When asked about these deficiencies, Costa Rica states that it is expanding the list of mandatory corporate model elements by regulation under Article 8(2) CLL. The Ministry of Economy, Industry and Commerce, together with the Ministry of Justice and Peace (MJP), will also develop and implement a model of organisation, crime prevention, management and control with a view to streamlining its application. The MJP has developed an action plan to raise awareness of the Convention and promote corporate

⁵¹ Law 8 262 on Strengthening Small and Medium Enterprises; and MEIC Regulation 39 295.

⁵² For example, an SME in the industrial sector may have up to 166 staff, annual turnover of USD 11 million, or net asset value of USD 20.7 million. In the commercial and services sectors, the corresponding thresholds are 50 staff, USD 18.6 million turnover, and USD 17.4 million net assets (Articles 13 and 15, MEIC Regulation 39 295).

⁵³ Peru [Phase 1](#), para. 56; Chile [Phase 3](#), para. 51 and Recommendation 1(b); and Chile [Phase 4](#), para. 165-167 and Recommendation 6(c).

models. These initiatives are commendable, but more steps could be taken to reach out to the private sector. Costa Rica indicates that it consults systematically the public in the legislative process. However, several private sector representatives at the on-site visit stated that they had not be adequately consulted before the CLL was enacted.

Commentary

The lead examiners welcome Costa Rica's current efforts to develop a regulation on corporate models. They recommend that Costa Rica (1) expand the mandatory elements of corporate models to include those that are vital to an effective anti-foreign bribery compliance programme, and (2) ensure that the requirements for corporate models for SMEs are based on all relevant features of the company, including its risk of committing foreign bribery.

(f) Corporate models as a defence against liability

246. Whether a corporate model may be a full defence against liability is unclear. As explained in Section C.3(b)(iv), where an offence is committed by a lower level person or an intermediary, liability arises only if company management has gravely breached its duties of supervision, monitoring and control. Put differently, the legal person could escape liability if the senior management had fulfilled its duties of supervision, monitoring and control. The question is then whether a company that has implemented a corporate model will necessarily discharge its duties of supervision, monitoring and control, and hence escape liability. Costa Rican authorities explain that a corporate model cannot be a complete defence and that Article 12 CLL lists exhaustively the benefits of corporate models, which are limited to sentence reductions. Minutes of the Legislative Assembly's discussion of this provision do not shed light on this issue.

Commentary

The lead examiners recommend that the Working Group follow up whether an effectively implemented corporate model is a defence under the CLL.

(g) Additional liability for failure to prevent foreign bribery

247. Article 2(7) CLL states that a legal person has "the legal duty to avoid the commission of the crimes [covered by the CLL]." Breach of this duty results in criminal liability under Article 18 CC. Costa Rican authorities state that this provision requires legal persons to "adapt their organisational structure to avoid the commission of crimes, and have an internal organisation that is efficient in preventing them, including through the proper establishment of effective and highly effective anti-corruption prevention models, practices and policies".

248. Article 2(7) CLL could be read to create an additional source of corporate liability. Since the provision imposes a "legal duty to avoid foreign bribery", it arguably requires a company to have an effective corporate model. Alternatively, the provision could be interpreted to impose corporate liability for foreign bribery which a legal person fails to prevent. But this interpretation would substantially duplicate the corporate liability provisions in Article 4(1) CLL described above.

249. Costa Rica explains that Article 2(7) CLL does not duplicate other CLL provisions but "merely reinforces the idea that the benefit obtained with the crime could be for the legal person who commits it, or for a third party, that could be, also, another legal person".

Commentary

The lead examiners recommend that Costa Rica take steps to clarify that Article 2(7) CLL does not create a source of corporate liability.

(h) Jurisdiction over legal persons

250. As mentioned in Section C.3(b) at p. 57, Costa Rica has jurisdiction over legal persons that are domiciled, resident or with operations in the country. Costa Rica also has universal jurisdiction over foreign bribery. It can thus assert jurisdiction over a legal person regardless of the location where the offence is committed or the nationality of the legal person (see Section C.2(c) at p. 56).

(i) Proceedings against the legal person and the natural person

251. Parties to the Convention are required to ensure that the conviction or prosecution of a natural person is not a pre-condition to the liability of a legal person for foreign bribery (2009 Anti-Bribery Recommendation Annex I.B).

252. Article 5 CLL clarifies that the criminal liability of legal persons is independent from the criminal liability of the natural person and subsists even when: (a) the responsible natural person cannot be individualised or has not been possible to direct proceedings against them; (b) the proceedings against the natural person have been dismissed; and (c) in case of an offence committed by senior management, the offence was committed within the scope of their functions, even if their participation is not proven. Procedurally, the “criminal process against the legal person must be transacted in the same file in which the criminal case against the natural person linked to the legal person is processed”. However, proceedings against a legal person can continue independently “when it has not been possible to identify the natural person” (Article 14 CLL).

253. As CLL imposes criminal liability, the Public Prosecution Service will conduct proceedings under the law. This resolves Working Group concerns in Phase 1 (paras. 71 and 129) about the independence of corporate proceedings, which at that time were conducted by the Ministry of Justice and Peace.

4. Offence of money laundering

254. Article 7 of the Convention states that each Party which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred.

(a) Elements of the money laundering offence

255. The Phase 1 Report (paras. 84-85) expressed concerns that Costa Rica’s money laundering offence requires dual criminality. In Phase 1 (para. 84), Costa Rica implemented Article 7 of the Convention through Article 69 of Law 7 786 on Narcotic, Psychotropic Substances, Drugs of Unauthorised Use, Related Activities, Money Laundering and Financing of Terrorism (MLFT). Money laundering is an offence under this provision only if the conduct constituting the predicate offence is considered a crime at the place where it occurred, according to the Costa Rican Supreme Court (Judgment 2015-1595). This contravenes Article 7 of the Convention, which requires the criminalisation of foreign bribery-related money laundering “without regard to the place where the bribery occurred”.

256. In response to the Working Group's concern, Costa Rica amended not the offence in Article 69 MLFT, but a second money laundering offence in Article 47 LAC to expressly remove the dual criminality requirement:

Article 47 - Receipt, legalisation, concealment of property or legitimization of assets. The person, who conceals, insures, transforms, invests, transfers, custodies, administers, acquires or gives the appearance of legitimacy to goods, assets or rights, knowing that they have been the product of illicit enrichment or criminal activities of a public official, committed on the occasion of the position or by the means and the opportunities that this provides, will be sanctioned with imprisonment of one to eight years. When the property, money or rights originate from the crime of transnational bribery, the same sanction shall be applied as the conduct described above, regardless of the place where the act was committed nor if transnational bribery is criminalised in that place [underlining indicates amendment by Article 37 CLL in 2019].

257. The Working Group did not examine Article 47 LAC in the Phase 1 evaluation because Costa Rica referred only to Article 69 MLFT. The reverse is true in Phase 2: Costa Rica refers only to Article 47 LAC even though Article 69 MLFT remains in force.

258. The amended Article 47 LAC may resolve the dual criminality issue but it has several other serious deficiencies:

- The provision covers the laundering of the proceeds of “illicit enrichment or criminal activities of a public official”. It arguably would not cover money laundering by a briber, since the laundered property are the proceeds of the criminal activities of the briber, not the public official.
- The offence does not cover the laundering of the proceeds of all acts of foreign bribery, but only those that were “committed on the occasion of the [public official's] position or by the means and the opportunities that this provides”. The foreign bribery offences in Article 1 of the Convention and Article 55 LAC do not contain such a limitation.
- Article 47 LAC only covers the laundering of the product (i.e. proceeds) of crime. On its face, it would not cover the laundering of the instruments of crime, e.g. a bribe, as required by the Convention. Costa Rica argues that a bribe could be considered the product of an official's act of corruption. Even if this were true, the offence would still not cover bribes that are intended for but have not reached the official.

Commentary

The lead examiners acknowledge Costa Rica's efforts to address the Working Group's concerns about the dual criminality requirement in the money laundering offence. Nevertheless, they are seriously concerned that Costa Rica's money laundering offence in Article 47 LAC departs significantly from the Convention. The provision also duplicates a second money laundering offence in Article 69 MLFT. Costa Rica argues that the two offences are not duplicative because only Article 47 LAC applies to money laundering predicated on foreign bribery. But this completely contradicts Costa Rica's position taken in Phase I. Even accepting this argument, Article 69 MLFT may still apply to cases of money laundering predicated on foreign bribery that are not covered by Article 47 LAC.

The lead examiners therefore recommend that Costa Rica (a) consolidate its money laundering offences into a single provision, and (b) ensure that this offence complies with the Convention by covering the laundering of the instruments and proceeds of all acts of foreign bribery envisaged by the Convention.

(b) Enforcement of the money laundering offence

259. Responsibility for prosecuting money laundering predicated on foreign bribery is divided. PPS Memorandum 01-2011 gives FAPTA jurisdiction over the offence in Article 47 LAC. Costa Rica states that this provision applies to money laundering predicated on foreign bribery. This is a suitable arrangement since FAPTA will also prosecute a substantive foreign bribery charge. The PPS Money Laundering Unit (*Fiscalía Adjunta Contra la Legitimación de Capitales*, MLU) has conduct of money laundering offences under Article 69 MLFT. This includes cases where the predicate corruption offences is not prosecuted, e.g. when a non-Costa Rican official is bribed and the proceeds are subsequently laundered in Costa Rica. This was the case in *Case #5 Money Laundering (Venezuela)* where the MLU – not FAPTA – announced the decision not to investigate.⁵⁴ A FAPTA and MLU Joint-Communiqué in February 2018 reiterated this arrangement.

260. Unfortunately, this division of responsibilities reduces the tools available for FAPTA’s money laundering investigations. Unlike the MLU’s cases, investigations conducted by FAPTA under Article 47 LAC cannot rely on the powers of the UIF to demand information and forward it to the prosecutor, police and courts under Articles 123-124 MLFT. The services of the Asset Recovery Unit in tracing, confiscating and managing assets are also not available, as FAPTA and MLU acknowledge:⁵⁵

Consequence of the above is that the powers of the Financial Analysis Unit and the Asset Recovery Unit of the Costa Rican Institute on Drugs in articles 123, 124, 139 and 140 of Law 7 786, to assist judicial authorities, as well as other obligations established by that law, can be applied when the crime of Article 69 of Law 7 786 is investigated and not when the crime established in Article 47 of Law 8 422 is investigated. The foregoing is without detriment to the powers that arise when there is a declaration of application of the special organised crime procedure (Law 8 754).

261. One consequence of this arrangement is that FAPTA does not receive suspicious transaction reports (STRs) directly from the UIF. When the UIF decides that an STR should be forwarded to the PPS for further investigation, the report is sent to the head of the MLU. If the head of the MLU sees fit, he will forward an anonymised version of the STR to other prosecutor units such as FAPTA.

262. A further concern is that the money laundering offence is not enforced with sufficient vigour. Statistics from 2014-2019 indicate that the PPS received an annual average of 148.8 complaints of money laundering (predicated on all eligible offences) but completed only 19.2 trials and obtained 21.8 convictions. This would seem low considering that over the same period there were annually on average 6.6 convictions for bribery, which is only one of many economic and non-economic proceeds-generating offences. Media

⁵⁴ CRHoy (29 October 2019), “[ICD entregó a Fiscalía informe sobre posible lavado de dinero en Alunasa](#)”.

⁵⁵ FAPTA and MLU (2 February 2018), “*Comunicado conjunto de la Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción y de la Fiscalía Adjunta Contra la Legitimación de Capitales*”.

articles that considered statistics from 2010-2016 also suggested that the PPS took a disproportionately low number of cases to prosecution.⁵⁶

263. This conclusion is reinforced by the three allegations of money laundering that are potentially related to foreign bribery (see Section A.2(d) at p. 8):

- In *Case #3 Money Laundering (Peru)*: According to media reports, Costa Rica closed a brief investigation in this case in 2015 partly because there were on-going proceedings in Peru. As explained in para. 116, the threshold for this ground of termination is too low. A second reason for termination was that investigative efforts would have to be taken in Peru. However, such efforts are routinely expected in crimes of an international nature. A third reason for termination was a lack of connection between the case and Costa Rican nationals and territory. This is puzzling, given that a Costa Rican lawyer allegedly set up shell companies in Costa Rica to launder proceeds in the country.
- In *Case #4 Money Laundering (Ecuador)*, Costa Rica decided not to investigate allegations that a senior foreign official laundered proceeds of corruption through a Panamanian bank that is owned by a Costa Rican company. Costa Rican authorities argue that Panamanian regulators administered the bank when it was acquired by a Costa Rican company. Even if this were true, it would not eliminate the possibility that proceeds of corruption are still deposited at the bank. Costa Rican authorities also state that Ecuador and Panama have not sought MLA from Costa Rica, but they have not confirmed that the absence of an MLA request was based on the merits of the case.
- In *Case #5 Money Laundering (Venezuela)*, the media reported that an entity in Costa Rica deposited large amounts of cash in its bank accounts in the country. The pattern of transactions was said to be suspicious. The Costa Rican Central Bank saw fit to close all of the entity's account in Costa Rica. US authorities sent the UIF (Costa Rica's financial intelligence unit) an alert which was passed on to the PPS. Nevertheless, the PPS did not consider the evidence to be sufficient for opening a criminal investigation. It has not taken any investigative actions to confirm or refute the allegations in the media. It requested information from the US only in October 2019, some 16 months after the allegations had surfaced in the media.

Commentary

The lead examiners are concerned that the tools for investigating money laundering under Article 47 LAC are fewer than investigations under Article 69 MLFT. Furthermore, STRs are filtered by the MLU before they reach FAPTA. At a minimum, this adds delay. At worst, relevant STRs may be filtered out by the MLU since it cannot be expected to be fully familiar with all of FAPTA's cases. The lead examiners therefore recommend that the investigative powers available in money laundering investigations under Article 69 MLFT be extended to investigations under Article 47 LAC, including the direct transmission of STRs by the UIF to FAPTA.

⁵⁶ American Expat Costa Rica (12 December 2017), "[Prosecutor Dismissed 73% of Cases Related to Money Laundering](#)"; La Nación (8 January 2018), "[Tribunales solo concretaron 94 condenas por lavado de dinero en seis años De 2010 hasta el 2016, autoridades recibieron 2.044 alertas de operaciones sospechosas](#)".

The lead examiners are also concerned about statistics which suggest that Costa Rica may not be proactively prosecuting money laundering cases. Specific cases involving the laundering of the proceeds of foreign bribery support this conclusion. They therefore recommend that Costa Rica take steps to ensure that it vigorously prosecute such cases.

(c) Sanctions for money laundering

264. Sanctions for laundering the proceeds of foreign bribery are much lower than those for laundering the proceeds of other economic crimes. The money laundering offence in Article 47 LAC results in a sentence of imprisonment of 1-8 years. The provision, however, does not apply to the laundering of the proceeds of fraud, theft and other economic crimes in the Criminal Code. This is covered by Article 69 MLFT, which imposes a much heavier sentence of 8-20 years. Corporate liability for money laundering predicated on domestic and foreign bribery results in the same sanctions, however (see Section C.6(b)(i) at p. 70).

Commentary

The lead examiners do not believe that there is a valid policy reason why the laundering the proceeds of foreign bribery should result in lower sanctions than laundering the proceeds of other economic crimes, such as fraud. They therefore recommend that Costa Rica consider amending its legislation to rectify this discrepancy.

5. Offence of false accounting

265. Article 8(2) of the Convention requires each Party to provide effective, proportionate and dissuasive civil, administrative or criminal penalties for omissions and falsifications in respect of the books, records, accounts and financial statements.

(a) Sanctions for false accounting

266. Costa Rica has implemented the Working Group's recommendation in Phase 1 (paras. 91 and 131) to enact a false accounting offence that implements Article 8(2) of the Convention. The CLL enacted Article 368bis CC which prohibits the falsifying of an accounting record, and the maintaining double accounts, for the purpose of committing or concealing an offence covered by the CLL (which includes foreign bribery). The offence is punishable by imprisonment of one to five years. Sentences can be suspended under Articles 59-63 CC if, according to Costa Rica, the offender does not have a criminal record. Article 60 CC requires a court to consider other factors. Fines are not available. The accounting and auditing profession at the on-site visit was aware of the new offence.

267. Corporate liability for false accounting is also available against all legal persons except for state-owned enterprises (see Section C.3(b)(i) at p. 57). The attribution rules and sanctions for corporate liability in cases of foreign bribery (see Section C.3(c) at p. 58) apply equally to false accounting offences.

Commentary

The lead examiners commend Costa Rica for implementing the Working Group's Phase 1 Recommendation and enacting a false accounting offence in Article 368bis CC.

(b) Enforcement of the false accounting offence

268. It is unclear whether Costa Rica has and will enforce the offence of foreign bribery-related false accounting. Article 368bis CC has not been applied since it was only enacted in June 2019. In Phase 1, Costa Rica referred to offences on false accounting committed

for the purposes of tax fraud in Law 4 755 on Tax Rules and Procedure. There is no indication that this provision has been applied to corruption-related false accounting.

269. A further issue is co-ordination. Similar to money laundering, all prosecutors in Costa Rica has jurisdiction to pursue the false accounting offence in Article 368*bis* CC. The PPS has not issued rules that give FAPTA exclusive conduct of cases involving corruption-related false accounting. PPS Memorandum 01-2011 gives FAPTA jurisdiction over substantive corruption offences and money laundering under Article 47 LAC. It does not, however, mention false accounting offences. Steps have also not been taken to ensure that future corruption-related false accounting cases would be prosecuted under Article 368*bis* CC and not the Law on Tax Rules and Procedure.

270. Just before the adoption of this report, the PPS issued Circular 03-ADM-2020 which gave FAPTA exclusive conduct of foreign bribery-related false accounting cases.

6. Sanctions for foreign bribery

271. Article 3(1) of the Convention requires foreign bribery to be punishable by “effective, proportionate and dissuasive criminal penalties”. The range of penalties should be “comparable to that applicable to the bribery of the Party’s own public officials.”

(a) Sanctions against natural persons for foreign bribery

272. Since Phase 1, Costa Rica has increased the maximum sentence of imprisonment and introduced fines for foreign bribery. Previously, non-aggravated foreign bribery was punishable by 2-8 years’ imprisonment and aggravated foreign bribery (i.e. bribery to breach an official’s duties) by 3-10 years. Article 37 CLL amended Article 55 LAC and increased the imprisonment for both types of foreign bribery to 4-12 years. The CLL also introduced fines for foreign bribery of up to 2 000 base salaries, i.e. approx. USD 1.54 million or EUR 1.40 million.⁵⁷ Costa Rica states that criminal fines can only be imposed concurrently with imprisonment and not as a stand-alone penalty. Article 71 CC lists the aggravating and mitigating factors at sentencing.

273. The sanctions for foreign bribery mostly exceed those for domestic bribery and other economic crimes. Domestic corruption offences have lower prison sentences (or the same, in the case of corruption of judges). The only possible difference is the fine, which up to 30 times the benefit (Articles 347-348 CC). Money laundering under Article 69 MLFT has a higher range of imprisonment (8-20 years). The opposite is true for money laundering under Article 47 LAC (1-8 years) and false accounting (1-6 years).

274. Whether actual sanctions in specific cases of foreign bribery are adequate remains to be seen. The Phase 1 Report (para. 34) found a substantial number of suspended sentences for domestic bribery. Statistics from 2011-2018 confirm this view, with 18 suspended sentences and just 6 of actual incarceration for bribers. The increase in sanctions introduced by the CLL has since made sentences for foreign bribery ineligible for suspensions. But the sentence may still be decreased through non-trial resolutions (see Section C.1(f) at p. 35).

Commentary

The lead examiners commend Costa Rica for increasing the maximum sanctions and introducing fines against natural persons for foreign bribery.

⁵⁷ The base salary for 2019 is CRC 446 200 or approximately USD 772.

(b) Sanctions against legal persons for foreign bribery**(i) Overview**

275. Article 11 CLL sets out the sanctions available against legal persons. The same maximum sanctions are available for foreign and domestic bribery. The sanctions vary depending whether foreign bribery relates to public procurement, and whether the legal person is a small or medium-sized enterprise (SME) or state-owned enterprise (SOE) and autonomous institution.

Offence	Type of legal persons	Financial penalty	Additional sanctions	Exceptional sanctions
Foreign bribery unrelated to public procurement	All legal persons except SMEs, SOEs and autonomous institutions	1 000 to 10 000 base salaries (approx. USD 77 000 to 7.7 million)	Loss or suspension of State benefits or subsidies for 3-10 years	Dissolution of the legal person
			Disqualification from subsidies and public aid, contracts, public tenders, bids or in any other activity related to the State for 3-10 years ⁵⁸	
			Disqualification from tax or social security benefits or incentives, for 3-10 years ⁵⁹	
			Total or partial cancellation of the operation permit, concessions or contracts, obtained as a result of the crime	
Foreign bribery related to public procurement	SOEs / autonomous institutions	1 000 to 10 000 base salaries	All	n/a
	SMEs	30 to 200 base salaries (approx. USD 23 000 to 154 000)	All	Dissolution of the legal person
Foreign bribery related to public procurement	All	Greater of: 1 000 to 10 000 base salaries or 10% of the procurement contract	All (but disqualification from public procurement procedures longer)	Mandatory disqualification from public procurement tenders for 10 years

(ii) Fines against legal persons

276. Earlier concerns about the sufficiency of fines against legal persons have been partially addressed. In Phase 1 (para. 37) the available fines were USD 15 500 – 780 000, which were not effective, proportionate and dissuasive. The maximum fines under the CLL

⁵⁸ The sanctions extend to legal persons controlled by the directly responsible legal person, its parent companies and subsidiaries.

⁵⁹ *Ibid.*

are now 1 000 – 10 000 base salaries. In 2019, this translates to CRC 446 million – 4.46 billion (USD 77 000 – 7.7 million).

277. The current fines for SMEs are too low since the definition of SMEs actually covers fairly large firms. The CLL increased the fines for most legal persons but decreased them for SMEs to 30 to 200 base salaries. In 2019, this equals CRC 13.4 million to 89.2 million (USD 23 000 – 154 000). An SME is defined using a formula based on three factors: average employees, annual net revenues and net assets.⁶⁰ For example, a firm in the industrial sector with an average of 40 staff, USD 5.0 million in annual net revenues and USD 6.5 million in net assets is considered an SME. The maximum fine under the CLL for such a company would be just 3% of its annual revenue and 2% of net assets. Mitigating factors may further reduce the fine.

278. Costa Rica explained that the Legislative Assembly was concerned that, without this provision, fines would be too onerous for SMEs with just a handful of staff. But the reduced fines in the CLL are not limited to such “micro-SMEs”. As the example in the previous paragraph shows, the reduced fines also apply to firms with a significant number of employees, annual revenues and net assets. Costa Rica also argues that the reduced fines take into account proportionality and the economic reality for Costa Rican SMEs and that the Legislative Assembly thoroughly discussed the level of the sanctions when the CLL was debated. But it admits that there have not been any rigorous analyses of why the chosen level of fines in the CLL is suitable.

Commentary

The lead examiners welcome Costa Rica’s recent efforts to increase substantially the maximum fines available for legal persons for foreign bribery. However, they regret that Costa Rica decreased the fines for SMEs without rigorously analysing whether chosen level of fines is appropriate. The lead examiners therefore recommend that the Working Group follow up whether the available fines for SMEs are effective, proportionate and dissuasive.

(iii) Sentence reductions through corporate models, and prevention and detection measures

279. A legal person that has adopted and effectively implemented a corporate model at the time when an offence was committed can benefit from a sentence reduction of up to 40% (Article 12(1)(d) CLL). A corporate model is essentially a corporate compliance programme (see Section C.3(e) at p. 61). If the offence was committed by senior managers or intermediaries (i.e. liability under (Article 4(1)(a) or (c) CLL), then two additional requirements must be met to qualify for sentence reduction: (i) the model was overseen by an autonomous body that sufficiently exercised its supervisory, monitoring and control functions; and (ii) the crime was committed by “fraudulently evading” the model. These two additional requirements do not apply if the offence was committed by lower-level persons (i.e. liability under Article 4(1)(b) CLL).

280. A second provision allowing sentence reductions for prevention and detection measures may result in overlap. Under Article 12(1)(c) CLL, a legal person is also entitled a sentence reduction of up to 40% if, before the commencement of the oral trial, it adopts “effective measures to prevent and discover crimes that could be committed in the future”. It is difficult to imagine how such “effective measures” would be anything but a corporate

⁶⁰ Article 15 of Regulation 39 295.

model or compliance programme. This ambiguity is similar to the issue of whether a corporate model can be a defence against liability, i.e. the implementation of an effective corporate model necessarily means that company management has fulfilled its duties of supervision, monitoring and control, within the meaning of Article 4(1)(b) (see Section C.3(f) at p. 63).

Commentary

The lead examiners recommend that Costa Rica clarify whether the term “effective measures to prevent and discover crimes” in Article 12(1)(c) CLL is synonymous with corporate models.

(iv) Sentence reductions through self-reporting

281. Article 12(1)(a) CLL allows sanctions to be reduced by up to 40% if a legal person that self-reports an offence for which it is liable to the authorities. The reduction is available to legal persons whose owners, directors, members of administration, representatives, proxies or supervisors who do not have knowledge of judicial proceedings against the legal person.

282. The provision may be overbroad and thus defeat its original purpose of enhancing the detection of crime. On its face, the provision applies even if the authorities are already aware of the self-reported allegation, for instance through a tip, media reports, or foreign authorities – a frequent occurrence in transnational bribery cases. Allowing sentence reductions in these cases would not increase crime detection and hence would not be good policy. The provision also allows sentence reductions if a legal person is aware of *foreign* proceedings against it and then self-reports to Costa Rican authorities. Costa Rica explains that the legislator’s intention was to incentivise detection through self-reporting but admits that the drafting of the provision may in fact be counterproductive.

283. A final challenge is proof. The prosecution has the challenging task of proving that a legal person does not know of judicial proceedings against it at the time of the self-report. In practice, this may mean that a sentence reduction may be available up to the point where the authorities expose an investigation to the legal person (e.g. after a raid or indictment).

Commentary

The lead examiners acknowledge that promoting self-reporting may enhance detection and enforcement of foreign bribery. Nevertheless, they are concerned that Article 12(1)(a) CLL does not reflect good policy and may in fact be abused by legal persons seeking sentence reductions. They therefore recommend that Costa Rica amend Article 12(1)(a) CLL so that sentence reductions are available only when a legal person (a) self-reports misconduct that is unknown to Costa Rican authorities, and (b) there is no investigation by Costa Rican or foreign authorities into the misconduct at the time the self-report was made.

(v) Sentence reductions through collaboration with the authorities

284. Article 12(1)(b) CLL allows for sanction reductions of again up to 40% if a legal person collaborates with the authorities in the investigation. A legal person must provide the authorities with “new and decisive proof that clarify the criminal responsibilities arising from the facts investigated”. Collaboration is possible at any time during the criminal proceedings.

285. This provision could benefit from clarification. On its face, the provision of “new and decisive proof that clarify the criminal responsibilities” could overlap with self-reporting of the crime. Guidance clarifying that the collaboration in question should occur after the authorities have detected the case and commenced investigation could therefore be useful. Also helpful would be an elaboration of the nature and degree of collaboration that is necessary, e.g. non-obstruction of searches, preservation and disclosure of relevant documents and information, waiver of privilege, disclosure of the outcomes of internal investigations, and facilitating access to witnesses.

Commentary

Given that co-operation with the authorities is a new addition to Costa Rican law, the lead examiners recommend that Costa Rica provide guidance to clarify the nature and degree of collaboration expected from legal persons under Article 12(1)(b) CLL.

(vi) Factors considered at sentencing and Article 5 of the Convention

286. The CLL allows the consideration of factors such as “serious damage to the public interest” and “serious social consequences” in determining the sanctions against legal persons. A permit, concession or contract would not be cancelled as a sanction if it would have “serious social consequences or serious damage to the public interest” (Article 11(1)(e)). The sentence must also take into account “the possibility of the sanctions causing serious harm to the public interest” and the “seriousness of the social consequences” (Articles 13(e) and (h)). Costa Rica states that Article 13 applies to a judge when determining the sanctions to be imposed.

287. These provisions could be applied in a manner that is inconsistent with Article 5 of the Convention. Article 5 prohibits the consideration of the factors of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved, in foreign bribery cases. The terms “serious damage to the public interest” and “serious social consequences” are undefined. They could conceivably encompass Article 5 factors. When asked about this issue, Costa Rica stated that “[it] is a country with an economy based on the provision of services, it is very important to take into account both the interests relating to the national economy, as well as the relations between states and their interests. These aspects must necessarily be assessed by a judge.” A judge at the on-site visit took the same view, adding that Article 5 applied only to the investigation and prosecution – but not the sanctioning – of foreign bribery. Costa Rica also takes the same interpretation of the term “public interest” under the “opportunity principle” (see Section C.1(e) at p. 33).

288. Costa Rica disagrees that these provisions raise concerns under Article 5 of the Convention. It states that the “public interest” is not a prohibited factor under Article 5. But the Working Group has consistently recommended that Parties to the Convention ensure that the consideration of the public interest must not encompass factors listed in Article 5.⁶¹ Costa Rica also states that Article 5 applies to investigations and prosecutions but not the imposition of sanctions. This is not consistent with the Working Group’s interpretation of Article 5.⁶²

⁶¹ For example, see Austria Phase 2 para. 133, Canada Phase 2, para. 78-80, Germany Phase 3 paras. 129-138, Sweden Phase 3 paras. 87-90 and UK Phase 2 paras. 163-167.

⁶² For example, see Brazil Phase 3 Recommendation 3(c) and Greece Phase 3bis Follow-up Issues 15(b) and (c).

Commentary

The lead examiners recommend that Costa Rica amend the CLL to ensure that the factors forbidden by Article 5 of the Convention do not influence sanctions against legal persons. They also recommend that Costa Rica raise awareness of Article 5 of the Convention among investigators, prosecutors and judges.

(c) Confiscation

289. Confiscation (*comiso*) of the instruments and proceeds of crime against natural and legal persons is mandatory upon conviction (Articles 103 and 110 CC; Article 28 CLL). FAPTA states that confiscation without a conviction can be ordered under Article 110 CC. The Criminal Code does not explicitly allow for confiscation without a conviction but Costa Rica provides jurisprudence to this effect.⁶³ The only requirement is proof that the property in question is the proceeds of crime. Statistics on the application of confiscation in practice are not available.

290. Costa Rica does not allow value confiscation, i.e. the confiscation of property the value of which corresponds to that of such proceeds, or for monetary sanctions of comparable effect. Confiscation would be thwarted if the proceeds of foreign bribery have been spent, lost or destroyed, for example. Costa Rica states that it could seek damages through a civil action, but this is not the same as value confiscation in at least two respects:

- Civil damages and value confiscation are qualitatively and quantitatively different. The amount of civil damages is equal to the damage suffered by the victim. The amount of value confiscation is the amount of the instruments and proceeds of crime that are subject to confiscation.
- There are also procedural differences. Confiscation is sought by the Costa Rican prosecutor. Civil action for damages must be commenced by the victim, i.e. the foreign state. In many cases, a foreign state may be too corrupt to do so. Civil damages are also only available when the natural person perpetrator is convicted (see para. 221). Confiscation is not limited in this respect (see para. 289).

Commentary

The lead examiners recommend that Costa Rica (a) provide for confiscation of property the value of which corresponds to that of such proceeds, or for monetary sanctions of comparable effect, (b) maintain statistics on confiscation in corruption cases.

(d) Debarment from public procurement

291. The 2009 Recommendation XI(i) requires that “Member countries’ laws and regulations should permit authorities to suspend, to an appropriate degree, from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, enterprises determined to have bribed foreign public officials in contravention of that Member’s national laws and, to the extent a Member applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, such sanctions should be applied equally in case of bribery of foreign public officials”.

⁶³ Court of Appeal, Second Penal Sentence Circuit (San José) Judgment 2015-1620 and Supreme Court Third Chamber Judgment 2015-0616.

292. Costa Rica has three legislative provisions on debarment for domestic and foreign bribery. Article 11(a) CLL provides for 10-year mandatory debarment against legal persons for foreign bribery related to public procurement. For foreign bribery unrelated to public procurement, Article 11(c) provides for optional debarment against a legal person for 3-10 years. Finally, Article 100(c) of Law 7 494 on Administrative Contracting provides for mandatory 10-year debarment against natural and legal persons for domestic or foreign bribery committed in the context of public procurement.

293. The extent to which these provisions have been applied in practice is unclear. The two CLL provisions understandably have not been used since they were only enacted in June 2019. But Article 100(c) of the Administrative Contracting Law was originally enacted in 1996. Costa Rica could not provide statistics on the enforcement of this provision. It did, however, refer to one recent case in which a foreign telecommunications company was debarred for bribing Costa Rican officials.

294. Any lack of application of the debarment provisions is likely due to an inadequate implementation framework. Procuring government authorities are tasked with enforcing debarment under the Administrative Contracting Law. Debarment under the CLL is ordered by a judge, but a procurement authority must still check the criminal records registry for the decision. Costa Rica readily admits a need to train procuring authorities on debarment procedures. The Controller General (CGR) conducts spot checks of procuring authorities but cannot be expected to examine all procurement contracts. At the time of the on-site visit, the Legislative Assembly was discussing a bill to create a body to implement procurement policies.

Commentary

The lead examiners commend Costa Rica for including provisions for debarment in the CLL. They recommend that Costa Rica ensure that a public authority oversees public procurement policies, and that this body ensures that procuring authorities enforce the debarment provisions in the CLL and the Administrative Contract Law.

D. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

295. Based on its findings regarding Costa Rica's implementation of the Convention and the 2009 Recommendation, the Working Group (1) makes the following recommendations to Latvia under Part 1 below; and (2) will follow up the issues in Part 2 when there is sufficient practice. Costa Rica will report to the Working Group orally within one year, i.e. by March 2021, on the steps taken to implement recommendations 3, 4(a)(i), 7(b), 7(c), 12(a), 12(c) and 16(e). Costa Rica will further report in writing within two years, i.e. by March 2022, on its implementation of all of the recommendations; its foreign bribery enforcement actions; and developments concerning the follow-up issues.

1. Recommendations

Recommendations for ensuring effective prevention and detection of foreign bribery

1. With respect to prevention and awareness-raising, the Working Group recommends that Costa Rica:

- (a) adopt a national strategy and action plan for fighting foreign bribery, which could be part of a broader national anti-corruption strategy, and designate a single public

- body to oversee the implementation of the strategy and action plan [2009 Recommendation II and III(i)];
- (b) including the MRE, raise awareness of foreign bribery within the private sector, especially among SMEs that export or invest overseas [2009 Recommendation III(i)];
 - (c) raise awareness of Article 5 of the Convention among investigators, prosecutors and judges [Convention Article 5 and Commentary 27; 2009 Recommendation III, V and Annex I.D];
2. Regarding the reporting of foreign bribery, the Working Group recommends that:
- (a) the MRE (i) train its officials on detecting and reporting foreign bribery, and the information and guidance to be given to Costa Rican companies on bribe solicitation; and (ii) amend its foreign bribery detection and reporting manual to cover all relevant foreign bribery allegations and require direct reporting of allegations to FAPTA [2009 Recommendation III, IX(ii) and Annex I.A];
 - (b) Costa Rica ensure that Article 281(a) CCP requires public officials to report all suspected acts of foreign bribery, including those reported in the media, and that in practice certainty in the veracity of the allegation is not required [2009 Recommendation IX(ii)].
3. Regarding whistleblower protection, the Working Group recommends that Costa Rica, as a matter of priority, adopt legislation that provides clear and comprehensive protection from retaliation to whistleblowers in the public and private sectors [2009 Recommendation III(iv), IX(i) and (iii)].
4. Regarding taxation, the Working Group recommends that Costa Rica:
- (a) amend its legislation to (i) expressly deny on an urgent basis the tax deduction of all bribes to foreign public officials, and not only those that expedite or facilitate a transaction, and (ii) consolidate its laws, regulations and “institutional criteria” that deal with the non-tax deductibility of bribes [2009 Recommendation VIII(i); 2009 Tax Recommendation I(i)];
 - (b) ensure that the DGT is routinely informed about foreign bribery convictions in order to re-examine systematically the tax returns of taxpayers who have been convicted of foreign bribery [2009 Recommendation III(iii) and VIII(i)];
 - (c) train regularly its tax officials on the detection of foreign bribery during audits and disseminate the OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors [2009 Recommendation III(iii) and VIII(i)].
5. With respect to accounting requirements, external audit and internal company controls, the Working Group recommends that Costa Rica:
- (a) increase the use of external audits, having regard to the individual circumstances of a company, including its size, type, legal structure, and geographical and industrial sector of operation [Convention Article 8; 2009 Recommendation X.B.i];
 - (b) work closely with the accounting and auditing profession and the CCPA to raise awareness of foreign bribery and provide guidance and training to external auditors on the detection and reporting of this crime [Convention Article 8; 2009 Recommendation X.B];

- (c) consider requiring an external auditor to report suspected acts of foreign bribery to competent authorities independent of the company, such as law enforcement or regulatory authorities, and ensure that auditors who make such reports reasonably and in good faith are protected from legal action [Convention Article 8; 2009 Recommendation III(iv), IX(iii) and X.B(v)];
 - (d) encourage (i) companies, in particular among SMEs operating abroad, to adopt anti-corruption compliance programmes, including by providing guidance on this issue; and (ii) business organisations and professional associations to promote compliance programmes among their members [2009 Recommendation III(i) and (v), X.C(i) and (ii)];
6. Regarding money laundering, the Working Group recommends that Costa Rica:
- (a) update the assessment of its exposure to corruption-related money laundering and take appropriate measures to address those risks [Convention Article 7; 2009 Recommendation II];
 - (b) expand its definition of PEPs to include close associates and family members of PEPs, as well as senior officials of international organisations [Convention Article 7; 2009 Recommendation III(ii)];
 - (c) provide further guidance to reporting entities on identifying suspicious transactions of money laundering predicated on foreign bribery, including typologies that specifically address foreign bribery [Convention Article 7; 2009 Recommendation II];
 - (d) train officials at UIF, SUGEF, SUGEVAL, SUPEN and SUGESE on money laundering related to foreign bribery [Convention Article 7; 2009 Recommendation II].

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

7. With respect to investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Costa Rica:
- (a) ensure that FAPTA (i) obtains all copies of the Working Group’s Matrix of Foreign Bribery Allegations, and (ii) makes full use of available sources of information for opening foreign bribery investigations, including by monitoring not only national but also international media more actively and by systematically consulting the Matrix [Convention Article 5 and Commentary 27; 2009 Recommendation III, V and Annex I.D];
 - (b) ensure that FAPTA (i) thoroughly investigates all credible allegations of foreign bribery and proceeds proactively against both natural and legal persons; and (ii) gives investigations and prosecutions of foreign bribery equal priority in practice as those of other serious corruption and financial crimes [Convention Article 5 and Commentary 27; 2009 Recommendation V and Annex I.D];
 - (c) amend its legislation to give FAPTA exclusive jurisdiction to conduct foreign bribery preliminary and preparatory investigations, and prosecutions [Convention Article 5 and Commentary 27; 2009 Recommendation V and Annex I.D];
 - (d) (i) take steps to ensure that Article 22(d) CCP does not allow the termination of cases unless Costa Rican authorities consult with their foreign counterparts and

ascertain that a foreign bribery investigation into the same case encompasses individuals and entities that are subject to Costa Rican jurisdiction; and (ii) ensure that where Costa Rican authorities decide to defer to the foreign investigation, Costa Rican investigation into the case should be suspended and not terminated definitively until the foreign jurisdiction has sanctioned the individuals and entities subject to Costa Rican jurisdiction [Convention Article 4 and 5 and Commentary 27; 2009 Recommendation V and Annex I.D].

8. Regarding non-trial resolutions, the Working Group recommends that Costa Rica:
 - (a) clarify effective collaboration agreements under Article 22(b) CCP by codifying the requirements for a collaboration agreement, such as that the agreement must be in writing and negotiated in the presence of defence counsel, and that there must be a “rational proportion” between the reprehensibility of the accused’s conduct and benefit from the accused’s collaboration [Convention Articles 3 and 5 and Commentary 27; 2009 Recommendation V and Annex I.D];
 - (b) issue written guidance to clarify (i) the scope of negotiations between the accused and the prosecution when the abbreviated procedure is used, including whether the charge and alleged facts may be negotiated; and (ii) the factors that a prosecutor considers in deciding to use the abbreviated procedure, and in the choice of the charge, facts and sanctions that form the basis of the abbreviated procedure [Convention Articles 3 and 5 and Commentary 27; 2009 Recommendation V and Annex I.D];
 - (c) make public, where appropriate and in conformity with the applicable rules, as much information about non-trial resolutions as possible, for example the underlying facts of the case, reasons for the choice of charges, terms of a resolution, and copies of agreements with offenders [Convention Articles 3 and 5 and Commentary 27; 2009 Recommendation V and Annex I.D].
9. Regarding statistics, the Working Group recommends that Costa Rica:
 - (a) maintain statistics on the duration of foreign bribery and domestic corruption cases, as well as cases that have been time-barred [Convention Articles 5 and 6 and Commentary 27; 2009 Recommendation V and Annex I.D];
 - (b) maintain statistics on the use of confiscation in foreign bribery and domestic corruption cases [Convention Articles 3 and 5 and Commentary 27; 2009 Recommendation V and Annex I.D].
10. Regarding investigative tools, resources and training, the Working Group recommends that Costa Rica:
 - (a) amend its legislation to make all special investigative techniques, including the freezing of funds and accounts, available in foreign bribery cases [Convention Article 5 and Commentary 27; 2009 Recommendation V and Annex I.D];
 - (b) amend its legislation to extend the provisions for lifting bank secrecy in organised crime cases to corruption cases [Convention Article 5 and Commentary 27; 2009 Recommendation V and Annex I.D];
 - (c) amend the CLL to ensure that all investigative techniques are available in investigations against legal persons [Convention Article 5 and Commentary 27; 2009 Recommendation V and Annex I.D];

- (d) ensure that FAPTA and the OIJ ACU have sufficient resources, and provide further training to FAPTA and the OIJ ACU on foreign bribery investigation and prosecution [Convention Article 5 and Commentary 27; 2009 Recommendation V and Annex I.D].
11. Regarding MLA and extradition, the Working Group recommends that Costa Rica:
- (a) ensure that its central authorities are better co-ordinated in foreign bribery cases, and consider consolidating its multiple central authorities [Convention Article 9; 2009 Recommendation III(ix) and XIII];
 - (b) amend its legislation to (i) explicitly provide for the types of investigative measures available as MLA; and (ii) ensure that it can provide all types of MLA that are available under a treaty to which it is party [Convention Article 9; 2009 Recommendation III(ix) and XIII];
 - (c) ensure that it can provide the full range of assistance available in non-criminal matters in conformity with the requirements under the Convention [Convention Article 9; 2009 Recommendation III(ix) and XIII];
 - (d) use of all available means to secure MLA, in particular through contact with foreign authorities via informal channels, regional networks, and the Working Group, including by ensuring that prosecutors apply Circular 03-ADM-2020 in practice [Convention Article 9; 2009 Recommendation III(ix) and XIII];
 - (e) amend its legislation to clarify that there is not a bar on extradition for foreign bribery offences (i) committed outside Costa Rica, and (ii) not committed in or not having produced effects in the requesting state [Convention Article 10; 2009 Recommendation III(ix) and XIII];
 - (f) ensure that, when it declines a request to extradite a Costa Rican national solely on the ground of nationality, it submits the case to its competent authorities for prosecution regardless of whether the requesting state has asked Costa Rican authorities to do so [Convention Article 10; 2009 Recommendation III(ix) and XIII].
12. With respect to the foreign bribery offence, the Working Group recommends that Costa Rica:
- (a) as a matter of priority, amend its legislation to clarify that Article 55 LAC provides liability where an individual accepts that foreign bribery is a possible consequence of his or her actions and hence has “eventual intent” under Article 31 CC [Convention Article 1; 2009 Recommendation III(ii) and V];
 - (b) ensure that the definition of a foreign public official covers all persons who perform a public function for a foreign state, regardless of whether the state is recognised by Costa Rica [Convention Article 1; 2009 Recommendation III(ii)];
 - (c) amend its legislation, as a matter of priority, to ensure that bribe solicitation is not a defence or exception to the foreign bribery offence [Convention Article 1; 2009 Recommendation III(ii), V and Annex I.A].
13. With respect to liability of legal persons, the Working Group recommends that Costa Rica:
- (a) take all steps to detect, investigate and hold legal persons liable for foreign bribery committed before the enactment of the CLL during the period in which Costa Rica

was already a Party to the Convention, by using in particular other avenues of liability such as civil action, or prosecutions for laundering the proceeds of bribery-tainted contracts that were generated after the CLL's enactment [Convention Articles 2 and 3; 2009 Recommendation III(ii) and Annex I.B];

- (b) amend the CLL to provide for corporate liability for foreign bribery committed by a lower level person due to a failure by the highest level managerial authority to prevent the crime, regardless of the gravity of the failure [Convention Article 2; 2009 Recommendation III(ii) and Annex I.B and II];
 - (c) (i) expand the mandatory elements of corporate models to include those that are vital to an effective anti-foreign bribery compliance programme; and (ii) ensure that the requirements for corporate models for SMEs are based on all relevant features of the company, including its risk of committing foreign bribery [Convention Article 2; 2009 Recommendation III(ii) and Annex I.B and II];
 - (d) clarify that Article 2(7) CLL does not create a source of corporate liability [Convention Article 2; 2009 Recommendation III(ii) and Annex I.B and II].
14. Regarding the money laundering offence, the Working Group recommends that Costa Rica:
- (a) consolidate its money laundering offences into a single provision, and ensure that this offence complies with the Convention by covering the laundering of the instruments and proceeds of all acts of foreign bribery envisaged by the Convention [Convention Article 7; 2009 Recommendation II and V];
 - (b) ensure that the investigative powers available in money laundering investigations under Article 69 MLFT are extended to investigations under Article 47 LAC, including the direct transmission of STRs by the UIF to FAPTA [Convention Article 7; 2009 Recommendation II and III(ii)];
 - (c) ensure that cases involving the laundering of the proceeds of foreign bribery are vigorously prosecuted [Convention Article 7; 2009 Recommendation II and III(ii)];
 - (d) consider amending its legislation to ensure that the laundering of proceeds of foreign bribery does not result in lower sanctions than the laundering the proceeds of other economic crimes [Convention Article 7; 2009 Recommendation II and V].
15. Regarding the false accounting offence, the Working Group recommends that Costa Rica amend the CLL to make state and non-state public companies and autonomous institutions liable for false accounting [Convention Articles 2 and 8; 2009 Recommendation III(ii), X.A(i) and Annex I.B].
16. Regarding sanctions and confiscation, the Working Group recommends that Costa Rica:
- (a) clarify whether the term “effective measures to prevent and discover crimes” in Article 12(1)(c) CLL is synonymous with corporate models [Convention Article 3; 2009 Recommendation III(ii) and Annex I.B and II];
 - (b) amend Article 12(1)(a) CLL so that sentence reductions are available only when a legal person (i) self-reports misconduct that is unknown to Costa Rican authorities, and (ii) there is no investigation by Costa Rican or foreign authorities into the misconduct at the time the self-report was made [Convention Articles 2, 3 and 5];

- (c) provide guidance to clarify the nature and degree of collaboration expected from legal persons under Article 12(1)(b) CLL [Convention Articles 2 and 3];
- (d) amend the CLL to ensure that the factors forbidden by Article 5 of the Convention do not influence sanctions against legal persons [Convention Articles 2, 3 and 5, and Commentary 27; 2009 Recommendation Annex I.C];
- (e) provide for confiscation of property the value of which corresponds to that of such proceeds, or for monetary sanctions of comparable effect [Convention Article 3];
- (f) ensure that a public authority oversees public procurement policies, and ensure through this body that procuring authorities enforce the debarment provisions in the CLL and the Administrative Contract Law [Convention Article 3; 2009 Recommendation II, III(ii)].

2. Follow-up by the Working Group

17. The Working Group will follow up the issues below as case law, practice and legislation develops:

- (a) the use of anonymous reports for opening preliminary and preparatory investigations in foreign bribery cases in Costa Rica [Convention Article 5 and Commentary 27; 2009 Recommendation IX and Annex I.D]
- (b) whether Costa Rica has created an export credit programme [2009 Recommendation XII and 2019 Export Credit Recommendation];
- (c) whether Costa Rica has created an ODA programme [2009 Recommendation XI(ii) and 2016 ODA Recommendation];
- (d) whether the abbreviated procedure under Articles 373-375 CCP results in effective, proportionate and dissuasive sanctions in foreign bribery cases [Convention Articles 3 and 5 and Commentary 27; 2009 Recommendation V and Annex I.D];
- (e) whether the application of the integral reparation of damage in foreign bribery cases results in effective, proportionate and dissuasive sanctions [Convention Articles 3 and 5 and Commentary 27; 2009 Recommendation V and Annex I.D];
- (f) whether the foreign bribery offence under Article 55 LAC covers non-pecuniary bribes [Convention Article 1];
- (g) whether legal persons in Costa Rica can be held liable when a person with the highest level managerial authority directs or authorises a lower level person to commit foreign bribery [Convention Article 2; 2009 Recommendation III(ii) and Annex I.B];
- (h) whether a legal person is liable under Article 4(2) CLL when natural persons commit foreign bribery to their advantage or that of a third party, and the legal person only benefits coincidentally from the crime [Convention Article 2; 2009 Recommendation III(ii) and Annex I.B];
- (i) the burden of proof for successor liability under Article 3 CLL [Convention Article 2; 2009 Recommendation III(ii) and Annex I.B];
- (j) whether an effectively implemented corporate model is a defence under the CLL [Convention Articles 2 and 3; 2009 Recommendation III(ii) and Annex I.B];

(k) whether the available fines for SMEs are effective, proportionate and dissuasive [Convention Article 3].

ANNEX 1 PARTICIPANTS AT THE ON-SITE VISIT

Public sector

- Ministry of Justice and Peace (MJP)
 - Attorney General's Office (*Procuraduría General de la República*, PGR)
- Ministry of Foreign Trade (COMEX)
 - National Contact Point (NCP) under OECD Guidelines for Multinational Enterprises
- Ministry of Foreign Relations
 - Directorate General for International Co-operation
 - Department responsible for extradition and mutual legal assistance
- Ministry of Finance
 - General Directorate of Taxation (*Dirección General de Tributación*)
 - National Accounting Office
- Ministry of Economy, Industry and Commerce (MEIC)
 - Social Responsibility Advisory Council (CARS) /DIGEPYME
- Ministry of National Planning and Political Economy (*Ministerio de Planificación Nacional y Política Económica*, MIDEPLAN)
 - International Co-operation Area
- Financial Intelligence Unit (*Unidad de Inteligencia Financiera*, UIF) of the Institute Against Drugs (*Instituto Costarricense sobre Drogas*, ICD)
- Comptroller General (*Comptroller General de la República*, CGR)
- Institute for Technical Standardisation (*Instituto de Normas Técnicas de Costa Rica*, INTECO)
- Superintendency of Financial Institutions (*Superintendencia General de Entidades Financieras*, SUGEF)
- Superintendency of Insurance (*Superintendencia General de Seguros*, SUGESE)
- Superintendency of Securities (*Superintendencia General de Valores*, SUGEVAL)
- Superintendency of Pensions (*Superintendencia de Pensiones*, SUPEN)

Judiciary

- Public Prosecution Service (*Ministerio Público*, PPS)
 - Transparency and Anti-Corruption Unit (*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción*, FAPTA)
 - Money Laundering Unit (*Fiscalía Adjunta Contra la Legitimación de Capitales*)
 - Office of Technical Advisory and International Relations (*Oficina de Asesoría Técnica y Relaciones Internacionales*, OATRI)
- Judges and Courts
 - Supreme Court, Third Chamber (*Corte Suprema de Justicia de Costa Rica, Sala Tercera*)
 - Judicial Inspection Tribunal (*Tribunal de la Inspección Judicial*)
 - Judicial School (*Escuela Judicial*)
- Anti-Corruption Unit of the Judicial Investigation Body (*Organismo de Investigación Judicial*, OIJ)
- Public Defenders (*Defensora Pública*)

Private sectorCompanies, Including State-Owned or State-Controlled Enterprises

- Agricultural Development Corporation of Monte SA
- Atemisa Precisión S.A.
- Banco de América Central
- Banco de Costa Rica
- Banco Nacional de Costa Rica
- Banco Popular y de Desarrollo Comunal
- Bayer
- Chiquita Brands Costa Rica
- Coca Cola Industrias Ltda. FEMSA
- Establishment Labs
- Grupo Britt
- Grupo ICE (*Instituto Costarricense de Electricidad*)
- Millicom (Tigo)
- Oceánica de Seguros Costa Rica
- Procter & Gamble Interamericas de Costa Rica
- Scotiabank
- Siemens S.A.
- Transportes Imperio del Atlántico S.A.
- Ujarrás

Business Associations

- Association Costarricense of Agencias de Carga, Consolidadores y Logística Internacional (ACACIA)
- American Chamber of Commerce (AmCham)
- Cimara de Construcción
- Cimara Costarricense de la Construction
- Cimara de Industrias de Costa Rica
- International Chamber of Commerce Costa Rica
- Unión Costarricense de Cámaras (UCCAEP)

Legal Profession and Academics

- Batalla
- BLP
- Dentons Muñoz
- Nassar Abogados Centroamerica

Accounting and Auditing Profession

- College of Public Accountants of Costa Rica (*Colegio de Contadores Públicos de Costa Rica, CCPA*)
- College of Private Accountants of Costa Rica (*Colegio de Contadores Privados de Costa Rica, CCPR*)
- KPMG
- EY

Civil society

- Costa Rica Integra
- Consejo Consultivo Nacional de Responsabilidad Social (CCNRS)
- Estado de la Justicia
- Dr. Alfredo Chirino
- Instituto de Prensa y Libertad de Expresión (IPLEX)
- La Nación
- Diario Extra
- Periódico La Nación

Parliamentarians

- Ivonne Acuña (PRN)
- Isabel Brenes
- Carolina Hidalgo (PAC)
- Jonathan Prendas (PRN)
- Juan Manuel Tirado (Nueva República)

ANNEX 2 LIST OF ABBREVIATIONS AND ACRONYMS

AML	anti-money laundering	MLU	Money Laundering Unit of the Public Prosecution Service (<i>Fiscalía Adjunta Contra la Legitimación de Capitales</i>)
CC	Criminal Code (Law 4 573)	MOF	Ministry of Finance
CLL	Corporate Liability Law 9 699	MJP	Ministry of Justice and Peace
CCP	Code of Criminal Procedure (Law 7 594)	MRE	Ministry of Foreign Relations (<i>Ministro de Relaciones Exteriores</i>)
CCPA	College of Public Accountants (<i>Colegio de Contadores Públicos de Costa Rica</i>)	NGO	non-governmental organisation
CCPR	College of Private Accountants (<i>Colegio de Contadores Privados de Costa Rica</i>)	OATRI	Office of Technical Advisory and International Relations (<i>Oficina de Asesoría Técnica y Relaciones Internacionales</i>)
CGR	Comptroller General (<i>Comptroller General de la Republica</i>)	ODA	official development assistance
COMEX	Ministry of Foreign Trade	OIJ	Judicial Investigation Body (<i>Organismo de Investigación Judicial</i>)
CONASSIF	National Supervisory Council for the Financial System	PEP	politically exposed person
CRC	Costa Rican colón	PG	Prosecutor General (<i>Fiscal General</i>)
DGT	General Directorate of Taxation (<i>Dirección General de Tributación</i>)	PGR	Attorney General (<i>Procuraduría General de la República</i>)
DTA	Double taxation agreement	PPS	Public Prosecution Service (<i>Ministerio Público</i>)
EUR	euro	SMEs	small- and medium-sized enterprises
FAPTA	Integrity, Transparency and Anti-Corruption Unit of PPS (<i>Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción</i>)	SOE	state-owned or state-controlled enterprise
IAS	International Accounting Standards	SUGEF	Superintendency of Financial Institutions (<i>Superintendencia General de Entidades Financieras</i>)
IFRS	International Financial Reporting Standards	SUGESE	Superintendency of Insurance (<i>Superintendencia General de Seguros</i>)
INTECO	Institute for Technical Standardisation (<i>Instituto de Normas Técnicas de Costa Rica</i>)	SUGEVAL	Superintendency of Securities (<i>Superintendencia General de Valores</i>)
ISA	International Standards on Auditing	SUPEN	Superintendency of Pensions (<i>Superintendencia de Pensiones</i>)
ITL	Income Tax Law 7 092	TIEA	Tax Information Exchange Agreement
LAC	Law 8 422 Against Corruption and Illicit Enrichment in the Civil Service	UIF	Financial Intelligence Unit (<i>Unidad de Inteligencia Financiera</i>) of the Institute Against Drugs (<i>Instituto Costarricense sobre Drogas</i>)
MEIC	Ministry of Economy, Industry and Commerce	USD	United States dollar
MIDEPLAN	Ministry of National Planning and Political Economy (<i>Ministerio de Planificación Nacional y Política Económica</i>)	UN	United Nations
MLFT	Law 7 786 on Narcotic, Psychotropic Substances, Drugs of Unauthorised Use, Related Activities, Money Laundering and Financing of Terrorism	UNCAC	United Nations Convention against Corruption

ANNEX 3 EXCERPTS OF RELEVANT LEGISLATION

Law 8 422 against Corruption and Illicit Enrichment in the Civil Service (LAC)

Article 47. Receipt, legalisation, concealment of property or legitimisation of assets.

The person, who conceals, insures, transforms, invests, transfers, custodies, administers, acquires or gives the appearance of legitimacy to goods, assets or rights, knowing that they have been the product of illicit enrichment or criminal activities of a public official, committed on the occasion of the position or by the means and the opportunities that this provides, will be sanctioned with imprisonment of one to eight years. When the property, money or rights originate from the crime of transnational bribery, the same sanction shall be applied as the conduct described above, regardless of the place where the act was committed nor if transnational bribery is criminalised in that place.

Article 55. Transnational Bribery

The person, that offers, promises or grants, directly or through an intermediary, a public official of another State, whatever the level of government, public entity or public company in which they work, or an official or representative of an international body, directly or indirectly, performs any benefit, reward or improper advantage, whether it is in money, virtual currency, movable or immovable assets or values, either for that official or for another natural or legal person, in order for that officer, using his or her office, performs, delays or omits any act or improperly asserts before the other official the influence derived from his or her position, shall be punished with imprisonment of four to twelve years.

In the event that the offense is committed by a natural person, a fine of up to two thousand base salaries will also be imposed.

The penalty will be from four to twelve years, if the bribery is performed so that the official executes an act contrary to his duties.

The same penalty shall apply to whoever accepts or receives the benefit, remuneration or advantage mentioned.

Corporate Liability Law 9 699

Title I GENERAL DISPOSITIONS ONLY CHAPTER

Article 1. Objective of the present law

This law regulates the criminal liability of legal persons regarding crimes contemplated in the Law Against Corruption and Illicit Enrichment in Public Service, Law No. 8422, of October 6, 2004, in its articles 45, 47, 48, 49, 50, 51, 52, 55, 57 and 58 and to the crimes contemplated in the Criminal Code, Law No. 4573, of May 4, 1970, in its articles 347, 348, 349, 350, 351, 352, 352 bis, 353, 354, 355, 361, 363 363 bis and 368bis, the procedure for the investigation and establishment of said criminal liability, the determination of the corresponding criminal sanctions and the execution of these, as well as the cases in which this law is applicable.

The foregoing, without prejudice to the individual criminal responsibility of natural persons for the commission of any of the crimes mentioned in the first paragraph of this article.

Article 2. Scope.

- (1) The provisions of this law shall be applicable to:
 - (a) Legal persons under Costa Rican or foreign private law, domiciled, resident or with operations in the country.
 - (b) State and non-state public companies and autonomous institutions, that are linked to international commercial relations and commit the crime of transnational bribery and the crimes of reception, legalisation or concealment of goods, product of transnational bribery.
- (2) For the purposes of this law, the legal person under Costa Rican private law is one established and domiciled in the country, regardless of the capital of origin.

(3) The foreign legal person is presumed domiciled in Costa Rica if it has in the country an agency, subsidiary or branch, or makes any type of contract or business in the country, but only with respect to the acts or contracts entered into by them.

(4) This Law will also apply to legal persons or de facto that operate through the figure of the trust, partnership, corporation or company of any kind, foundations and other associations of a non-commercial nature, that have the capacity to act and assume legal responsibility for their actions.

(5) Parent companies will be liable, when one of its subordinates or a company under its direct or indirect control, commits one of the acts listed in the preceding article provided, when the parent company benefits directly or indirectly or when they act on in its name or representation.

(6) Legal persons who commit the acts previously described in this Law, for the direct or indirect benefit of another legal person or who act as intermediaries, are also liable pursuant to this Law.

(7) The legal persons described in the preceding paragraphs have the legal duty to avoid the commission of the crimes described in article 1 of this Law. If not, they will be criminally liable according to what is established in article 18 of Law No. 4573, of the Criminal Code, of May 4, 1970.

Article 3. Vicissitudes of the legal person

(1) When the legal person allegedly responsible for the conducts described in Article 1 of this law, is absorbed, transformed, acquired, merged or excised, after the events that arose a liability, the following rules will be followed:

- (a) If it is extinguished as a result of an absorption, transformation, acquisition or merger, the absorbing or new legal person will be the subject of the liability procedure that regulates this law and will be responsible for the consequences that derive from it.
- (b) If it is excised, all the legal persons that have participated in the excision process, whether as an excised or beneficiary, will be subject to the process and sanctions of this law.

(2) In the event that an apparent dissolution occurs, when the legal person continues its economic activity through a new one but maintains the substantial identity of its clients, suppliers, employees, or the most relevant part of all of them, it continues to have criminal responsibility of the dissolved legal person.

Article 4. Attribution of criminal liability of legal persons.

(1) Legal persons will be criminally liable:

- (a) Of the crimes committed in the name or on behalf of the same, and for their direct or indirect benefit, by their legal representatives or by those acting individually or as members of a body of the legal person, they are authorised to make decisions in name of the legal person or have general organisational or control faculties within it.
- (b) Of the crimes committed, in the exercise of activities of legal persons and for the account and direct or indirect benefit of them, by whom, being subject to the authority of the natural persons mentioned in the previous subparagraph, they have been able to perform the facts for having gravely breached by them the duties of supervision, monitoring and control of their activity, attended to the specific circumstances of the case.
- (c) Of the crimes committed in the name or on behalf of the same, and in their direct or indirect benefit, through intermediaries that are not related to the legal person, but hired or requested by their legal representatives or by those acting individually or as members of a body of the legal person, that are authorised to make decisions on behalf of the legal person due to the grave breach by those, the duties of supervision, monitoring and control of their activity, attended to the specific circumstances of the case.

(2) Legal persons shall not be criminally liable in cases in which the natural persons indicated in the preceding paragraphs, committed the crime to their advantage or in favour of a third party, or if the representation invoked by the agent was false, without prejudice of the civil or administrative liability that may be incurred.

(3) The liability of the legal person does not exclude the individual responsibility of the natural person, whether these directors or employees or any other person who participates in the commission of the conducts cited in this article that will be determined by the provisions of other laws.

Article 5. Independence of the criminal liability of the legal person.

The criminal liability of the legal person will be independent from the criminal liability of the natural persons and will subsist even when, fulfilling the requirements provided in this legislation, one of the following situations occur:

- (a) The responsible natural person has not been individualised or it has not been possible to direct the process against the possible individual responsible.
- (b) When in the criminal proceeding against the natural person alluded to, the definitive or provisional dismissal is decreed in accordance with the criminal procedural legislation, or some cause of termination of the criminal action for the individual.
- (c) When it has not been possible to establish the participation of the individual or individuals responsible, as long as in the respective process it is conclusively demonstrated that the crime was committed within the scope of functions and attributions of the persons indicated in paragraph a) of article 4 of this law.

TITLE II OF THE OPTIONAL MODEL OF ORGANISATION, PREVENTION OF CRIMES, MANAGEMENT AND CONTROL

Article 6. Promotion of the adoption of a model of organisation, crime prevention, management and control.

The Ministry of Economy, Industry and Commerce, and the Ministry of Justice and Peace, in coordination with the corresponding public institutions according to their legal competences, will promote the establishment of a model of organisation, crime prevention, management and control as indicated in articles 8 and 10 of this law, which is optional as well as the adoption of corporate transparency and ethics programs and internal anti-corruption mechanisms and of internal control by Costa Rican legal persons.

Article 7. Responsible for the model.

(1) Every legal entity that adopts the organisation, crime prevention, management and control optional model, must have a person in charge of supervising the operation and compliance of said model. The person in charge must have autonomy regarding the administration of the legal person, its owners, its partners, its shareholders or its administrators. It will be able to exercise control or internal audit duties. The legal persons indicated in article 10 of this Law are exempt from this obligation.

(2) The management body and the Administration must provide the responsible in charge of crime prevention with sufficient means and faculties to carry out its duties. The responsible must establish, together with the Administration of the legal person, a program directed to the effective application of the organisation, crime prevention, management and control model, as well as an efficient supervision system in order to detect its faults in order to modify it in a timely manner to any changes of the circumstances of the legal person.

Article 8. Organisation, crime prevention, management and control model.

(1) The model of organisation, crime prevention, management and control must be related to the risks inherent to the activity performed by the legal person, its size, type of business, complexity and economic capacity, with the aim of preventing, detecting, correcting and reporting before the corresponding authorities, the criminal acts covered by this law.

(2) Except as provided in articles 9 and 10 of this law, the model described above must contain at least the following, as well as any other condition that is established by regulation:

- (a) Identify the activities or processes of the legal person, whether habitual or sporadic, in the context of which the risk of committing the crimes, that should be prevented, is generated or increased.

- (b) Establish specific protocols, codes of ethics, rules and procedures that allow people who are part of the legal person, regardless of the position or function exercised, to schedule and execute their tasks in a manner that prevents the commission of crimes.
- (c) Establish through protocols or procedures, the formation of the legal person's will in order to adopt and execute decisions of the legal person.
- (d) Establish procedures in the area of administration and audit of financial resources, which will allow the legal person to prevent their use in the commission of crimes.
- (e) Create specific rules and procedures to prevent unlawful actions in the context of bidding processes, in the execution of administrative contracts or in any other interaction with the public sector.
- (f) Determine the scope of the code of ethics or conduct, or the prevention policies and procedures, for third parties or business partners, such as suppliers, distributors, service providers, agents and intermediaries, when the possible risks deem it mandatory.
- (g) Have adequate management models of financial resources to avoid the commission of crimes that must be prevented.
- (h) Execute a periodic training program of the model to directors, administrators, employees and third parties or business partners.
- (i) Schedule a periodic risk analysis and verification of the model, and its eventual modification when relevant infractions of its provisions are revealed, or when the changes in the organisation, in the control structure or in the activity carried out, make them necessary.
- (j) Agree on a disciplinary system that adequately sanctions non-compliance with the measures prescribed by the model, according to the form of administration of the respective legal person.
- (k) Carry out an external audit of their accounting, in accordance with the provisions of the regulations of this law or when the authorities of the Ministry of Finance require it. In case of finding apparent unlawful acts, the external auditor has the duty to report them to the Public Ministry.

(3) Obligations, prohibitions and internal sanctions must be indicated in the regulations that the legal person dictates for this purpose and must be communicated to directors, administrators, employees and third parties or business partners. This internal regulation must be expressly incorporated in the respective work and service provision contracts of all to workers, directors, administrators, employees and third parties or business partners, including its executives.

Article 9. State and non-state public companies, and autonomous institutions.

The Internal Control System of state and non-state public companies, and public autonomous institutions, regulated by the General Law of Internal Control, Law No. 8292, of August 27, 2002, must incorporate the minimum requirements of the model of organisation, crime prevention, management and control that regulates article 8 of this law.

Article 10. Legal persons of small and medium size.

(1) In small and medium-sized legal persons, the functions of the person in charge of supervising the operation and compliance of the model of organisation, crime prevention, management and control referred to in article 7, may be assumed directly by the administrative body, or in its absence by the owner, partner or shareholder in charge of the legal person's management.

(2) For the purposes of this law, small and medium-sized legal persons are those that, according to the Law on Strengthening Small and Medium Enterprises Law N. 8262, of May 2, 202, and other legislation in force, meet the characteristics described for small and medium enterprises, or its equivalents for other type of organisations, and foundations, non-commercial associations and development associations.

(3) The model described above must contain at least the following, as well as any other condition established by regulation:

- (a) Identify the activities or processes of the legal person, whether habitual or sporadic, in the context of which the risk of committing the crimes that should be prevented is generated or increased.
- (b) Establish specific protocols, codes of ethics, rules and procedures that allow people who are part of the legal person, regardless of the position or function exercised, to schedule and execute their tasks in a manner that prevents the commission of crimes.
- (c) Establish through protocols or procedures, the formation of the will in order to adopt and execute decisions of the legal person.
- (d) Create specific rules and procedures to prevent unlawful actions in the context of bidding processes, in the execution of administrative contracts or in any other interaction with the public sector.
- (e) Execute a periodic training program of the model to directors, administrators, employees and third parties or business partners.
- (f) Agree on a disciplinary system that adequately sanctions non-compliance with the measures prescribed by the model, according to the form of administration of the respective legal person.
- (g) Carry out an external audit of their accounting, in accordance with the provisions of the regulations of this law or when the authorities of the Ministry of Finance require it. In case of finding apparent unlawful acts, the external auditor has the duty to report them to the Public Ministry.

TITLE III OF THE PENALTIES

Article 11. Types of penalties.

(1) The penalties applicable to legal persons are the following:

Main:

- (a) In all crimes applicable to this law, a fine of one thousand to ten thousand base salaries will always be imposed, with the exception of the companies in article 10 of this law, which will be subject to a fine of thirty to two hundred base salaries. If the offense is related to a public procurement procedure, the previous legal fine or up to ten percent (10%) of the amount of its offer or adjudication, whichever turns out to be greater, will be applied to the responsible legal person; and also, disqualification from participating in public procurement procedures for ten years.

The determination of the amount of the fine to be imposed on state and non-state companies and public autonomous institutions, must consider the eventual impact on the procurement of public services that the economic burden, could cause.
- (b) Loss or suspension of state benefits or subsidies that they have, for a term of three up to ten years.
- (c) Inability to obtain subsidies and public aid, to contract or participate in public tenders or bids or in any other activity related to the State, for a term of three up to ten years. The inhabilitation will be extended to the legal persons controlled by the directly responsible legal person, its parent companies and its subordinates.
- (d) Inability to enjoy benefits or tax or Social Security incentives, for a term of three up to ten years. The inhabilitation will be extended to the legal persons controlled by the directly responsible legal person, its parent companies and its subordinates.
- (e) Total or partial cancellation of the operation permit, concessions or contracts, obtained as a result of the crime. This penalty will not apply in the event that it could cause serious social consequences or serious damage to the public interest, as a result of its application.
- (f) Dissolution of the legal person. This sanction can only be applied if the legal person has been created for the sole purpose of committing a crime or if the commission of crimes constitutes its main activity. This penalty will not apply to state and non-state public companies nor autonomous institutions.

(2) If the cancellation or dissolution of the legal person is sentenced, the Judge will communicate the sanction to the corresponding registry, for publication in the Official Gazette and cancellation of its registration and, if applicable, to the National Registry for the respective annotation of its assets. There will be a legal impossibility for the processing of absorption, acquisition, transformation, merger or excise of a legal person, or other similar figure.

(3) When the assets of a legal person must be liquidated according to this law, the registered rights in rem and labour rights, both of third parties in good faith, will have priority over any other obligations that must be satisfied, including the pecuniary penalty eventually imposed.

(4) The judicial authority will order, before the corresponding section of the Judicial Registry of Offenders and any other corresponding registry, the annotation of the criminal sanction that has been imposed. This annotation will be maintained for a period of ten years from the effective fulfilment of the sanction.

(5) The application of the penalties provided for in this law does not exclude possible penalties for conduct incurred by public officials or individuals; nor does it exclude the possibility of demanding liability for damages and losses caused to the Administration.

(6) Accessory: Publication in the Official Gazette or other Gazette with national circulation of an extract of the judgment that contains the operative part of the final conviction. The legal person will bear the costs of the publication.

Article 12. Mitigating circumstances of the criminal liability.

(1) The Judge may reduce by up to forty percent (40%) the penalty to be imposed in the offenses referred to in article 1 of this law, to the legal person when one or more of the following mitigating circumstances of the criminal liability of legal persons concur:

- (a) Filing, by its owners, directors, members of administrative bodies, representatives, proxies or supervisors, before the competent authorities, the possible infraction, without having the knowledge that the judicial proceeding is directed against them.
- (b) Collaboration, by its owners, directors, members of administrative bodies, representatives, proxies or supervisors, with the investigation of the fact, providing, at any time during the process, new and decisive proofs that clarify the criminal responsibilities arising from the facts investigated.
- (c) Adopt, before the commencement of oral proceedings, effective measures to prevent and discover crimes that could be committed in the future with the means or under the cover of the legal person.
- (d) If the crime was committed by any of the persons indicated in subparagraphs a) or c) of article 4 of this law:
 - (i) It will be demonstrated that the administration body has adopted and implemented effectively, before committing the offense, models of organisation, crime prevention, management and control that include the appropriate surveillance and control measures to avoid crimes of the same nature or to reduce significantly, the risk of its commission.
 - (ii) It will be verified that the functioning and compliance of the implemented crime prevention model has been entrusted to a body of the legal person with autonomous powers of initiative and control or that has been legally entrusted with the function of supervising the effectiveness of the internal controls of the legal person.
 - (iii) It will be verified that the individual authors have committed the crime by fraudulently evading the organisation and crime prevention models.
 - (iv) It will be proven that there has not been an omission or insufficient exercise of its supervisory, monitoring and control functions by the body referred to in subparagraph ii) of subparagraph d) of this section.
- (e) If the crime was committed by the persons indicated in subsection b) of article 4 of this law, if it is shown that, before committing the offense, the legal person has effectively adopted and implemented a model of organisation, crime prevention, management and control that is

adequate to prevent crimes of the nature of which it was committed or to significantly reduce the risk of its commission.

Article 13. Criteria for the determination of penalties.

In addition to the provisions of article 71 of the Criminal Code, Law No. 4573, of May 4, 1970, the penalties provided for in this law shall be determined in accordance with the following criteria:

- (a) The amounts and hierarchy of the employees and collaborators involved in the crime.
- (b) The direct commission by owners, managers, members of administrative bodies, or through representatives, proxies, or business partners.
- (c) The nature, size and economic capacity of the legal person.
- (d) The seriousness of the unlawful act at a national or international level.
- (e) The possibility of sanctions causing serious harm to the public interest or the provision of a public service.
- (f) The existence and effective implementation of a model of organisation, crime prevention, management and control.
- (g) The amounts of money or securities involved in the commission of the crime.
- (h) The seriousness of the social consequences.
- (i) In the case of state and non-state public companies and autonomous institutions, the continuity and sustainability of the public service must be taken into account.

TITLE IV PROCEDURAL ASPECTS

CHAPTER I Procedure for the Criminal Investigation of an Accused Legal Person

Article 14. Investigation and procedure.

In accordance with the provisions of article 5 of this law, the criminal process against the legal person must be transacted in the same file in which the criminal case against the natural person linked to the legal person is processed. If the individual cannot be identified, the process and file will continue against the legal person.

Article 15. Procedural status of the legal person.

The provisions relating to the accused, established in the Criminal Procedure Code, Law N. 7594, of April 10, 1996 and in the respective special laws, will be applicable to legal persons, as long as they are procedurally compatible. The application of criteria of opportunity to legal persons is prohibited.

Article 16. Citation of the legal person.

- (1) The legal person will be cited through its legal representative, resident agent or proxy, as appropriate, who has the obligation to be present in all acts of the process in which the presence of the accused is required when he is a natural person; failing that, it will be cited at the official registered domicile in the corresponding registry. In the event that the natural person representing the legal person does not appear before the requesting judicial authority being duly summoned, it may be conducted by the police force, and pay the costs incurred, except for just cause.
- (2) If it has not been possible to cite the legal person according to the previous paragraph, it will be done through edicts published during three days in the Judicial Bulletin. The edicts will identify the cause, the judicial authority, the citation period that will not be longer than one month, and the warning that, in case of no-show, a public criminal defence attorney will be appointed, who will exercise his legal representation as a procedural curator and his criminal defence, in accordance with the provisions of the following article.
- (3) In any case, the pertinent investigation procedures will continue.

Article 17. Rebellion and representation of the legal entity.

(1) The legal person, which, without serious impediment, does not appear by means of its legal representative to a citation, or change the registered corporate address without notice, will be declared in rebellion.

(2) If the legal representative, resident agent or proxy of the legal person has unknown whereabouts, abandons the legal representation, has the status of accused, or the rebellion of the legal person has been declared, a public criminal defence attorney, who will exercise its legal representation as a procedural curator and the criminal defence of the legal person will be immediately appointed.

(3) In any case, the legal person may designate at any time a legal representative and a defender of their trust, who will assume the case in the state as it is.

(4) When the criminal procedure law requires the presence of the accused as a condition or requirement for the completion of a judicial hearing or any other judicial act, it shall be understood that said requirement is satisfied with the presence of the public criminal defence attorney or the defender of confidence, as the case may be. The warnings provided in the first paragraph, proceed with respect to both, for said purposes.

Article 18. Limitation of the criminal liability.

The criminal action with respect to the crimes foreseen in article 1 of this law, will prescribe as established by the applicable legislation; however, the following rules will apply:

(a) The deadlines set in articles 31, 32, 33, 34 and 35 of the Code of Criminal Procedure, Law No. 7594, of April 10, 1996 and the Law against Corruption and Illicit Enrichment, Law No. 8422, of October 6, 2004, in its article 62.

(b) In addition to the causes contemplated in article 33 of the Code of Criminal Procedure, Law No. 7594, of April 10, 1996, the act of positive citation described in article 16 of this law, will interrupt the prescription of the criminal action.

Article 19. Appearance of the legal representative of the legal person.

(1) The legal representative of the legal person will act as such in the process, or another person with special power or legal mandate may be appointed for the case, if it is granted with the formalities that correspond to the type of legal person in question. The legal person must designate a lawyer, but, if it does not, a public criminal defence attorney will be appointed. If the legal representative or proxy is a qualified law professional, they may exercise said defence.

(2) In his first intervention, the representative or proxy must indicate the domicile of the legal person, and the place or form to receive notifications, in accordance with the Law of Judicial Notifications, Law N.º 8687, of December 4, 2008.

(3) At any time during the process, the legal person may substitute its legal representative or proxy. It must verify the designation by completing the formalities according to the legal person in question. Until the above is complied with, the representation shall not be substituted or modified. The substitution shall not prejudice the effectiveness of the acts performed by its previous representative.

(4) The substitution operated once the oral trial has begun, will not interrupt it.

Article 20. Conflict of interest.

(1) If the judge, at any stage of the process, ascertains the existence of a conflict of interest between the legal person and the person designated as representative or proxy, it will notify the former to replace it within a period of five days. If it is not replaced within the indicated period, a public criminal defence attorney, will be appointed, who will proceed in accordance with the provisions of article 19 of this law.

(2) In no case, the representative or agent of the legal person that has the character of accused may represent it.

Article 21. Alternative solutions to the conflict and abbreviated special procedure.

(1) During the process, the abbreviated special procedure and the alternative solutions provided for in the criminal procedure legislation may be applied.

(2) If the legal person submits to an alternative solution to the procedure that involves a donation of money or property, it will not be tax deductible nor can it be considered as an exit.

CHAPTER II Precautionary measures

Article 22. Registry annotation.

(1) The voluntary dissolution of the legal person during the development of the criminal proceeding against it is prohibited.

(2) During the development of the process, at the request of the Public Ministry, the complainant, the civil actor or the victim, the jurisdictional authority will order the annotation of the criminal process in the margin of the registration of the legal person, for which the respective writ will be sent to the corresponding registry.

Article 23. Judicial authorisation.

(1) In order to ensure the effectiveness of the possible criminal liability to be imposed or already imposed, once initiated criminal proceedings against a legal person, and up to the firm criminal judgment or compliance with the penalty imposed, the authorisation of the criminal judge or of the jurisdictional authority, depending on the stage in which the process is in, authorisation will be needed for the transformation, merger, absorption, acquisition or excise.

(2) The legal person must request the respective authorisation from the jurisdictional authority, which will award a hearing for ten working days to all the parties. During this period, the Public Ministry and the complainant or the civil actor, may request the precautionary measure provided for in article 24 of this law or may require a guarantee of security in accordance with the provisions of article 250 of the Criminal Procedure Code, Law N. 7594 of April 10, 1996.

(3) In the ten following business days, the jurisdictional authority must resolve this matter.

(4) This authorisation may be granted, even after the immobilisation has been requested, if the legal person gives sufficient guarantees of its compliance or of the penalty that may be imposed.

(5) In order to adopt this decision, the jurisdictional authority must take care of the possible affectation in the continuity of the activity of the legal person or to the affectation of a service or public interest.

Article 24. Immobilisation of the legal person.

For the purposes of this Law and at the request of a party, the jurisdictional authority will order the immobilisation of the legal person by directing an order to the corresponding registry. Once the immobilisation has been practiced, any movement, transformation, absorption, merger, acquisition, excise or change that is sought on the legal person, will cause its denial and therefore it will not have any legal effect; unless expressly authorised by the criminal or execution of the sentence judge in charge of the matter on which that order was issued.

CHAPTER III Confiscation of property

Article 25. Confiscation of property.

The confiscation will be governed by the provisions of articles 198, 199 and 200 of the Code of Criminal Procedure, Law No. 7594, of April 10, 1996.

Article 26. Judicial deposit of the goods.

The assets referred to in article 25 of this law may be placed in provisional storage at the order of the legal person.

Article 27. Deposit of confiscated money.

The judicial authority will deposit the confiscated money in the account of the Criminal Court that, due to competence, will oversee the case and, immediately, send a copy of the deposit. Regarding the produced interests, it will proceed according to the Organic Law of the Judicial Power, Law N. 7333 of May 5, 1993.

Article 28. Confiscation

The confiscation will be governed by the provisions of article 110 of the Criminal Code, Law No. 4573, of May 4, 1970 and its procedure in article 489 of the Code of Criminal Procedure, Law No. 7594, of April 10, 1996.

TITLE V VARIOUS PROVISIONS**Article 29. Registration of rulings and alternative measures to the conflict.**

It will correspond to the Judicial Registry of Delinquents to settle the rulings and alternative measures to the conflict against the legal persons in application of this law. The judicial authority will communicate the condemnatory judgment, once it is firm.

Article 30. International cooperation.

(1) The Public Prosecutor's Office may resort to reciprocal international legal assistance mechanisms provided under Article 9 of the Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development, Law N. 9450 of May, 11, 2017, when required to carry out the investigations regarding offences under this law and in chapter 4 of the United Nations Convention Against Corruption, Law N. 8557, of November 29, 2006.

(2) For such purpose, it may request foreign authorities and international organisations, directly or by the methods established, to provide any element of proof or undertake the tasks that may be necessary, within the scope of their competence, for the penalisation processes hereunder.

(3) The request for assistance, will inform the requested authority the data necessary for its development, it will describe the facts that motivate such action, the purpose, elements of proof, the laws allegedly violated, the identity and location of the persons or goods, when necessary, as well as the instructions it may deem necessary for the foreign authority to follow and the period given to pursue the request.

(4) Likewise, it may resort to all forms of judicial, police or administrative cooperation it may deem necessary, in accordance with the procedures established in conventions, treaties or agreements signed, approved and ratified by the State, or by virtue of any instrument of international cooperation, signed by any authority on a national level or facilitated by cooperation networks between similar authorities in different States.

(5) The provisions on international cooperation provided for in the preceding paragraphs, shall apply in the case of domestic bribery.

Article 31. Duty of international cooperation.

The State of Costa Rica will cooperate with other States with respect to the investigations and proceedings, whose purpose is consistent with the ends sought by this law, however it may be called. This cooperation will be coordinated through the Public Prosecutor's Office, who will designate an office of its competence as the Central Authority.

Article 32. Sanctioning competence of the Comptroller General of the Republic.

This law preserves the penalisation competence of the Comptroller General of the Republic contained in Law of Administrative Contracts, Law N. 7494, of May 2, 1995 and any other law that recognises the basis for its constitutional competence.

TITLE VI FINAL PROVISIONS**Article 33. Rules of interpretation.**

(1) For the interpretation of this law, with regard to the criminal liability of legal persons, the provisions of international treaties ratified by Costa Rica will be considered. In particular, for acts of transnational bribery the provisions of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development, Law No. 9450, of May 11, 2007, and the United Nations Convention Against Corruption, Law No. 8557, of November 29, 2006, will be considered.

(2) In a supplementary manner, refer as applicable to the provisions of the Criminal Code, Law No. 4573, of May 4, 1970; the Code of Criminal Procedure, Law No. 7594, of April 10, 1996, the Civil Code, Law No. 63, of September 28, 1887, Code of Civil Procedure, Law No. 9342, of February 3, 2016, the Commercial Code, Law No. 3284, of April 30, 1964, Law against Corruption and Illicit Enrichment, Law No. 8422, of October 6, 2004 and General Law of Public Administration, Law N. 6227, of May 2, 2002 and other concordant laws, as pertinent.

Criminal Code (Law 4 573)

Article 355 Concusión

Prison from two to eight years will be imposed on the public official who, abusing his quality or functions, obliges or induces someone to give or unduly promise, for himself or for a third party, a good or a patrimonial benefit.

Article 368 bis. Falsification of accounting records

Shall be punished with imprisonment from one to six years, to whom, with the purpose of committing or concealing any of the crimes contemplated in article 1 of the Law of Responsibility of Legal Persons for acts of Transnational and Domestic Bribery and other crimes, falsifies in whole or in part the books, physical or computer records, or any other accounting document of a legal or natural person. The same sanction will be applied to the natural person who carries a double accounting or accounts not settled in the accounting books for the same purpose. "

Criminal Procedure Code (Law 7 594)

Article 22 - Principles of legality and opportunity

The Public Ministry shall exercise public criminal action, in all cases where appropriate, in accordance with the provisions of the law.

However, with the authorisation of the hierarchical superior, the representative of the Public Ministry may request that all or part of the criminal prosecution, which is limited to one or several infractions or to any of the persons who participated in the act, be waived, when:

- a) It is an insignificant event, of minimal culpability of the author or the participant or with a small contribution from the latter, unless there is violence over the people or force over things, the public interest is affected or the fact has been committed by a public official in the exercise of the office or on his occasion.
 - b) In cases of organised crime, violent crime, serious crimes or complex processing and the accused collaborate effectively with the investigation, provide essential information to prevent the crime from continuing or to perpetuate others, help clarify the fact investigated or other related or provide useful information to prove the participation of other accused, provided that the behaviour of the collaborator is less reprehensible than the punishable acts whose persecution facilitates or whose continuation avoids.
- Notwithstanding the provisions of Article 300, in the cases provided for in this subparagraph, the victim will not be informed of the request to apply the opportunity criterion and, if there is no complainant, will not be entitled to do so later, unless the court order the resumption of the procedure according to the following article.
- c) The accused has suffered, as a result of the act, serious physical or moral damage that renders disproportionate the application of a penalty, or when the budgets under which the court is authorised to dispense with the penalty.
 - d) The penalty or security measure that may be imposed, due to the fact or the infraction of whose persecution is dispensed with, is irrelevant, in consideration of the penalty or security measure imposed, which must wait for the remaining facts or infractions that are imposed or that would be imposed on a procedure processed abroad. In these latter cases, active extradition may be dispensed with and the passive granted.

The request must be made before the court that will decide the corresponding, according to the procedure established for the conclusion of the preparatory procedure.

Article 25 - Origin

When the conditional suspension of the sentence or in cases for crimes punishable by exclusively non-custodial sentences, the accused may request the suspension of the trial procedure provided that, during the previous five years, he has not benefited from this measure or with the extinction of the criminal action for the repair of the damage or the conciliation. For such purposes, the Judicial Registry will keep a file of the beneficiaries.

The measure will not proceed in intentional crimes, when the act has been committed by means of force in things or violence over people. This procedural institute can be applied only in the crimes of patrimonial violence contemplated in Law No. 8589, Criminalisation of Violence against Women, of April 25, 2007, when there is no violence against people and whenever they have been processed with application of the Law of Restorative Justice.

The request must contain a plan to repair the damage caused by the crime, to the satisfaction of the victim of known residence, and a detail of the conditions that the accused is willing to comply with, according to the following article. The plan may consist of conciliation with the victim, the natural repair of the damage caused or a symbolic repair, immediate or by meeting deadlines. If the petition has not yet been indicted, the Public Prosecutor's Office will describe the fact that it imputes to him.

To grant the benefit are indispensable conditions that the defendant admits the fact that is attributed to him and that the victim expresses his agreement with the suspension of the trial process.

At an oral hearing, the court will hear the petition of the prosecutor, the victim of known domicile, as well as the accused, and will resolve immediately, unless that discussion differs for the preliminary hearing. The resolution will set the conditions according to which the procedure is suspended or the request is rejected and will approve or modify the reparation plan proposed by the accused, according to criteria of reasonableness.

The suspension of the procedure may be requested at any time, even before the opening of the trial is decided, without prejudice to processing in accordance with the Restorative Justice Law, and will not prevent the civil action before the respective courts.

If the request of the accused is not admitted or the procedure is resumed later, the admission of the facts by the accused cannot be considered as a confession.

When the reparation plan for the damage caused by the crime incorporates the public utility service, it must observe the regulations of article 56 bis of the Penal Code.

(As amended by Article 47 of the Restorative Justice Law, No. 9582 of July 2, 2018)

Article 26 - Conditions to be fulfilled during the trial period.

The court will set the trial period, which cannot be less than two years or more than five years, and will determine one or more of the rules that the defendant must comply with, among the following:

- a) Reside in a certain place.
- b) To frequent certain places or people.
- c) Refrain from using drugs or narcotics, or from abusing alcoholic beverages.
- d) Participate in special treatment programs in order to refrain from consuming drugs, alcoholic beverages or committing criminal acts.
- e) Begin or finish primary school, if it has not been completed; learn a profession or trade or follow training courses in the place or institution determined by the court.
- f) Providing services or tasks in favour of the State or institutions of public good.
- g) Undergo medical or psychological treatment, if necessary.
- h) Remain in a job or employment, or adopt, within the term determined by the court, a trade, art, industry or profession, if it has no means of subsistence.
- i) Submit to the surveillance determined by the court.
- j) Not possess or carry weapons.
- k) Do not drive vehicles.

l) Participate and submit to the conditions of the treatment program under restorative judicial supervision, in accordance with the provisions of the Restorative Justice Law.

m) Participate in programs with socio-educational approaches for the management of anger, masculinity and related, for the prevention of intrafamily violence and against women.

Only on the proposition of the accused, the court may impose other rules of analogous conduct when it considers that they are reasonable.

(As amended by Article 47 of the Restorative Justice Law, No. 9582 of July 2, 2018)

Article 27 - Notification and monitoring of test conditions

The court must personally explain to the accused the conditions that must be met during the trial period and the consequences of non-compliance.

It will correspond to a specialised office, attached to the General Directorate of Social Adaptation, monitor compliance with the imposed rules and report periodically to the court, within the periods it determines, without prejudice to other persons or entities, such as the restorative headquarters according to the Restorative Justice Law, also provide you with reports.

(As amended by Article 47 of the Restorative Justice Law, No. 9582 of July 2, 2018)

ARTICLE 28 - Revocation of the suspension

If the accused fails to comply with the reparation plan, moves away, unreasonably and unjustifiably, from the imposed conditions or commits a new crime, the court will hold a hearing for three days to the Public Prosecutor and the accused and will decide, by founded order, about the resumption. of criminal prosecution. In the first case, instead of the revocation, the court can extend the trial period for up to two more years. This extension of the term can be imposed only once.

Article 30 - Causes of extinction of the criminal action

The criminal action will be extinguished for the following reasons:

- a) The death of the accused.
- b) The withdrawal of the complaint, in the crimes of private action.
- c) The payment of the maximum amount provided for the fine, carried out before the oral proceedings, in the case of offenses sanctioned only with this type of penalty, in which case the court will make the corresponding fixation, at the request of the interested party, provided when the victim expresses his agreement.
- d) The application of an opportunity criterion, in the cases and forms provided in this Code.
- e) The prescription.
- f) Compliance with the period of suspension of the trial, without it being revoked.
- g) The pardon or the amnesty.
- h) The revocation of the private instance, in the crimes of public action whose persecution depends on that.
- i) The death of the offended person, in cases of private action crimes, unless the one already initiated by the victim is continued by his heirs, in accordance with the provisions of this Code.
- j) The integral reparation to the satisfaction of the victim, of the particular or social damage caused, carried out before the oral trial, in crimes of patrimonial content without force in things or violence over persons and in wrongful acts, provided that the victim or the Public Prosecutor's Office admit it, depending on the case.

This cause is always provided that, during the previous five years, the accused has not benefited from this measure or the suspension of the trial or conciliation. For such purposes, the Judicial Registry will keep a file of the beneficiaries.

k) The conciliation, provided that during the previous five years, the defendant has not benefited from this measure, with the suspension of the trial and the integral reparation of the damage.

l) Failure to comply with the maximum terms of the preparatory investigation, in the terms established by this Code.

m) When the investigation has not been reopened, within a period of one year, after the provisional dismissal has been issued.

Article 278 - Faculty to denounce

Those who know of a crime of public action may report it to the Public Ministry, a court with criminal jurisdiction or the Judicial Police, unless the action depends on a private instance.

In the latter case, only those who have the power to urge may denounce, in accordance with this Code.

The court that receives a complaint will immediately inform the Public Ministry.

Article 279 - Form

The complaint may be submitted in written or verbal form, personally or by a special agent. In the latter case, it must be accompanied by a power of attorney.

When it is verbal, an act will be issued in accordance with the formalities established in this Code.

In both cases the official will verify the identity of the complainant.

Article 281 - Obligation to denounce

They will have the obligation to report offenses that can be prosecuted ex officio:

- a) Officials or public employees who know them in the exercise of their functions.
- b) Doctors, midwives, pharmacists and others who practice any branch of the art of healing, who know these facts when providing the aid of their profession, unless the knowledge acquired by them is protected by law under the protection of professional secrecy.
- c) Persons who, by virtue of the law, the authority or a legal act, are in charge of the management, administration, care or control of assets or interests of an institution, entity or person, regarding crimes committed in their detriment or detriment to the estate or assets placed under their charge or control and provided that they know the fact in order to exercise their functions.

In all these cases, the denunciation will not be obligatory if it reasonably risks the criminal prosecution of oneself, of the spouse, or of relatives up to the third degree by consanguinity or affinity, or of a person who lives with the complainant linked to him by special ties of affection.

ARTICLE 289 - Purpose of the criminal prosecution

When the Public Prosecutor's Office becomes aware of a crime of public action, it must prevent it from producing further consequences and will promote its investigation to determine the circumstances of the act and its perpetrators or participants.

Article 373 - Admissibility

At any time, even before agreeing to open the trial, the application of the abbreviated procedure may be proposed when:

- a) The accused admits the fact that he is attributed and consents to the application of this procedure.
- b) The Public Prosecutor's Office, the complainant and the civil party express their agreement.

In those cases where it proceeds according to current legal regulations, it may be requested that the abbreviated procedure be processed through the restorative justice procedure.

The existence of co-defendants does not prevent the application of these rules to any of them.

(As amended by Article 47 of the Restorative Justice Law, No. 9582 of July 2, 2018)

Article 374 - Initial procedure.

The Public Ministry, the complainant and the accused, jointly or separately, will express their desire to apply the abbreviated procedure and will prove compliance with the requirements of law.

The Public Ministry and the complainant, if applicable, will make the accusation if they have not done so, which will contain a description of the attributed conduct and its legal qualification and will request the penalty to be imposed. For such purposes, the minimum of the penalty provided for in the offense may be reduced by up to one third.

The victim of a known address will be heard, but his / her criteria will not be binding. However, in cases processed through the application of the procedure established in the Restorative Justice Law, the consent of the victim to participate in the restorative approach will be a requirement of viability. If the court deems the request appropriate, it will agree and send the matter to the judgment court.

(As amended by Article 47 of the Restorative Justice Law, No. 9582 of July 2, 2018)

ARTICLE 375 - Procedure in the trial court

Once the proceedings have been received, the court will issue a sentence unless, in advance, it considers it appropriate to hear the parties and the victim of a known address at an oral hearing.

When deciding the court can reject the abbreviated procedure and, in this case, re-send the matter for its ordinary processing or dictate the corresponding sentence. If he orders the return, the previous requirement on the penalty does not bind the Public Ministry during the trial, nor the admission of the facts on the part of the accused may be considered as a confession.

If convicted, the penalty imposed may not exceed that required by the accusers.

The sentence will contain the requirements set forth in this Code, succinctly, and will be challenged by the resources and the provisions that in this Code are regulated to appeal the judgment that is issued in the ordinary criminal process.

ARTICLE 376 -Origin

When the processing is complex due to the multiplicity of the facts, the high number of accused or victims or when dealing with cases related to the investigation of any form of organised crime, the court, ex officio or at the request of the Public Ministry, may authorise, by reasoned resolution, the application of the special rules provided in this Title.

At the trial stage, the decision can only be taken at the time when the debate is called.

When the application of the complex procedure is arranged during the preparatory or intermediate phases, the reduction of the limitation period by half, provided for in article 33 of this Code, shall not apply.

Tax legislation

Income Tax Law 7 092, Article 9(1)(l)

The payment of gifts, gifts, offers, whether direct or indirect, in money or in any form of kind made by the taxable person or the companies connected with him for the benefit of public officials or employees of the private sector, with a view to expediting or facilitating a transaction at a transnational or national level. The above regardless of the legal forms adopted to make the aforementioned payment.

Regulations to Law on Income Tax, Article 12(n)

In no case shall bribes to public officials or private employees in order to expedite or facilitate a transaction at a transnational or national level be deductible from gross income payments of taxpayers or companies.