

Unclassified

English - Or. English

14 March 2022

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

Costa Rica Phase 2: Two Year Written Follow-Up – Summary and Conclusions

7–11 March 2022

The Working Group adopted the Summary and Conclusions on 11 March 2022.

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JT03491210

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Costa Rica Phase 2: Two-year Written Follow-Up Report – Summary and Conclusions

Summary of findings¹

1. In March 2022, Costa Rica submitted its Phase 2 written follow-up report to the OECD Working Group on Bribery in International Business Transactions (Working Group). The report described Costa Rica's efforts to implement the 54 recommendations and to address the follow-up issues identified during its [Phase 2 evaluation](#) of March 2020.² In sum, Costa Rica has fully implemented 12 recommendations, partially implemented another 12 and not implemented 30.

2. The Working Group welcomes several of the steps taken by Costa Rica. The Phase 2 Report referred to two foreign bribery allegations that had not been adequately investigated. Since then, one case has been satisfactorily pursued to its conclusion, while the other is actively investigated for money laundering. A third allegation has surfaced since Phase 2 and is also under investigation. In addition, various efforts have been made to raise awareness of fighting foreign bribery, especially by the Ministry of Justice and Peace. New governmental guidance on compliance programmes has been helpful, though there are issues with some of its provisions. Most statistics on the duration of foreign bribery and corruption cases are now available to the public.

3. These achievements, however, are overshadowed by the number of unimplemented recommendations. Some 30 of the 54 recommendations – 56% of the total – are not implemented. There has been little development in areas such as legislation on whistleblower protection, other than the designation of a task force to address this issue. On the co-ordination of bodies involved in mutual legal assistance, Costa Rica largely reiterates its arguments from Phase 2. Citing the nature and stage of ongoing cases, Costa Rica was unable to provide sufficient information on the enforcement of money laundering cases.

4. The Working Group is particularly troubled that the implementation of 27 of the Phase 2 recommendations (representing 81% of the outstanding recommendations, according to Costa Rica) hinges on a Bill in the Legislative Assembly. The Bill is ambitious, seeking to amend numerous provisions in the Criminal Code, Criminal Procedure Code, Law 8 422 against Corruption and Illicit Enrichment in the Civil Service (LAC), Law 9 699 on Corporate Liability (CLL), and other legislation. However, the Working Group only considers enacted legislation when assessing the implementation of the Convention.³ Moreover, since its introduction into the Legislative Assembly on 9 March 2021, the Bill has not been enacted. Since Costa Rica held a general election on 6 February 2022,

¹ The team evaluating Costa Rica's follow-up report was composed of lead examiners from Latvia (Ms. Dina Spūle, Financial Intelligence Unit; Mr. Andrejs Lisenko, Corruption Prevention and Combating Bureau; and Ms. Zane Ozola, Ministry of Justice); Peru (Ms. Silvana Carrión Ordinola, Attorney General's Office; Ms. Mónica Paola Silva Escudero, Second Corporate Prosecutor's Office Specialized in Corruption Crimes of Lima; and Mr. Eloy Alberto Munive Pariona, Secretary of Public Integrity); and the OECD Anti-Corruption Division (William Loo, Martha Monterrosa, and Louise Lecaros de Cossio). See the [Phase 4 Procedures](#) (paras. 54-59) on the roles of the lead examiners and Secretariat.

² On 26 November 2021, the OECD Council adopted the Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (the 2021 Recommendation), in order to strengthen the implementation of the OECD Anti-Bribery Convention and further enhance the fight against foreign bribery. The 2021 Recommendation updates and expands upon the 2009 Recommendation. As the 2021 Recommendation was not in force at the time of the Phase 2 evaluation of Costa Rica, the recommendations that the Working Group formulated referred to the 2009 Recommendation.

³ For example, see [Chile: Follow-up to the Phase 3 Report and Recommendations](#), para. 5.

there is no guarantee that the new Legislative Assembly will continue and finish its predecessor's work on the Bill.

5. The Working Group's Summary and Conclusions of Costa Rica's implementation of the Phase 2 recommendations are presented below. The Summary and Conclusions should be read in conjunction with the report prepared by Costa Rica in the annex.

Regarding the prevention and detection of foreign bribery:

Recommendation 1(a) – Partially implemented: The Phase 2 Report recommended that Costa Rica adopt a national strategy and action plan for fighting foreign bribery. On 6 August 2021, Costa Rica adopted the 2021-2030 [National Strategy of Integrity and Prevention of Corruption \(ENIPC\)](#). A working group that comprises several entities from the public and private sectors work in the implementation of the ENIPC, and the Ministry of Justice and Peace (MJP) oversees this implementation.

Problematic is the absence of specific references to foreign bribery in the ENIPC. The ENIPC mentions the Convention at the outset (p. 16) and does not refer to foreign bribery again. Costa Rica states that "axis four" of the ENIPC covers topics such as "conflicts of interest, lobbying, bribery and influence peddling", and the "repression of money laundering for corruption crimes, control of lobbying and revolving doors". Costa Rica argues that the generic terms "bribery" and "corruption" "unequivocally" includes foreign bribery. But this is unsatisfactory, since foreign bribery involves risks and circumstances that are distinct from domestic corruption and hence requires separate and explicit consideration. Most strikingly, the ENIPC does not identify the activities and sectors in Costa Rica that are at risk of committing foreign bribery, or explain how the activities in the ENIPC would address these risks. Costa Rica argues that the Working Group recommendation did not expressly require identification of foreign bribery risks. But any effective strategy to fight foreign bribery must necessarily begin with the identification of risk activities and sectors before designing actions to address such risks.

Recommendation 1(b) – Partially implemented: Costa Rica's MJP has commendably engaged with the private sector to raise awareness via numerous initiatives, including the dissemination of the relevant material and the organisation of events. However, while the events covered overall anti-corruption and compliance issues, foreign bribery was not the focus and activities targeting small- and medium-sized enterprises (SMEs) are only planned. The Ministry of Foreign Relations (*Ministerio de Relaciones Exteriores*, MRE) has not raised awareness among Costa Rican companies, as requested in the Working Group recommendation.

Recommendation 1(c) – Partially implemented: When imposing sanctions under Articles 11(1)(e), 13(e), and 13(h) of the Corporate Liability Law (CLL), a court may consider factors such as "serious social consequences or serious damage to the public interest," "the possibility of the sanctions causing serious harm to the public interest," and the "seriousness of the social consequences." These terms could conceivably allow the consideration of factors prohibited by Article 5 of the Convention. To raise awareness of Article 5 of the Convention, Costa Rica distributed an "infographic" among investigators and prosecutors but not judges. Furthermore, while the infographic referred to Article 5, it did not explain which CLL provisions could lead to the consideration of Article 5 factors. No other measure has been taken. Costa Rica also reports that the Bill before the Legislative Assembly would amend Articles 11 and 13 CLL. However, the proposed amendments do not address Article 5 of the Convention.

Regarding the reporting of foreign bribery:

Recommendation 2(a) – Partially implemented: The MRE delivered training specific to foreign bribery and related topics. The MRE's Diplomatic Academy incorporated transnational bribery into its training curriculum. The MRE's foreign bribery detection and reporting manual was amended to cover foreign bribery committed by non-Costa Rican nationals working for a Costa Rican company abroad. Also, an MRE official must now

report foreign bribery allegations to the MRE legal department. If justified, the legal department will further report directly to the Integrity, Transparency and Anti-Corruption Unit of the Public Prosecution Service (*Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción*, FAPTA), in addition to the Technical Advice and International Relations Office (OATRI) of the Public Prosecution Service (PPS). The Working Group welcomes these developments. However, Costa Rica did not explain the information and guidance that the MRE would give to Costa Rican companies on bribe solicitation. Furthermore, if the MRE legal department declines to report an allegation to FAPTA, then the reporting obligation under Article 281(a) of the Code of Criminal Procedure (CCP) continues to cover both MRE officials; the one who originally submitted the allegation, and the official from the legal department. This requirement merits closer examination in Phase 3.

Recommendation 2(b) – Fully implemented: Article 281(a) CCP requires public officials to report when there is “likely” a criminal offence. In practice, some officials required a “certain degree of certainty” or additional supporting evidence prior to reporting. Since Phase 2, the Attorney General’s Office (PGR) and the PPS conducted extensive awareness raising, including training over 3 500 officials on this point since 2019. A Guide was issued underscoring this issue.

Recommendation 3 – Not implemented: In Phase 2, the Working Group expressed serious concerns about Costa Rica’s lack of comprehensive whistleblower protection. Costa Rica is drafting a bill on this issue. The Bill before the Legislative Assembly concerns witness coercion, which Costa Rica admits does not amount to whistleblower protection. Executive Decree 42 399 refers to whistleblowing, but companies are not required to adopt corporate models, as the Working Group had already observed in Phase 2.

Regarding taxation:

Recommendation 4(a) – Not implemented: Costa Rica’s tax law does not explicitly deny the tax deduction of all bribes to foreign public officials, but only those that expedite or facilitate a “transaction”. The Bill before the Legislative Assembly would rectify this shortcoming. This is a positive development, but the Bill remains unenacted.

Recommendation 4(b) – Fully implemented: FAPTA is responsible for prosecuting foreign bribery and will now routinely inform the General Directorate of Taxation of convictions in these cases. The Working Group welcomes this development and will examine the operation of this system in Phase 3 by considering the data on actual reporting.

Recommendation 4(c) – Fully implemented: The PPS and the PGR have trained tax auditors and Ministry of Finance officials on the detection of bribe payments during audits. The OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors was distributed in one event. The Working Group commends these efforts and encourages Costa Rica to continue repeating the training regularly as indicated in the recommendation.

Regarding accounting requirements, external audit and internal company controls:

Recommendation 5(a) – Not implemented: In Phases 1 and 2, the Working Group recommended that Costa Rica increase the use of external audits. Costa Rica is “analysing different options available under [its] legal system to comply with this recommendation”.

Recommendation 5(b) – Fully implemented: Since Phase 2, the College of Public Accountants (CCPA) and Foundation for the Study of Money Laundering and Crimes (FELADE) have provided training. Four sessions referred to foreign bribery while other events dealt with corruption generally, corporate liability, money laundering, and audit quality. Costa Rica is encouraged to continue raising awareness of foreign bribery and training external auditors on the detection and reporting of this crime.

Recommendation 5(c) – Not implemented: Costa Rica has not considered requiring an external auditor to report suspected acts of foreign bribery to competent authorities. The CCPA is reviewing its Ethics Code which includes a duty to consider Law 8 422 against Corruption and Illicit Enrichment in the Civil Service (LAC). But LAC does not address reporting by external auditors. Costa Rica reports that the CCPA created an agreement with the Financial Intelligence Unit (UIF) and is required to use the official channel “to report suspicious transactions”. But these are suspicious transactions of money laundering, and not foreign bribery which is the focus of this recommendation. Moreover, the obligation of Costa Rican accountants and auditors to report suspected money laundering transactions predates the Phase 2 Report (para. 80).

Recommendation 5(d) – Fully implemented: Costa Rica provided guidance on compliance programmes (Executive Decree 42 399-MEIC-MJP). A section of the guidance is dedicated to SMEs, though there are issues with certain of its provisions (see recommendation 13(c) below). Costa Rica has disseminated relevant material on compliance via different channels, including: the website and newsletter of the MJP. Business organisations and professional associations delivered four webinars on compliance in December 2020 and August 2021. The Bar Association appointed a permanent representative to promote compliance programmes.

Regarding anti-money laundering:

Recommendation 6(a) – Fully implemented: The 2021 National Money Laundering and Terrorist Financing Risk Assessment (ENR) assesses Costa Rica's exposure to corruption-related money laundering, classifying it as “high-risk”. The UIF has raised awareness of the ENR.

Recommendation 6(b) – Not implemented: The definition of politically exposed persons (PEPs) in anti-money laundering (AML) legislation does not include close associates or other family members of PEPs, or senior officials of international organisations. Costa Rica has submitted a [Bill](#) to the Legislative Assembly to address these deficiencies.

Recommendation 6(c) – Partially implemented: The UIF has not developed any written guidance or typologies on identifying suspicious transactions of money laundering predicated on foreign bribery. The PPS trained employees of one financial institution on foreign bribery detection. However, this training did not address specific foreign bribery typologies. The UIF and PGR in March 2022 will train officials of the UIF and the Legal Department of the Institute against Drugs, as well as compliance officers and supervisors of reporting institutions. Costa Rica is encouraged to address foreign bribery typologies in such training. Guidelines or updated foreign bribery typologies are necessary to fully implement this recommendation.

Recommendation 6(d) – Partially implemented: Four training activities “related to foreign bribery and corruption” were provided to the superintendencies that oversee the implementation of AML rules (Superintendency of Financial Institutions (SUGEI); Superintendency of Securities (SUGEVAL); Superintendency of Pensions (SUPEN); and Superintendency of Insurance (SUGESE)). In March 2022, Costa Rica will provide two training activities to the UIF, superintendencies, the Ministry of Finance, the Institute against Drugs (the UIF within the *Instituto Costarricense sobre Drogas*, ICD) and reporting entities regarding money laundering related to foreign bribery and other related matters. Costa Rica reports that another training will also be provided during the last trimester of 2022. The Working Group commends Costa Rica for its multiple existing training initiatives and is encouraged that Costa Rica will ensure that training is conducted regularly in the future.

Regarding the investigation and prosecution of foreign bribery and related offences:

Recommendation 7(a) – Fully implemented: Members of FAPTA now have access to the foreign bribery allegations circulated by the Working Group. Further, FAPTA monitors international and national media.

Recommendation 7(b) – Fully implemented: The Phase 2 Report referred to two foreign bribery allegations that had not been adequately investigated. Since Phase 2, a court in Costa Rica dismissed the first case because of a lack of evidence following a thorough investigation. A money laundering investigation predicated on foreign bribery into the second case is ongoing with USD 3.5 million seized. A third allegation that surfaced after Phase 2 is also under investigation. Costa Rican authorities are encouraged to continue both investigations vigorously.

Recommendation 7(c) – Not implemented: FAPTA and the PGR have concurrent jurisdiction over corruption offences, including foreign bribery. This raises concerns about the independence of foreign bribery enforcement under Article 5 of the Convention because the PGR is within the MJP. Concurrent jurisdiction can also lead to overlap and conflict. The Bill before the Legislative Assembly would give FAPTA exclusive jurisdiction over foreign bribery and related offences. However, the Bill has not been enacted. An additional Circular 03-ADM-2020 does not have the same force as legislation. Moreover, the Working Group had also already considered the Circular in Phase 2.

Recommendation 7(d) – Not implemented: Article 22(d) CCP allows the termination of a foreign bribery case when a foreign jurisdiction investigates the same case. This applies even if the foreign investigation does not target Costa Rican individuals or companies, or the potential sanctions in the foreign country are less severe than those in Costa Rica. The Bill before the Legislative Assembly would amend this provision. Prior to terminating their foreign bribery investigation, Costa Rican authorities would have to verify whether the foreign proceeding covers natural or legal persons subject to Costa Rican jurisdiction. The limitation period in Costa Rica would be suspended while the foreign proceeding is ongoing. However, the Bill has yet to be enacted.

Regarding non-trial resolutions:

Recommendations 8(a) and (b) – Not implemented: Proceedings for foreign bribery and related offences may be terminated through effective collaboration agreements and the abbreviated procedure (Articles 22(b) and 373-375 CCP, Article 21 CLL). Aspects of these non-trial resolutions are not set out in statute or written guidance, however. The Bill before the Legislative Assembly would amend Article 22(b) and codify existing practices, but the Bill has not yet been enacted. Costa Rica reiterates that Circular 03-ADM-2020 provides recommended guidance on the abbreviated procedure, but the Working Group has already found otherwise in Phase 2.

Recommendation 8(c) – Not implemented: Non-trial resolutions in Costa Rica are not sufficiently transparent. No action has been taken since Phase 2. Costa Rica merely reiterates its position that Circular 03-ADM-2020 settles the matter. However, the Working Group considered the Circular in Phase 2 and found that it contained deficiencies related to transparency. Costa Rica adds that “alternative measures are also *usually* published when the cases are of national interest”. But this falls short of routine publication of all non-trial resolutions. The example provided by Costa Rica is also a newspaper article about a resolution and not an official publication. The Bill before the Legislative Assembly would make collaborative agreements even more opaque by requiring a closed judicial hearing.

Regarding statistics:

Recommendation 9(a) – Fully implemented and converted to follow up: Costa Rica provided statistics on the duration of foreign bribery and corruption cases prepared by the

Unit for Monitoring and Support to the Management of Prosecutors' Offices (UMGEF). Additional statistics are expected when the Judicial Observatory database is completed. The Working Group will follow up the maintenance of these data in Phase 3.

Recommendation 9(b) – Not implemented: Costa Rica remains unable to collect statistics on confiscation in corruption cases. The MJP, in co-operation with the judiciary, are collecting statistics on confiscation in corruption cases. However, due to technical difficulties and additional time required to collect this information, this data is not expected to be available in the Judicial Observatory until next year.

Regarding investigative tools, resources and training:

Recommendation 10(a) – Not implemented: The Bill before the Legislative Assembly would make available to foreign bribery investigations all special investigative techniques in Law 7 786 on Narcotic, Psychotropic Substances, Drugs of Unauthorised Use, Related Activities, Money Laundering and Financing of Terrorism (MLFT). This is a positive development. However, the Bill has yet to be passed.

Recommendation 10(b) – Not implemented: Bank secrecy is lifted in foreign bribery cases only if the information sought is “absolutely essential” or “indispensable.” This requirement does not apply to organised crime cases by reason of Article 18 of Law 8 754. The Bill before the Legislative Assembly would not change this situation since it extends to foreign bribery the investigative techniques in the MLFT but not Law 8 754.

Recommendation 10(c) – Not implemented: Law 9 699 on Corporate Liability does not clearly make all investigative techniques that can be used against natural persons available against legal persons. The Bill before the Legislative Assembly would make available to foreign bribery investigations all special investigative techniques provided in MLFT, which includes investigative techniques against legal persons. This development is positive but the Bill has yet to be passed.

Recommendation 10(d) – Partially implemented: In Phase 2, FAPTA and the Anti-Corruption Unit (ACU) of the Judicial Investigation Body (OIJ) had fairly heavy caseloads and limited training foreign bribery. Since then, a new OIJ unit “Anti-Corruption, Economic and Financial Crimes Section” (SADEF) has been created. SADEF investigates foreign bribery and has received increased human resources (though the number of investigators is unclear). FAPTA’s human resources also increased by 10% in June 2020 and temporarily by another 10% in January-October 2021. Foreign bribery-related training has been provided to FAPTA but not the OIJ.

Regarding mutual legal assistance and extradition:

Recommendation 11(a) – Not implemented: Four different authorities are involved in executing mutual legal assistance (MLA) requests in foreign bribery cases depending on the legal basis for the request. Apart from the OATRI, all of these bodies serve largely as mailboxes and thus add unnecessary delay. Poor co-ordination was demonstrated in two foreign bribery cases in which the PGR requested MLA without informing OATRI or the prosecuting authority. Costa Rica argues that these requests were for information “for administrative reasons [i.e. to report to the Working Group] and not for MLA”. Nevertheless, the requests were sought under the MLA provisions of a multilateral treaty. More importantly, the PGR made the two requests without the knowledge of OATRI or the Public Prosecution Service which had jurisdiction over the criminal investigation of these cases in Costa Rica (Phase 2 Report para. 173).

Costa Rica reiterates its position from Phase 2 that the four authorities co-ordinate, cooperate, and have a good relationship. Costa Rica also provides a letter dated 4 March 2022 from the one of the four central authorities (PGR) to a second central authority (OATRI). In the letter, the PGR nominates one of its officials as a contact point and asks OATRI to consider doing likewise. The letter thus merely underscores the current absence

of a co-ordination framework between these two central authorities. The letter also does not involve the other two central authorities identified in the Phase 2 Report.

Recommendation 11(b) – Not implemented: Costa Rica cannot provide some types of MLA that are contemplated in treaties to which it is Party since those measures are not available in Costa Rica's own foreign bribery investigations. The Bill before the Legislative Assembly would enact new Articles 154bis and ter to extend international co-operation to "[a]ny other form of assistance in accordance with international instruments approved by Costa Rica and with domestic law." This development is positive but the Bill is not yet enacted.

Recommendation 11(c) – Not implemented: Costa Rica cannot provide the full range of MLA to another Party for use in non-criminal proceedings against a legal person within the scope of the Convention. The Bill before the Legislative Assembly would rectify this shortcoming by amending the Organic Law of the Judicial Power, the PPS Law, and the CLL. This is welcomed but the Bill is yet to be passed.

Recommendation 11(d) – Fully implemented: Costa Rican authorities had difficulties obtaining timely responses to their MLA requests. The Working Group thus recommended that Costa Rica use all available means to secure MLA, including through informal channels as suggested in PPS Circular 03-ADM-2020. Costa Rica confirms that the Circular has been followed and informal communication channels have been used. The Working Group welcomes these developments and will examine data on this issue in Phase 3. However, the Bill before the Legislative Assembly only provides the use of informal channels for urgent MLA requests. This is not in line with the recommendation, which is not limited to urgent requests. In any event, the Bill remains unenacted.

Recommendation 11(e) – Not implemented: The Bill before the Legislative Assembly would amend Article 2 of the Extradition Law to remove the bar on extradition for an offence committed outside Costa Rica. The Bill would also amend Article 3(f) to make extradition available for foreign bribery that is "not committed in or not having produced effects in the requesting state". These are positive developments but the Bill has not been enacted.

Recommendation 11(f) – Fully implemented: The Working Group recommended that Costa Rica 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. In response, Costa Rica confirms that this is the case under Article 3(a) of the Extradition Law. Costa Rica requested MLA to gather information and prosecute nationals whose extradition had recently been denied. The Working Group commends these efforts and encourages Costa Rica to continue applying Article 3(a) of the Extradition Law.

Regarding the foreign bribery offence:

Recommendation 12(a) – Not implemented: Costa Rica's foreign bribery offence in Article 55 LAC only covers foreign bribery committed with "direct intent", i.e. if an individual desires the realisation of the crime. The offence does not cover "eventual intent", i.e. if the individual does not want the crime to result *per se*, but nevertheless accepts it as at least possible (i.e. *dolus eventualis*, recklessness or wilful blindness). The Working Group recommended that Costa Rica amend its legislation to rectify this shortcoming as a matter of priority. The Bill before the Legislative Assembly would amend Article 55 LAC to extend the foreign bribery offence to "whoever accepts the realisation of this crime, anticipating it at least as a possibility". This is a positive step, but the Bill remains unenacted.

Recommendation 12(b) – Partially implemented: The Working Group recommended that Costa Rica take steps to ensure that its foreign bribery offence covers the bribery of an official of a state not recognised by Costa Rica. Costa Rica merely reiterates its Phase 2 position that the definition would be interpreted in a manner consistent with the

Convention. It has raised awareness among prosecutors and tax auditors, which is useful. However, similar efforts with the judiciary are only planned.

Recommendation 12(c) – Not implemented: Under the concept of *concusión*, when a foreign or domestic 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. Almost any mere bribe solicitation by a public official amounts to *concusión*. The Bill before the Legislative Assembly would amend Article 55 LAC to rectify this concern, which is a positive development. However, the Bill has yet to be passed.

Regarding corporate liability:

Recommendation 13(a) – Partially implemented: Art. 44bis LAC was enacted in 2008 to provide for corporate liability for foreign bribery. The CLL repealed this provision in 2019 and does not apply to crimes predating its enactment. Costa Rica therefore could no longer impose corporate liability for foreign bribery committed in 2008-2019. The Working Group recommended that Costa Rica pursue such cases via civil action or money laundering prosecutions. Costa Rica states that no new cases have arisen since Phase 2. However, Costa Rica describes two ongoing investigations under recommendation 7(b) above. In one case, a legal person is suspected of foreign bribery and money laundering. Costa Rica is encouraged to pursue this investigation. In the meantime, recommendation 13(a) is only partially implemented.

Recommendation 13(b) – Not implemented: 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”. Failures to prevent foreign bribery that are not “grave” do not result in liability, contrary to the 2009 Anti-Bribery Recommendation Annex I.B. The Bill before the Legislative Assembly eliminates the word “gravely” in Articles 4(1)(b) and (c) CLL. However, the Bill has not yet been enacted.

Recommendation 13(c) – Partially implemented: The CLL introduced “corporate models” which are essentially corporate compliance programmes. A company with a model at the time of an offence may be entitled to a sentence reduction. The Working Group recommended that Costa Rica strengthen the minimum requirements of a model that are set out in in the CLL.

In response, Costa Rica enacted Decree 42 399-MEIC-MJP which addresses many of the Working Group’s criticisms. Additional case law and practice will be important to determine whether a company is eligible for a sentence reduction by meeting the minimum requirements in the CLL and not the additional requirements in the Decree.

The second part of this recommendation states that the mandatory model requirements should not be reduced for all SMEs. Model requirements should also be reduced based on a company’s risk profile and not merely its size. The recommendation derives from Article 10 CLL, which states that only 7 of the 11 model elements are mandatory for all SMEs. In addition, Article 7(1) CLL allows corporate models for all SMEs to be overseen by the company’s person’s owner, partner, shareholder or administrative body, rather than by an independent individual. The Working Group has noted in the evaluation of Costa Rica and other countries that a reduction in compliance requirements should not be based on rigid thresholds (such as whether a company meets the legal definition of an SME). The requirements should instead take into account all relevant features of a company, including its risk of committing foreign bribery (Phase 2 Report para. 244).

Decree 42 399 does not address this concern. Article 22 requires SMEs to conduct risk assessments. But there is no further requirement that SMEs implement a model that is commensurate with its risks. Furthermore, all SMEs, regardless of their risk profiles, may adopt a model with a reduced list of elements (Article 25). The models of all SMEs - again regardless of the risks the SMEs face – may be overseen “directly [by] the senior management or, failing that, the founder, founding associate, the owner, partner or

shareholder in charge of the management of the legal person” (Article 26). The framework under the Decree is thus essentially the same as under the CLL in Phase 2.

Also, SMEs are required to conduct risk assessments if they develop a model. However, models are optional. This would allow SMEs that engage in high-risk activities not to have a model. All SMEs that want to have a model, are required to have anti-bribery measures, though these measures can be reduced according to the SME’s risk-profile, as noted in the Phase 2 Report (para. 244).

Recommendation 13(d) – Not implemented: Article 4 CLL provides for corporate liability for crimes committed. However, Article 2(7) adds that a legal person has “the legal duty to avoid the commission of the crimes [covered by the CLL].” This could be read to create an additional source of corporate liability. The Bill before the Legislative Assembly would eliminate this uncertainty by repealing Article 2(7) CLL. However, the Bill is unenacted.

Regarding the money laundering offence:

Recommendation 14(a) – Not implemented: In Phase 1, Costa Rica stated the crime of money laundering predicated on foreign bribery was covered by Article 69(a)-(b) MLFT. The Working Group expressed concerns that this provision requires dual criminality. In Phase 2, Costa Rica stated that foreign bribery-related money laundering was instead covered by Article 47 LAC. This provision does not require dual criminality but had several other deficiencies. The Bill before the Legislative Assembly would cut-and-paste Article 47 LAC into a new Article 69(c) MLFT. The Bill therefore would not consolidate the two offences as recommended by the Working Group, but would merely place them under the umbrella of Article 69 MLFT. More importantly, the Bill would preserve all of the problems identified earlier: the offence in Articles 69(a)-(b) would still require dual criminality, and the offence in Article 69(c) would still contain the deficiencies in Article 47 LAC identified in the Phase 2 Report. The provisions are also duplicative: multiple provisions in Article 69 may simultaneously apply to an act of laundering.

Recommendation 14(b) – Not implemented: Responsibility for prosecuting money laundering predicated on foreign bribery is divided: FAPTA prosecutes the Article 47 LAC offence, while the PPS Money Laundering Unit (*Fiscalía Adjunta Contra la Legitimación de Capitales*, MLU) prosecutes Article 69 MLFT. FAPTA has fewer investigative tools than the MLU. Recommendation 14(b) thus asked Costa Rica to make the same tools available for investigating both offences. Costa Rica refers to Circular 01-2018. However, the Circular does not alter the investigative powers available to FAPTA. As described in the recommendation 14(a), the Bill before the Legislative Assembly would transfer the Article 47 LAC offence to Article 69 MLFT. According to Costa Rica, the same investigative powers would then be available to all money laundering offences prosecuted by the PPS. The Bill, however, is not yet enacted.

If enacted, the Bill could create a problem of interpretation as it could be interpreted that FAPTA could prosecute a foreign bribery charge but the MLU could prosecute the laundering of the proceeds of the bribery in the same case. However, Costa Rica explains that Circular 01-2018 allows FAPTA to investigate money laundering related to corruption. An example of this is that Costa Rica currently has an ongoing case in which FAPTA investigates both foreign bribery and money laundering charges. Changes made to the investigative powers and distribution of money laundering cases will warrant closer examination in Phase 3.

Recommendation 14(c) – Partially implemented: In Phase 2, statistics showed that Costa Rica did not vigorously enforce its money laundering offence. This conclusion was corroborated by Costa Rica’s inaction in three cases of alleged laundering of the proceeds of foreign bribery. In its Written Follow-Up Report, Costa Rica states that it is investigating foreign bribery-related money laundering and has seized funds in the Construction (Panama) case. However, it declines to provide information on the three money laundering cases mentioned in the Phase 2 Report, citing the confidentiality of ongoing investigations as the reason. Costa Rica also argues that it has reported other cases that

show “money laundering is being vigorously investigated”. However, these cases are in their early stages. Charges have not been laid. Until these cases are successfully completed and Costa Rica provides more information, recommendation 14(c) is at best partially implemented.

Recommendation 14(d) – Fully implemented: This Recommendation asks Costa Rica to *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. The Bill before the Legislative Assembly would make all money laundering subject to the same maximum sanctions, regardless of the predicate offence. This is a positive development, but the Bill remains unenacted.

Regarding the false accounting offence:

Recommendation 15 – Not implemented: State and non-state public companies and autonomous institutions can be held liable for foreign bribery and money laundering but not false accounting. The Bill before the Legislative Assembly would rectify this shortcoming but has yet to be enacted.

Regarding sanctions for foreign bribery:

Recommendation 16(a) – Not implemented: Article 12(1)(d) CLL allows a sentence reduction if a legal person adopted and effectively implemented a corporate model at the time of the offence. Article 12(1)(c) CLL also allows a sentence reduction if a legal person, before the commencement of the oral trial, “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 model. The two provisions would therefore overlap. The Bill before the Legislative Assembly would amend Article 12(1)(c) to allow a sentence reduction if a legal person “adopt[s] and implement[s], prior to the commencement of the oral trial, the model of organisation, crime prevention, management and control.” Costa Rica states that this amendment would resolve the issue of overlap since Article 12(1)(c) would refer to adoption of a model before trial, while Article 12(1)(d) deals with a model adopted at the time of the offence. The clarification is welcomed. However, the Bill has yet to be enacted.

Recommendation 16(b) – Not implemented: Article 12(1)(a) CLL allows sanctions to be reduced by up to 40% if (i) a legal person self-reports an offence for which it is liable to the authorities, and (ii) the legal person does not have knowledge of judicial proceedings against it. The reduction applies even if the authorities have already begun an investigation, or if a legal person is aware of foreign proceedings against it at the time of self-reporting. The Bill before the Legislative Assembly would amend Article 12(1)(a) to rectify these shortcomings. This is a positive step, but the Bill has yet to be enacted.

Recommendation 16(c) – Not implemented: Article 12(1)(b) CLL allows for sentence reductions if a legal person provides the authorities with “new and decisive proof that clarify the criminal responsibilities arising from the facts investigated”. The Bill before the Legislative Assembly would amend this provision to require a legal person to provide “new and decisive evidence” for the investigation. The evidence must also be “difficult or impossible to obtain without the collaboration”, and be “useful and effective for the resolution of the case”. This is a positive development, but the Bill has yet to be enacted.

Recommendation 16(d) – Not implemented: Article 5 of the Convention prohibits the consideration of the national economic interest, potential effect upon relations with another State, and identity of the natural or legal persons involved, in foreign bribery cases. When imposing sanctions under the CLL, a court may consider factors such as “serious social consequences or serious damage to the public interest” (Article 11(1)(e)); “the possibility of the sanctions causing serious harm to the public interest”; and the “seriousness of the social consequences” (Articles 13(e) and (h)). These terms are undefined and could conceivably encompass Article 5 factors. The Bill before the Legislative Assembly would repeal these terms apart from the notion of “social

consequences” in Article 13(h). The proposed amendment is a positive development, but the Bill has yet to be enacted.

Recommendation 16(e) – Not implemented: Costa Rica does not allow value confiscation. The Bill before the Legislative Assembly provides for value confiscation against legal persons, which would be a positive development. The Bill does not contain the same provision for natural persons, however. Article 55 LAC would be amended to provide that a natural person who commits foreign bribery would be “fined up to two thousand basic wages or thirty times the amount equivalent to the value of the property or benefit offered, obtained or promised, whichever turns out to be greater.” This provides for a fine as a function of the gain from the crime, but the Convention requires confiscation as a sanction in addition to a fine. In any event, the Bill has yet to be enacted.

Recommendation 16(f) – Partially implemented: Costa Rica has three legislative provisions on debarment for domestic and foreign bribery. All were underused, likely due to an inadequate implementation framework. Costa Rica has enacted the General Law of Administrative Contracting (Law 9986) which enters into force in December 2022. The Law creates the Public Authority for Public Procurement within the Ministry Finance to oversee public procurement. This is positive. However, Costa Rica has not taken steps to ensure that this body enforces the debarment provisions, which the Working Group recommendation also requires.

Conclusions of the Working Group on Bribery

6. Based on these findings, the Working Group concludes that recommendations 2(b), 4(b)-(c), 5(b), 5(d), 6(a), 7(a)-(b), 9(a), 11(d), 11(f), and 14(d) have been fully implemented; recommendations 1(a)-(c), 2(a), 6(c)-(d), 10(d), 12(b), 13(a), 13(c), 14(c), and 16(f) partially implemented; and recommendations 3, 4(a), 5(a), 5(c), 6(b), 7(c)-(d), 8(a)-(c), 9(b), 10(a)-(c), 11(a)-(c), 11(e), 12(a), 12(c), 13(b), 13(d), 14(a)-(b), 15, and 16(a)-(e) not implemented. The Working Group invites Costa Rica to report back in writing within six months on the status of the Bill before the Legislative Assembly and recommendation 3. The Working Group requests the report to be in writing to allow the proper assessment of the Bill’s text. As with all Working Group members, Costa Rica will continue to report on its foreign bribery enforcement actions annually during Working Group meetings. The Working Group will continue to monitor follow-up issues identified in the Phase 2 Report as case law and practice develop.

Annex. Phase 2 Evaluation of Costa Rica: Two-Year Written Follow-Up Report by Costa Rica

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 2 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the [Phase 2 Monitoring Information Resources](#) (page 18).*

Name of country: COSTA RICA
Date of approval of Phase 2 Report: 11 March 2020
Date of information: 26 November 2021, updated 3 February 2022

i) PART I: RECOMMENDATIONS FOR ACTION

Regarding Part I, responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Recommendations for ensuring effective prevention and detection of the bribery of foreign public officials

Text of recommendation 1(a):

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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

On August 6th, 2021, the Public Ethics Office of the Attorney General's Office (PGR), presented before the Presidencies of the Supreme Powers and the Supreme Electoral Tribunal the document entitled "National Strategy of Integrity and Prevention of Corruption " (ENIPC). The ENIPC is an instrument that establishes the sensitive and priority areas that will receive an inter-institutional approach during the next decade in matters of integrity, corruption, transparency, and probity.

The creation of the document began in October 2019, with the establishment of a multi-stakeholder Working Group, which had the objective of designing, developing, and implementing the ENIPC. The sectors involved, worked on the definition of the general guidelines of the ENIPC and on a methodology for consensus decision-making, which enabled its participatory creation and will aid its implementation.

* As agreed, the evaluation schedule is based on the Phase 4 Two-Year Written Follow-Up Report Timetable set out in Annex 8 to the Phase 4 Monitoring Guide.

In addition, it collected different citizen consultations on this issue to identify the main problems perceived by society.

One of the objectives of the multi-stakeholder Working Group was to articulate different national and international agendas related to this issue, so that going forward, they could cooperate and build on each other. Thus, the ENIPC incorporates the country's international commitments, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, among others, to provide a platform for inter-institutional and inter-sectoral coordination for the adoption of these initiatives with a longer timeframe, monitoring and accountability mechanisms and better use of resources.

The main objective of the ENIPC is to establish the strategic framework for action by the State and all actors in society, for the promotion of ethics and the creation of a culture of legality that minimizes acts of corruption, meaning an anti-corruption strategy, which emphasizes prevention and a clear horizon.

The priorities contained in the ENIPC are grouped in a plan where the actions, tasks, products and expected results are described; developed in the short, medium and long term, at the operational, tactical and strategic levels. The priorities contained in the ENIPC are grouped into five work areas:

- **Axis No. 1:** Governance in the fight against corruption. The purpose of this axis is to establish a governance model for integrity, control environment and anti-corruption, with a country leadership and a national public policy that coordinates, articulates and directs it strategically. It also includes the development of proposals for regulatory reform to support the implementation of the various objectives of the ENIPC.
- **Axis No. 2:** Management of human talent to fight against corruption. This axis seeks the incorporation into the Public Sector of people who demonstrate ethics, probity, and suitability for their respective positions. Also, various actions are contemplated to promote, train, supervise and ensure the integrity of public officials and institutions.
- **Axis No. 3:** Promotion of citizen participation and control. This axis seeks to enhance the role of citizens in public affairs, especially in the public policy cycle, which includes all phases: definition, design, implementation, and evaluation. It is also interested in promoting consultative processes and oversight of the Treasury and the Civil Service in general. It seeks to encourage reporting by public officials and citizens and to enhance whistleblower protection.
- **Axis No. 4:** Corruption risk management in public-private interaction. This seeks to identify risk areas and prevent conflicts of interest in activities involving public officials and bodies of the public sector with private actors, in which acts of corruption are more likely to happen.
- **Axis No. 5:** Access to information of public interest and accountability. This axis generates the opening of public administration data, the strengthening of transparency, accountability, and the simplification of procedures for citizens through their digitalization.

With regard to the designation of a single public body to oversee the implementation of the strategy and action plan, the ENIPC multi-stakeholder Working Group plans to operate, on a permanent basis, with 3 levels of action, which are:

- Plenary, composed of the entire multi-stakeholder Working Group.
- Technical Secretariat composed of four actors:
 1. The person occupying the position of Minister of Justice: This person will have a role, mainly, of political support, mobilizing political will and resources, political interlocutor and responsible within the Executive Branch. In addition, he/she will be the channel of communication with the President of the Republic and the Presidential Cabinet and will have

personnel from his/her Office to assist the Technical Secretariat in specific actions that may be required. Meaning, the Ministry of Justice is the single designated public body to oversee the implementation of the ENIPC.

2. A person in the Public Ethic's Office of the Attorney General's Office: His/her role will be mainly one of technical support, coordination of inter-institutional and international efforts and interlocutor with the control bodies.
 3. A person from the Centre for Research and Training in Public Administration of the University of Costa Rica, with an academic profile and previous knowledge of ENIPC topics and project management skills: he/she will have a mainly technical support role and will manage projects and routine activities, design and apply follow-up instruments and collaborate in the organization of activities, calls for proposals, alliances and contacts.
 4. Finally, a person from the association "Costa Rica Integra", which is a chapter for Transparency International: who will have a role, mainly, of technical support, coordination of inter-institutional and international efforts, who can serve as a multiplier of information and interlocutor with other civil society organizations and the private sector.
- Working Subgroups. Conformed for specific activities or topics according to their affinity, competencies, and resources.

Find all the information related to the ENIPC in the following link: <http://www.enipc.co.cr/>

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(b):

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

Actions taken as of the date of the follow-up report to implement this recommendation:

The attention to this recommendation has been assumed and coordinated by the Ministry of Justice and Peace (MJP) which, in accordance with Law No. 6739, "Organic Law of the Ministry of Justice and Peace", is responsible for coordinating all official plans and programs linked, directly or indirectly, with the promotion of peace, alternative conflict resolution, crime and violence prevention, amongst others. Likewise, the MJP leads the Costa Rican representation before the WGB.

Consequently, the MJP has undertaken a variety of dissemination and awareness-raising actions to contribute to the prevention and reporting of foreign bribery, as follows:

- **Ministry of Justice and Peace website:**

The MJP enabled in its web page for the general population, a space dedicated to informing and prevent foreign bribery. On the website people will find information regarding the Anti-Bribery

Convention and its recommendations, Law No. 9699 (CLL), Executive Decree 42399, as well as the WGB Phase 1 and 2 Reports.

This website also performs as a tool kit for other institutional partners that wish to raise awareness, it has many graphic downloadable materials that are easy for them to use and upload in their social media and share with their own networks. Stakeholders may find 18 free downloadable graphic pieces for users and for organizations that want to share them with their staff, as well as, the edition of the MJP's program: "Let's Talk about Justice", dedicated to inform about the liability of legal persons, the foreign bribery offence and the Antibribery Convention; also, the video of the GACIF 2021: Global Anticorruption & Integrity Forum, where MJP addressed the topic: "Cross-sectoral response and responsible business conduct and integrity efforts on the COVID 19 response".

Find the information at <http://www.mjp.go.cr/Cohecho/Cohecho>, tab "Foreign bribery prevention campaign".

Download the graphic pieces in the following link: <https://photos.app.goo.gl/ssyJVWTuxxCBwWjJ9>

- **b. Partnership network:**

The MJP has partnered with key institutions to disseminate information and detection tools, raise awareness, and prevent foreign bribery. The objective of the network is to share the graphic pieces created by the MJP among the stakeholders of the allied institutions, to promote this issue and attain greater reach. All the parties involved have agreed by written consent to continuously disseminate this information to their stakeholders.

Currently, the MJP is also branching to other media, like the coordination of a series of radio programs with the Ministry of Economy, Industry and Commerce (MEIC) in "Radio PYME" and with the Association of Public Accountants in "Huella CPA".

Also, MJP is in the process of signing a Memorandum of Understanding with the Costa Rican Chamber of Health to work jointly in the promotion of actions that help knowledge, awareness and implementation within the health sector regarding ethics issues and anti-corruption actions in full compliance with Law 9699 and its Regulations, as well as the promotion and dissemination of the ENIPC.

- **c. Subscriber's list:**

Regarding the awareness raising recommendations, the MJP has created an information network to further awareness efforts regarding the prevention, detection and sanctioning of corruption, specifically foreign bribery, a button was enabled on the MJP's web page for people interested in subscribing to an email list from which informative content on corruption prevention actions is distributed. To date, approximately more than 200 people have been included and subscribed, which includes stakeholders from the private and public sector, academia, media, international organizations, and others. The email address is prevencionsoborno@mj.go.cr

- **d. Inter-institutional work:**

The MJP positioned the prevention and report of foreign bribery in various inter-institutional workspaces in the country:

- In the National Open Government Commission, the MJP contributes with the implementation of the Open Government National Plan, formulated through a process of co-creation and consultation of various sectors of the population. The Plan includes an axis on "Integrity and anti-corruption" which includes a commitment called: "Strengthening of citizen capacities and mechanisms for the prevention of corruption in the Public Administration based on open data", specifically, in terms of foreign bribery MJP works on:

- Adapting anticorruption regulations to plain non-technical language for the better understanding of the population, for this purpose, regulations regarding duty of probity; conflicts of interest; prohibition to receive and provide economic retribution, advantages or gifts, including foreign bribery; liability of legal persons and reporting of corruption offenses; were selected.
- Coordination the training of public officials in prevention and reporting of corruption offenses with the Public Ethics Office of the Attorney General's Office (PGR)
- Mapping, promotion and improvement of available channels for reporting acts of corruption.

The latter can be revised in the following link:
<https://drive.google.com/file/d/1SISfsDzif0DhXrOJsON-P6NisR7tdzo/view>

- In the National Strategy of Integrity and Prevention of Corruption (ENIPC), MJP participates in the particular axes related to: "Governance of the anti-corruption area" to designate a single public body to oversee the implementation of the strategy and action plan; "Participation and citizen control" to promote actions related to reporting persons protection indicated in recommendation 3 and strengthening of reporting processes, including anonymous reports; and "Risk management in the public-private interaction" for the promotion and adoption of integrity (compliance) programs.

In each of these areas there is a public official who also participates as part of the Costa Rican delegation to the WGB. This allows the information recommended by the WGB to be transmitted to each of these axes and in the ENIPC, in general.

(Refer recommendation 1(a) for the document of the ENIPC)

- At the Technical Standards Institute of Costa Rica (INTECO), MJP is contributing to the formulation of a technical standard to support the adoption of compliance models in accordance with ISO standards and the provisions of Executive Decree 42399, with a special emphasis for SMEs.
- In the Regulatory Compliance Committee of the Costa Rica's Bar Association, there is a permanent representative that is constantly seeking for opportunities to promote these issues.

- **Celebration, participation and dissemination of events:**

The leadership of MJP's representation to the WGB has allowed it to remain in close contact with the private sector, academia and civil society.

MJP organized with the International Chamber of Commerce, a session as part of 2021 OECD GACIF: "Leading through the Crisis: Integrity and Anti-Corruption for a Resilient Recovery", namely "Cross-sectoral response and responsible business conduct and integrity efforts on the COVID 19 response."

During this session, the panelists had the opportunity to identify the best practices used by their sectors to manage corruption risks and how their previous efforts regarding responsible business conduct and integrity, paid off during the response to the COVID-19 crisis.

The forum specified the main actions implemented by the public and private sectors to strengthen the State's direct procurement procedures, as well as the supervision system for delivery and reception of donations to the public sector, regarding sanitary supplies. In addition, civil society commented on the recommendations of Transparency International on public procurement issues during the emergency period, as well as the mechanisms for the follow-up of the vaccination process.

The MJP has centred the foreign bribery offence and the CLL, as an incomparable and innovative tool to detect, sanction and prevent corruption. One of the most important actions, has been to collaborate with academia, civil society, and the private sector to raise awareness regarding these matters. One

of the most important outcomes has been the many events where these sectors have gathered to learn and cooperate.

1. The International Chamber of Commerce Costa Rica and the World Compliance Association are organizing the IV International Anti-Corruption Congress, which will be held on December 7th, 2021.
2. Costa Rica's Bar Association hosted the following event in which awareness of foreign bribery was raised: Congress on ethics and the fight against corruption, a necessity for the 21st Century on the 3rd and 4th of November 2021.
3. The Compliance Office of the Judiciary of Costa Rica organized the webinar "Public Compliance: Anticorruption Program in the Public Sector. Experience and challenges for Costa Rica". The purpose of the event was to disseminate and promote knowledge of compliance programs as a tool to properly manage the risk of corruption in public institutions and private organizations.
4. The Compliance Commission of Costa Rica's Bar Association organized the "First Compliance Days" with the following topics discussed:
 - Monday, August 23: Ethics and Culture of Compliance
 - Tuesday, August 24: Compliance and Good Corporate Governance
 - Wednesday August 25: How to implement an effective compliance program? Last trends
 - Thursday, August 26: Compliance challenges in the different sectors
 - Friday, August 27: Compliance programs for the prevention of money laundering
5. The Costa Rica's International Chamber of Commerce and the World Compliance Association, held the webinar "The importance of compliance in the private sector", on August 4th, 2021, where the impact of corruption cases and the importance of having compliance programs in the private sector were analysed.
6. Intervention in "Frecuencia MP" radio program, dedicated to learning about the project for the identification and reporting of suspected corruption crimes taking place in local governments, including foreign bribery, held on April 12th, 2021.
7. In commemoration of the International Anti-Corruption Day, the Costa Rica's International Chamber of Commerce and its Anti-Corruption Commission held the webinar "Compliance, virtuality and technology" on December 9th, 2020.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 1(c):

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

Actions taken as of the date of the follow-up report to implement this recommendation:

The Public Prosecution Service (PPS) elaborated an infographic regarding the information of Article 5 of the Convention, as well as the 2009 recommendation on this article. This document was communicated with the Integrity, Transparency and Anti-Corruption Unit of the PPS and the Judicial Investigation Body, to raise awareness.

Going forward, the Ministry of Justice and Peace will coordinate with the Judiciary Branch in order to make this information available to the rest of their personnel.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(a):

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

The Ministry of Foreign Relations (MRE) has proceeded to amend its foreign bribery detection and reporting manual to cover all relevant foreign bribery allegations and require direct reporting of allegations to FAPTA. After the manual was amended, the MRE ordered that it be notified to all public officials in the representations that Costa Rica has abroad.

Kindly find enclosed the new manual and a word version of the document with track changes to better reflect the amendments, you may also find the official letter in which the Minister order the notification of the new manual.

The manual and related documents have been transferred to 100% of the 58 representations that Costa Rica has abroad, for a total of 173 public officials. Up until the first week of November, 18 of these representations indicated that they had not yet detected possible cases of transnational bribery.

Furthermore, regarding training and guidance, the Diplomatic Academy, Manuel María de Peralta, included training on transnational bribery in the mandatory training programs that personnel appointed abroad must receive prior to starting their duties. This invitation has also been extended in various occasions, to public officials who are already carrying out their duties in their respective receiving States. The training and guidance have been prepared and provided by the Legal Department of the MRE. Up to November, the training has been given 7 times to a total of 43 public officials appointed abroad. The personnel who has received this training prior to being appointed abroad has been evaluated on their knowledge of the manual and subject matter.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(b):

2. Regarding the reporting of foreign bribery, the Working Group recommends that:

(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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Costa Rica ensured training for public officials and the general public to report any acts of corruption, breaches of public ethics and the duty of probity, informing them the importance of reporting, and their rights as citizens. Relevant trainings on these matters are:

- **Training provided by the Attorney General's Office:**

The General Attorney's Office (PGR) maintains an annual training program for public officials, "Administrative reporting of acts of corruption" and another one titled "Ethics and probity in the exercise of the function public", one of the main topics expands on the public official's obligation to report all suspected acts of corruption, which includes, foreign bribery. They include Article 281(a) CCP which includes the public official's legal duty to report before the competent authorities the allegedly corrupt or illegal acts detected during their functions. None of the regulations in this regard, demand a certainty or veracity of the facts, said requirement does not have legal basis.

During these trainings, the PGR warns that, if the public official is aware of possible acts of corruption and does not report them, he/she incurs in a breach of the duty of probity, which could generate administrative, civil and even criminal liability; the rights of reporting person are also indicated.

The "Administrative reporting of acts of corruption" training was imparted to 149 public officials during 2019, and "Ethics and probity in the exercise of the function public", to 1926 public officials during 2019 and 2020.

Also, during the training the PGR imparted for the 89 tax auditors from the Ministry of Finance, this topic was also discussed. The PGR officials explained that the CCP requires public officials to report all suspected acts of foreign bribery and any other corruption acts, including foreign bribery and related offences, and that in practice certainty in the veracity of the allegation is not required. For more information regarding this training kindly refer to recommendation 4(c).

- **Training provided by Ministry of Foreign Relations:**

One of the actions taken to further awareness regarding the public official's mandatory reporting of suspected acts of corruption in article 281 CCP, was made by the Ministry of Foreign Relations. In the foreign bribery detection and reporting manual that was shared with their personnel they reiterated this obligation.

- **Training provided by ENIPC:**

The National Strategy of Integrity and Prevention of Corruption (ENIPC), mentioned in recommendation 1(a), cooperates with further awareness of this issue. On page 54 of this document, you can identify actions 3.2.1 and 3.2.2. Action 3.2.1 is: motivate the effective reporting before bodies of control, regarding substance and formalities, on the alleged acts of corruption or lack of duty of probity and transparency in the exercise of public functions. Action 3.2.2 is: strengthen the channels

and mechanisms for receiving confidential electronic reports by public officials. As you may see from these actions, this Strategy is not just about awareness, but actions that will promote and strengthen the reporting by public officials and citizens.

- **Awareness raising provided by Costa Rica's Bar Association:**

Costa Rica's Bar Association hosted the following event: Congress on ethics and the fight against corruption, a necessity for the 21st Century on the 3rd and 4th of November 2021. This obligation was addressed by the PGR and WGB representative, who was a speaker in this event.

"First Compliance Days" where the topic of the public official's duty to report was addressed by the PGR. The event was held from August 23 to 27, 2021.

- **The Public Prosecution Service (PPS)**

On December 9, 2021, in celebration of the Day Against Corruption, the Integrity, Transparency and Anti-Corruption Unit of PPS, will hold an accountability event before the public, where, among other matters, the public and invited institutions will be encouraged to report suspected acts of corruption, including transnational bribery. The invitation to the activity is on the website of the Judiciary Branch and is accessible to all the public.

- **Other training actions:**

MJP has compiled information related to the reporting of acts of corruption, including the duty of the public official to report, with the objective of adapting this information to a clear and understandable language for all public officials, in the framework of the projects with National Open Government Commission, for the implementation of the National Open State Plan.

This task is being carried out by the School of Philology of the University of Costa Rica and is expected to be delivered on December 2021. The material produced will be used to train public officials, as well as to produce infographic materials.

- **Other actions:**

The MJP maintains a permanent alert on its website regarding the duty to report which indicates:

"Remember that: Public officials have the legal duty to report allegedly corrupt acts that they become aware of in the exercise of their functions. The person who serves as a public official who has knowledge of possible or alleged acts of corruption and does not report them, incurs in a breach of his duty of probity, which could generate administrative, civil and even criminal liability. Do not hesitate to report the crime of foreign bribery." You may consult the alert in the following link: <http://www.mjp.go.cr/Cohecho/Cohecho>

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3:

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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Regarding recommendation on the adoption of legislation that provides clear and comprehensive protection from retaliation to whistleblowers, Costa Rica has taken action to adopt legislation that provides clear protection from retaliation to whistleblowers in the public and private sectors. The taskforce included an important provision on the draft bill, but we believe this only partially addresses the situation on criminal proceedings. You may consult this legal reform in lines 13 to 16 of Annex 1.

On this regard, we understand that to enact effective legislation, far-reaching action that includes all the relevant stakeholders must be taken, thus this effort must go beyond the taskforce. Consequently, the Ministry of Justice and Peace (MJP) has been proactively participating in the axis for “Effective Reporting and Whistleblower Protection” within the National Strategy of Integrity and Prevention of Corruption (ENIPC), since this is an ample platform that includes most of the relevant stakeholders on this matter. The ENIPC, mentioned in recommendation 1(a), on page 57 has action 3.2.6 which is to promote the creation of legislation that offers a clear and comprehensive protection against retaliation for whistleblowers from the moment they report.

This strategy also includes other important actions like the one on page 55, action 3.2.3 on the strengthening of the protocol for care and protection of whistleblowers of corruption of the Office of Attention and Protection for the Victims of Crime.

(Refer to recommendation 1(a) for the ENIPC)

The interinstitutional team that will tend to this recommendation and the action of the ENIPC, has already been conformed and is working on a proposed bill. This team is led by the MJP and integrated by the Public Prosecution Service, the Attorney General’s Office, the Judicial Investigation Body and the Ministry of Foreign Trade. Currently, we do not have a finished text to present to the Working Group on Bribery, but we hope to do so next year.

Finally, Costa Rica established in Executive Decree No. 42399 (articles 14 and 29) a provision regarding the protection of reporting persons and witnesses within the organizations that includes: the term of protection needed, the definition of a support and protection officer, employment protection measures and disciplinary measures against anyone who retaliates or tries to identify the reporting person. The organization that adopts the Model of organization, crime prevention, management and control must implement this provision, whether, in major organizations, SMEs or State-Owned Enterprises.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(a):

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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 58 to 61 of Annex 1. Once the legal reform is enacted, and following the supremacy of law, Costa Rica will consolidate its regulations and “institutional criteria” accordingly.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(b):

4. Regarding taxation, the Working Group recommends that Costa Rica:

(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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Costa Rica has taken action in this recommendation. A channel has already been established between the General Directorate of Taxation (DGT) and the Public Prosecution Service (PPS). Specifically, the Integrity, Transparency and Anti-Corruption Unit (FAPTA) is responsible on routinely informing about foreign bribery convictions to the DGT. Currently, since the cases are all ongoing, there are no foreign bribery convictions, thus we do not have further information to provide on this regard.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(c):

4. Regarding taxation, the Working Group recommends that Costa Rica:

(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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Costa Rica has complied with this recommendation. The Public Prosecution Service (PPS) has launched a training for tax officials on the detection of foreign bribery during audits. 120 officials of the Ministry of Finance who are in charge of carrying out studies and the analyses necessary to verify the economic reality of natural or legal persons with tax obligations are being trained in the 3 editions of this first training. This will cover 100% of the personnel that needs this. The first edition was in August 2021 and the second one in November 2021, the other edition will take place on February 2022 and cover the remaining public officials.

The Attorney General's Office (PGR) has also trained 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. 89 tax auditors from the Ministry of Finance, specifically, the General Directorate of Taxation were trained on these topics by the PGR. Given that the training was imparted virtually, public officials from all parts of the country were able to participate, including those in rural areas. The video of this event has also been shared with other public officials after the event, as a training tool. The event took place February 13th, 2020 and was titled: Transnational bribery and related crimes and the detection and reporting function of the tax administration.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(a):

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Costa Rica has been analysing different options available under our legal system to comply with this recommendation. Once the decision has been reached and agreed by the competent authorities, the action plan will be notified to the Working Group.

Text of recommendation 5(b):

5. With respect to accounting requirements, external audit and internal company controls, the Working Group recommends that Costa Rica:

- (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].

Actions taken as of the date of the follow-up report to implement this recommendation:

The College of Public Accountants (CCPA) has undertaken the following actions aimed at raising awareness and training the accounting and auditing professionals:

- **Updating and training:**

The CCPA, as a member body of the International Federation of Accountants (IFAC) and in compliance with the Statements of Member's Obligations (DOM), specifically DOM 1, establishes requirements in relation to Quality Control review systems, thus, the CCPA is committed to the constant updating and training for all its members to adopt a quality control system in accordance with the highest global standards required by the profession and in compliance with the DOM1.

The CCPA signed an agreement with the Foundation for the Study of Money Laundering and Crimes (FELADE) on October 13th, 2020, to achieve an alliance of academic and training cooperation in the awareness of these issues. As part of this program, several trainings have been conducted on issues related to foreign bribery, money laundering, detection and risk assessment, among others.

On April 21st, 2021, a training was given by the Attorney General's Office (PGR) to motivate the fight against corruption and to learn about the relevance of complying with Law CLL. Currently, this subject matter is maintained in the training programs of the CCPA.

Other training has also been provided on money laundering, risk detection and assessment, ISO 37001 Management Systems and Anti-bribery, among others. Some of the examples are the following:

- August 9th, 2021, they imparted a training titled: Law on Tax Compliance for Foreign Accounts, viewed by 532 people.
- September 31st, 2021, they imparted a training titled: Internal audit, 2023, Project to strengthen the professional practice of the internal audit function, viewed by 498 people.
- September 24th, 2021, they imparted a training titled: Prevention of money laundering according to IFAC, viewed by 533 people.
- May 4th, 2021, they imparted a training titled: Acts of corruption, viewed by 1107 people.
- October 1st, 2021, they imparted a training titled: General guidelines for the analysis of allegedly irregular events. Main changes and new approaches, viewed by 1003 people.
- November 8th, 2021, they imparted a training titled: ISO 37001 Standard: Management and anti-bribery systems, viewed by 1132 people.
- November 3rd, 2021, they imparted a training titled: What are the responsibilities of the preparers of financial information and that of the external auditor, viewed by 3956 people.

- **Raise awareness:**

For the purposes of the implementation of an effective Quality Control system by professionals and Firms, the CCPA has made the following tools available that can be downloaded from the College's website: www.ccpa.or.cr in the Prosecutor's Office / Quality Control section:

- Suggested Quality Control Policies and Procedures Manual.
- Quality Control System Self-Assessment Guide.
- Circular N° 07-2014 - Guide for the Implementation of Quality Control for Firms or Offices of Public Accountants and Independent Professionals.
- Circular N° 10-2014 - Manual of Quality Control Reviews according to the Aspects Indicated by the International Quality Control Standard.

In addition, an informative video has been used to call for information on the subject, through their radio program "Huella CPA" and networks. Relevant information on anti-money laundering and anti-bribery activities is included in the bulletins issued by the CCPA to professionals and firms through the magazine "CPA Informed".

In particular, as part of MJP partnership network, graphic pieces elaborated by MJP will be monthly published in the bulletins that are disseminated for the Certified Public Accountants.

- **Monitoring:**

Pursuant to the provisions indicated in point a) and in compliance with the normative framework that regulates the profession, all Certified Public Accountants and Public Accounting Firms must make the Annual Statement of Quality Control Compliance, and any new firm that registers must comply with the Manual for Registration, Updating and De-registration of Public Accounting Firms (MTIADD-07 2020) and will be reviewed within the following three months.

In addition, the Quality Control Commission must review the information every three years and follow up on the recommendations, and for the period 2020 and 2021, the Commission initiated the review of

Certified Public Accountants in the liberal practice of the profession, who do not perform their services through corporations.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(c):

5. With respect to accounting requirements, external audit and internal company controls, the Working Group recommends that Costa Rica:

(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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

- **Ethics Code changes:**

The Board of Directors of the CCPA agreed, on June 14th, 2021, Agreement N°220-6-2021 SO.12, the receipt of the Ethics Code draft update of the CCPA. The document is in the process of being reviewed by the legal advisors of the CCPA. Likewise, through Agreement N°482-10-2021 SO.21, dated October 20, 2021, the proposed amendment was sent for review of the members.

Among the modifications, this proposal includes aspects contemplated in the Ethics Code of the IESBA of the International Federation of Accountants. The enacted Ethics Code already establishes that the professionals registered in the CCPA are responsible for the public interest and therefore dedicates a section to conflicts of interest and their evaluation. In addition, it included the duty to consider the provisions of the Law against Corruption and Illicit Enrichment in the Public Service and its regulations, aspects that are also considered in the new proposal.

- **Joint efforts with the Financial Intelligence Unit**

Also, CCPA created an agreement with the Financial Intelligence Unit (FIU), in order to communicate and encourage the firms of Certified Public Accountants, as well as the Independent Public Accountants who perform in public faith, to report suspicious transactions through the platform of the FIU.

The CCPA must use the official channel that reporting / regulated entities use for reporting of suspicious transactions. Authorized Public Accountants were included in the communications of the FIU web page as intermediary professionals, where they can have access to the regulations related to Law 8204, access to the list of politically exposed persons, communications, training courses, and alerts from the United Nations Security Council.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(d):

5. With respect to accounting requirements, external audit and internal company controls, the Working Group recommends that Costa Rica:

- (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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

The Ministry of Justice and Peace (MJP) has undertaken a variety of actions to encourage companies, business organisations and professional associations to promote compliance programs:

- **Executive Decree 42399 “Model of organization, crime prevention, management and control”**

In August 2020, the MJP and MEIC published Executive Decree 42399, with the purpose of regulating Title II of Law 9699 CLL. The regulation aims to promote and provide guidance for the implementation of the “Model of organization, crime prevention, management and control”. The implementation of the Model within legal persons will have as its main purpose to prevent, detect and mitigate the commission of the crimes contemplated in Article 1 of Law CLL, which includes foreign bribery.

The Decree contains a chapter with the generalities of the Model, another one dedicated to the development of the Model for legal persons in general, a particular one for state-owned companies and another one for SMEs. Some aspects included are:

- Risk assessment in the Model
- Due diligence
- Crime prevention policy
- Person in charge of the Model
- Role of the person in charge of the Model
- Reporting management
- Measures for the protection of the reporting person
- Sanctions
- Monitoring and evaluation
- Auditing

(Refer to recommendation 3 for the Executive Decree 42399, “Model of organization, crime prevention, management and control”)

- **Ministry of Justice and Peace (MJP) website:**

The MJP enabled in its web page a space related to inform and prevent transnational bribery. On the website people will find information regarding the Executive Decree 42399 “Model of organization, crime prevention, management and control”.

This website also functions as a tool kit for other institutional partners that wish to raise awareness, it has many graphic downloadable materials that are accompanied by wording that informs about the “Model of organization, crime prevention, management and control”.

Find the materials and information at <http://www.mjp.go.cr/Cohecho/Cohecho>, tab "Foreign bribery prevention campaign".

- **Partnership network:**

The MJP has partnered with key institutions to disseminate information about the “Model of organization, crime prevention, management and control”.

Currently, the Ministry of Economy, Industry and Commerce (MEIC) is sharing the graphic pieces created by the MJP and both are coordinating a space in the radio programs "Radio PYME", to disseminate information related with the adoption of anti-corruption compliance programmes.

- **Subscriber’s list:**

Regarding the awareness raising recommendations, the MJP has created an information network to further awareness efforts regarding the prevention, detection and sanctioning of corruption, specifically foreign bribery, a button was enabled on the MJP's web page for people interested in subscribing to an email list from which informative content on corruption prevention actions is distributed. To date, approximately more than 200 people have been included and subscribed, which includes stakeholders from the private and public sector, academia, media, international organizations, and others. The email address is prevencionsoborno@mj.go.cr

- **Inter-institutional work:**

The MJP positioned the prevention and report of foreign bribery in various inter-institutional work spaces in the country:

- In the National Strategy of Integrity and Prevention of Corruption (ENIPC), MJP participates in the axe 4) namely "Risk management in the public-private interaction", specifically in 4.4 point about “Integrity Programs in the Private and Public Sector” with the objective of promoting the establishment of integrity programs in public and private sector organizations, in order to mitigate corruption risks, through the implementation of a communication and training campaign, counselling, support, as well as the generation of incentive policies.

(Refer to recommendation 1(a) for the National Strategy of Integrity and Prevention of Corruption)

- At the Technical Standards Institute of Costa Rica (INTECO), MJP is contributing to the formulation of a technical standard to support the adoption of compliance models in accordance with ISO standards and the provisions of Executive Decree 42399.
- In the Regulatory Compliance Committee of the Costa Rica’s Bar Association, there is a permanent representative that is constantly seeking for opportunities to promote these issues.
- Also, MJP is in the process of signing a Memorandum of Understanding with the Costa Rican Chamber of Health (CCS) to work jointly in the promotion of actions that help knowledge, awareness and implementation within the health sector regarding ethics issues and anti-corruption actions in full compliance with Law 9699 and its Regulations, as well as the promotion and dissemination of the ENIPC. The latter, on the occasion that the CCS implemented, in 2020, a stamp to support organizations in complying with the requirements of Law 9699 and its Regulations to prevent and control corruption crimes within and outside the organization, called PROMED Anti-corruption Compliant Stamp, in order to ensure ethics in business and support companies in the implementation of the best standards in governance, compliance and transparency.

- **Related events:**

Other instances have joined together to hold events on occasion of the recent incorporation of the liability of legal persons, particularly regarding compliance programs:

- The Compliance Office of the Judiciary of Costa Rica organized the webinar "Public Compliance: Anticorruption Program in the Public Sector. Experience and challenges for Costa Rica". The

purpose of the event was to disseminate and promote knowledge of compliance programs as a tool to properly manage the risk of corruption in public institutions and private organizations.

- The Compliance Commission of the Costa Rica’s Bar Association organized the "First Compliance Days" with the following topics discussed:
 - Monday, August 23: Ethics and Culture of Compliance
 - Tuesday, August 24: Compliance and Good Corporate Governance
 - Wednesday August 25: How to implement an effective compliance program? Last trends
 - Thursday, August 26: Compliance challenges in the different sectors
 - Friday, August 27: Compliance programs for the prevention of money laundering
- Costa Rica’s International Chamber of Commerce and the World Compliance Association, held the webinar "The importance of compliance in the private sector", on August 4th, 2021, where the impact of corruption cases and the importance of having compliance programs in the private sector were analysed.
- In commemoration of the International Anti-Corruption Day, Costa Rica’s International Chamber of Commerce and its Anti-Corruption Commission held the webinar "Compliance, virtuality and technology" on December 9th, 2020.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(a):

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

At the beginning of this year, Costa Rica’s financial intelligence unit (UIF) presented the National Money Laundering and Terrorist Financing Risk Assessment (ENR) which contains a developed section on the subject of Corruption, proof of this is shown in the country risk matrix, where this crime is established among the most relevant and worrying aspects dealt with in the process. See the risk matrix:

| Risk map | |
|----------------|--|
| Level of risk | Risk description |
| Very high risk | Costa Rica’s geographical location in the drug route to the north |
| High risk | Increase of criminal activity in Costa Rica |
| | Increased movement and use of currency cash |
| | Increasingly active presence in Costa Rica of organized crime groups |

| | | |
|---------------|--|--|
| | Existence of corruption | |
| Moderate risk | Regional environment with countries with political, social and economic instability | |
| | Concurrence of circumstances that make financing of terrorism feasible from Costa Rica | |

The matrix shows that the existence of corruption, that is located at a somewhat higher risk level, is one of the main concerns of the operational working groups. These working groups were held with different public and private entities and agencies in Costa Rica. This means all illegal activities aimed at generating behaviours or actions in Public Administrations or public officials that violate legality and the principle of objectivity. This broad concept includes different types of actions, such as foreign bribery, domestic bribery, prevarication, or embezzlement, among others.

The double negative impact of this crime in terms of money laundering was discussed, given that on the one hand, it generates illicit income that needs to be legitimized and, on the other hand, it diverts public resources that could be used for public policies to prevent and combat money laundering.

In order to prepare the analysis of corruption and to ensure that it was as well documented as possible, information was requested from various public agencies regarding specific situations of corruption that have been detected among their members. This section was developed over 17 pages in the document.

Find the public version of the document here:
https://www.icd.go.cr/portalicd/images/docs/uif/ENR_CR_VERSIN_PBLICA.pdf

In addition, on January 28th, 2021, SUGEF Agreement 12-21 was published, “Specific Guidelines for Obligated Subjects Supervised by the General Superintendency of Financial Institutions (SUGEF) to the Regulation for the prevention of the risk of money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction, applicable to the subjects bound by article 14 of Law 7786”. Regarding precedent crimes of money laundering: Reporting entities must know and understand the precedent crimes established in articles 69 and 69 bis of Law 7786 and related laws, so that the policies and procedures for the prevention of the risk of ML/FT/FPADM consider alerts to identify possible patterns related to these crimes that could represent an unusual or suspicious operation. Among these, all the crimes of bribery, according to the provisions of the Criminal Code, must be considered.

Take into account that these guidelines must be considered by the reporting entities supervised by SUGEF to prevent the carrying out of operations that may be linked to activities to prevent money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction. This guideline can be consulted in the following web address:
[https://www.sugef.fi.cr/ver/normativa/normativa%20aprobada%20no%20vigente/Sugef%2012-21%20\(v05%2018%20agosto%202021\).pdf](https://www.sugef.fi.cr/ver/normativa/normativa%20aprobada%20no%20vigente/Sugef%2012-21%20(v05%2018%20agosto%202021).pdf)

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(b):

6. Regarding money laundering, the Working Group recommends that Costa Rica:

(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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Costa Rica is working on a draft bill that meets the technical criteria. This proposal covers the elements related to the people who occupy senior positions in international organizations, the scope of the definition to family members, spouses and close partners, and proposes a relevant initiative that allows an inter-institutional technological development so that the country has an official list that includes all PEPs, one which will be permanently updated. This initiative will allow having an updated list all the time and also contributes with elements of international cooperation and due diligence of clients in the national financial system, since it will be accessible to the obliged subjects and the anti-money laundering supervisors. The Costa Rican Institute on Drugs (ICD), the Financial Intelligence Unit (UIF), the National Council for Supervision of the Financial System (CONASSIF) and the Superintendency of Financial Institutions (SUGEF), presented the text with the technical elements to the Presidency of the Republic so that it can be filed before Congress.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(c):

6. Regarding money laundering, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

The topics in this recommendation remain within the permanent training topics, especially derived from the surveillance that should be carried out on PEPs. The Financial Intelligence Unit (UIF) takes advantage of this spaces to constantly train their officials. Annually, and as a rule of the Unit, officials must be instructed on matters related to probity and rules regarding the responsibilities of public officials. This is part of the UIF's training program derived from a Certification Standard that they must keep current.

Additionally, UIF shares spaces to discuss financial crimes in order to keep the population informed, including officials of the reporting entities. You may find events, documents, statistics, alerts, and more information in the web site: <https://www.icd.go.cr/portalicd/index.php/inicio-uif>

The training by the Public Prosecution Service for the detection of foreign bribery detailed in recommendation 4(c) is also being imparted to strategic employees that currently work in banks. The first one to receive this training is the National Bank (Banco Nacional of Costa Rica). They began in

November 2021 and others will receive it during February 2022. This training will be followed by others in different institutions.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(d):

6. Regarding money laundering, the Working Group recommends that Costa Rica:

(d) train officials at UIF, SUGEF, SUGEVAL, SUPEN and SUGESE on money laundering related to foreign bribery [Convention Article 7; 2009 Recommendation II].

Actions taken as of the date of the follow-up report to implement this recommendation:

Personnel from the Superintendencies (SUGEF, SUGEVAL, SUPEN and SUGESE), as well as from the National Council for the Supervision of the Financial System (CONASSIF), have participated in the following trainings, which include matters related to foreign bribery and corruption in their agendas:

- July 16th, 2020, they received a training titled: cooperation on investigations and procedures related to corruption, tax crimes and associated money laundering.
- April 24th, 2020, they received a training titled: importance of ISO 37001 in the fight against corruption.
- November 11th, 2020, Departmental meeting of the department for analysis of compliance with Law 8204 imparted by Rafael Coto regarding corruption issues, and another one imparted by Viviana Fernández regarding anti-bribery, mechanisms, and ideas for change.

August 19th, 2021, they received a training titled: how to detect money laundering and corruption in the financial statements of companies.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

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

Text of recommendation 7(a):

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

This recommendation has been complied with. Personnel from FAPTA has been granted access to the ONE platform where the Matrix of Foreign Bribery Allegations is. Provided the constant monitoring of international and national media, and consulting the Matrix, investigations have been opened, such as the Panama case. This case is ongoing and concerns foreign bribery and money laundering.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(b):

7. With respect to investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Costa Rica gives investigations and prosecutions of foreign bribery equal priority in practice as those of other serious corruption and financial crimes. The mandate to do so is in the policy on criminal prosecution of functional and corruption offences (13-ADM 2019) within the Public Prosecution Service (PPS), issued by the Prosecutor General of PPS and executed by the Public Prosecutor's Office for Probity, Transparency and Anti-Corruption (FAPTA).

This policy regards sensitive areas of commission of acts of corruption with high national impact and consequences for violations of economic, social and cultural rights and that endanger the rule of law and human rights. It clearly states foreign bribery as a priority and a central strategic axis for combating corruption. Given that there is a system in place to state it as a priority and that we currently we have

ongoing cases regarding foreign bribery, we believe this recommendation should be moved to the follow-up section.

There are personnel dedicated to the constant monitoring of international and national media, and investigations have been opened, such as the Panama case. This case is ongoing and concerns foreign bribery and money laundering. In this case, a freezing of suspicious funds was executed for the amount of \$ 3.6 million.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(c):

7. With respect to investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 76 to 77 and 95 to 97 of Annex 1.

Additionally, binding circular (03-ADM-2020), established that:

“FAPTA will assume the investigation and other subsequent procedural steps of all transnational bribery cases. Internally in that office, it will be decided, depending on the complexity of the case, whether the case will be dealt with by the San José team, whether by the number of parts, facts or evidence to be obtained, among other factors to be considered.

In the event of a case of transnational bribery being detected in a territorial or specialised prosecutor's office, it must be forwarded immediately to the FAPTA office, which is appropriate by territory, with the totality of the actions. FAPTA will be the specialized and lead prosecutor who will ultimately qualify it as the crime of transnational bribery and, if it considers that it is another crime that is not corruption, it may refer it to the original prosecutor's office or another prosecutor's office.”

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(d):

7. With respect to investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Costa Rica:

(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 definitely 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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 80 to 93, 98, and 208 to 211 of Annex 1.

Additionally, binding circular (03-ADM-2020), established that:

“2. Non-application of the opportunity criterion of insignificance of the event in this criminal type.

Any crime of transnational bribery affects the country where the act is committed, but also the Costa Rican State, because its international image is affected when natural or legal persons offer, promise or give an undue gift or advantage (the bribe) to a foreign public official. This could have an impact on international trade relations, hiring with our country, considering that it is a State that is engaged in or has been engaged in bribing foreign public officials.

Therefore, it must be understood that any transnational bribery case affects the public interest, transcends borders, and being a multi-offensive offence and of such magnitude in its effects, it can never be taken as an insignificant act. Accordingly, it is prohibited to apply the criterion of opportunity because of insignificance of the act, in the terms of article 22 (a) of the Code of Criminal Procedure.” Therefore, the Prosecutor General has stated that article 22.a cannot be applied to foreign bribery cases, and that is how FAPTA proceeds.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(a):

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 80 to 93 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(b):

8. Regarding non-trial resolutions, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Binding circular (03-ADM-2020), established that:

“4. Alternative measures and abbreviated special procedure.

Circular 13-ADM-2019 of the PPS stated that the application of these measures and the abbreviated special procedure must comply with the guidelines set out therein, including for cases of transnational bribery. However, in view of the reform implemented by Law 9699 of 11 June 2019, where the range of penalties increased for this crime from four to twelve years in prison, it is not possible to apply conciliation or the suspension of the trial process in this crime.

The application of comprehensive damage repair will only be accepted when it is determined that the proposed repair plan is effective, proportionate, rational, and deterrent to the offender, as required by the Anti-Bribery Convention. Therefore, plans that only include a symbolic donation or repair cannot be accepted, even if the Public Ethics Office agrees with the proposed plan. If the latter is not proportionate to the facts, and the judge approves it, the respective appeal shall be filed.

The abbreviated special procedure will continue to require the approval of the Deputy Prosecutor for FAPTA, assessing the specific circumstances of the case, the personal conditions of the accused, and also seeking to be an effective, proportional and dissuasive sanction for the accused party, whether that is a natural or legal person, as ordered in circular 01-ADM-2020.”

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(c):

8. Regarding non-trial resolutions, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Binding circular (03-ADM-2020) establishes that the Public Prosecution Service (PPS) shall seek the periodic publication of the sanctions obtained, thus we already comply with this recommendation. The circular reads as follows:

“As a final conviction results from this abbreviated proceeding, the case becomes public under the rules of our Code of Criminal Procedure. Therefore, the Office of the PPS shall seek the periodic publication of the sanctions obtained by this means, as part of the transparency and accountability carried out by the PPS. This is in compliance with the provisions of Law No. 8968, Law on the Protection of the Person Against the Processing of Their Personal Data, applicable for natural persons. To this end, it is provided that on a quarterly basis the Deputy Prosecutor of the Integrity, Transparency and Anti-Corruption Unit (FAPTA) sends the information to this office in order to be published in the official media.”

Given that the foreign bribery cases are still ongoing, we do not have any further information to provide in this regard.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(a):

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

The Unit for Monitoring and Support to the Management of Prosecutors' Offices (UMGEF) has developed statistics regarding foreign bribery and domestic corruption cases, including duration of the investigation, the preliminary phase, and the trial one:

Additionally, the Information and Communication Technology Directorate of the Judiciary Branch is incorporating of the crime of foreign I bribery in the catalogue of crimes that the computer system must maintain at a national level. After the statistics are fully incorporated, in the page of the Judicial Observatory, <https://observatoriojudicial.poder-judicial.go.cr/pages/inicio>, properly in the Statistical Data board of the Public Ministry, you may consult statistics regarding foreign bribery and domestic corruption cases. In the Judicial Observatory began in 2019, and the information visualized in this data base will be permanently updated from that date forward.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(b):

9. Regarding statistics, the Working Group recommends that Costa Rica:

- (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].

Actions taken as of the date of the follow-up report to implement this recommendation:

As in recommendation 9(a), the Ministry of Justice has coordinated with the Judiciary Branch to comply with this recommendation. We have fully complied with 9(a), however, given the specific nature of recommendation 9(b), and some technical difficulties we have encountered, we still require some time to fully comply. We expect that the modification in the Judicial Observatory will be completed for next year. We will keep the Working Group and Secretariat informed on the advancement of these statistics.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(a):

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 64 to 66 and 229 to 230 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(b):

10. Regarding investigative tools, resources and training, the Working Group recommends that Costa Rica:

- (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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 229 to 230 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(c):

10. Regarding investigative tools, resources and training, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to line 127 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 10(d):

10. Regarding investigative tools, resources and training, the Working Group recommends that Costa Rica:

(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]. establishing itself as the governing office on the subject of investigations against corruption in the public function.

Actions taken as of the date of the follow-up report to implement this recommendation:

The human resource of the Integrity, Transparency and Anti-Corruption Unit (FAPTA) of the Public Prosecution Service (PPS), was increased by 10% on June 1st, 2020 and another 10% increase in staff was designated from January 1st, 2021 to October 31st, since as of November 2021, those resources were reassigned to other prosecutions.

Given the COVID-19 pandemic, virtual trainings have been received with different international organizations, like webinars, and FAPTA is currently expected to have trainings on the persecution of legal persons. At the same time, collaboration has been achieved on this issue with the contact points of the LAC LEN network that was born from the OECD, they have provided FAPTA with valuable support material for the prosecution and accusation of legal persons.

Regarding OIJ, on September 9th, 2019, a new structure specialized in dealing with corruption cases started operating. This structure is called the Anti-Corruption, Economic and Financial Crimes Section (SADEF), and is attached to the Criminal Investigations Department of the Judicial Investigation Body. SADEF is the governing office on investigations against corruption in the public function.

The work began with a structure made up of 27 public officials including headquarters, investigation personnel, criminal analysis personnel and administrative personnel.

Due to an approval of ordinary budget for anti-corruption by the Legislative Branch, on January 1st, 2021, there was an increase in human resources. This allowed the creation of 38 new positions and a multidisciplinary structure.

Currently the Anti-Corruption Section is made up of a group of 60 public officials that includes headquarters, research staff, criminal analysis, auditors, IT and administrative experts. All of the above, has allowed us to provide a better service in the fight against corruption in the public function and that has triggered the materialization of highly relevant investigations, many of which have come to light.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Regarding the recommendation to provide further training to OIJ ACU on foreign bribery investigation and prosecution, the Ministry of Justice has initiated conversations with them to help them comply. Given the needs of the OIJ ACU and the technical nature of the training, the Ministry is considering requesting international cooperation to comply.

Text of recommendation 11(a):

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

The central authority for the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, is the Public Prosecution Service (OATRI), who already coordinates with other central authorities when necessary. Given the good relationship and cooperation spirit between them, the Public Prosecution Service has not had any problems coordinating MLA regarding foreign bribery cases.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(b):

11. Regarding MLA and extradition, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 213 to 226 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(c):

11. Regarding MLA and extradition, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 5 to 9, 69 to 75, and 193 to 194 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(d):

11. Regarding MLA and extradition, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to line 99 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(e):

11. Regarding MLA and extradition, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 53 to 56 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11(f):

11. Regarding MLA and extradition, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

As mentioned during the Phase 2 evaluation, Article 3(a) of the Extradition Laws provides that where extradition is refused on the ground of nationality, such cases “shall be judged by the domestic courts”. Recently and without receiving a request to prosecute, Costa Rica has required MLA to countries that sought the extradition of Costa Rican nationals. These MLA requests were made to gather information to prosecute said nationals.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(a):

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 140 o 146 of Annex 1.

Additionally, binding circular (03-ADM-2020), established that:

“1. Form of commission of the offense: direct intent and eventual intent.

Part of the interpretation provided by this specialized group is the form of commission of the offence, since its first article is broad in its wording, stating that Member States must recognize as an offence the following conduct:

"... that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business."

Reading this article makes it clear that the scope of the criminal law includes both those who obtain a direct or indirect benefit, on account of bribery offered to a foreign public official, either by a natural person as such or by a legal person.

This crime is usually committed through intermediaries. International practice shows that this is usual when individuals pay a consultant a large sum of money, not in line with the actual hiring expenses, without asking how that money will be spent or what the consultant will do. This implies an acceptance, at least as a possibility, of the outcome of the payment of a bribe by the consultant. According to the interpretation made by the WGB, this subject participates in the crime with eventual intent, known as willful blindness in some legislations (willful blindness).

It is worth noting that the conventionality control comes from the supralegal rules requiring the Costa Rican State and, in this case, the PPS as the person in charge of criminal proceedings - to apply the interpretations of the indicated WGB, when the internal rules do not match the terms of the Convention. It must then be considered that this treaty obliges the country to abide by its conventional commitments and, moreover, in the specific case of Costa Rica, the recognition that the crime of Transnational Bribery can be committed both by direct intent (when it is fully known that the undue advantage or

promise will be offered or even paid), as eventual intent (when payment of the bribe is accepted as possible, even if it is not expressly requested to pay it or at least offer it to the foreign public official).

Otherwise, it would imply possible international liability of the State for judicial negligence, undesirable under public international law. Consequently, in the case of the crime of transnational bribery, the criminal investigation will focus both on individuals and legal persons who commit the action by direct or intentional intent, gathering the necessary evidence for such verification.”

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(b):

12. With respect to the foreign bribery offence, the Working Group recommends that Costa Rica:

(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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Costa Rica requests that this recommendation be considered complied with, and that it becomes a follow-up matter. Since, as reported at the time of the evaluation, in the criminal prohibition (*tipo penal*) of transnational bribery, the term foreign public official is a normative element of the criminal prohibition (*elemento normativo del tipo penal*), so its content is defined by other regulations, such as the Convention itself, which also has a supra-legal nature.

The Public Prosecution Service (PPS) elaborated an infographic regarding the definition of a foreign public official. This document was communicated with the Integrity, Transparency and Anti-Corruption Unit of the PPS and the Judicial Investigation Body, to raise awareness.

Going forward, the Ministry of Justice and Peace will coordinate with the Judiciary Branch in order to make this information available to their personnel.

Also, during the training the PGR imparted for the 89 tax auditors from the Ministry of Finance, this topic was also discussed. The PGR officials explained 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. For more information regarding this training kindly refer to recommendation 4(c).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 12(c):

12. With respect to the foreign bribery offence, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 140 to 142 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Currently, there are no new news of acts of transnational bribery or related crimes prior to the enactment of the CLL. Should any new news arise and in the event of having any previous cases, the possibility of applying the liability of legal persons subsists, and the Government would act accordingly.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13(b):

13. With respect to liability of legal persons, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 165 to 172 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13(c):

13. With respect to liability of legal persons, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

On August 26th, 2020, we enacted the Regulation of title II of the CLL, called the “Optional Model of Organization, Crime Prevention, Management and Control”. This regulation expands the mandatory elements of corporate models to include those that are vital to an effective foreign bribery compliance programme and 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. It is noteworthy to mention that we have been working with the Technical Standards Institute of Costa Rica to develop a guide to implement said regulation, with a special emphasis for SMEs.

Some aspects included are:

- Risk assessment in the Model.

- Due diligence.
- Crime prevention policy.
- Person in charge of the Model.
- Role of the person in charge of the Model.
- Reporting management.
- Measures for the protection of the reporting person.
- Sanctions.
- Monitoring and evaluation.
- Auditing.

Kindly find below the publication on the Official Gazette of the Regulation of title II of the CLL.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13(d):

13. With respect to liability of legal persons, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 165 to 172 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(a):

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 111 to 119 and 257 to 258 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(b):

14. Regarding the money laundering offence, the Working Group recommends that Costa Rica:

(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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 111 to 119 and 229 to 231 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(c):

14. Regarding the money laundering offence, the Working Group recommends that Costa Rica:

(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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

The Foreign Bribery cases are on-going, and no confiscation has been executed yet. However, in the on-going Panama case, as a preventive measure, we seized \$3.6 million suspected of money laundering. The case started in 2020, and the assets were located, seized and frozen in 2021.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(d):

14. Regarding the money laundering offence, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 111 to 119 of Annex

1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15:

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 155 to 164 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 16(a):

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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that

will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 185 to 189 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 16(b):

16. Regarding sanctions and confiscation, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 185 to 189 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 16(c):

16. Regarding sanctions and confiscation, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 184 to 188 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 16(d):

16. Regarding sanctions and confiscation, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 173 to 183 and 190 to 192 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 16(e):

16. Regarding sanctions and confiscation, the Working Group recommends that Costa Rica:

(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].

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 140 to 146 and 173 to 183 of Annex 1.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 16(f):

16. Regarding sanctions and confiscation, the Working Group recommends that Costa Rica:

(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)].

Actions taken as of the date of the follow-up report to implement this recommendation:

Costa Rica informs that, as of May 27th, 2021, a new General Law of Administrative Contracting, Law 9986, was enacted, which becomes effective as of December 1st, 2022. This law regulates all the contractual activity of the State, and in which public funds are used in whole or in part. It even covers private subjects related to the Public Treasury. The articles of sanctions to individuals are transcribed and translated, since they will be administrative debarments in force as of December 2022. Additionally, this Law creates the Public Authority for Public Procurement, that has an executing office in the Ministry Finance.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

ii) PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Regarding Part II, countries are invited to provide information with regard to any follow-up issue identified below where there have been relevant developments since Phase 2. Please describe/include any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate.

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

Text of issue for follow-up 17(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].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The on-going investigations regarding foreign bribery have already been reported, thus there are no new relevant developments on this regard. However, kindly be aware that, the OIJ's confidential hotline 800-8000-645 is always available for the submission of anonymous and confidential complaints. In the reporting of citizens, the approach to the authorities of FAPTA is promoted, with an information bulletin, that is accessible on the website and may also be performed through and email to the mp-pta@poder-judicial.go.cr. As previously mentioned, the confidential hotline 800-8000-645 of the OIJ receives complaints, as well as through emails to cico-oij@poder-judicial.go.cr.

Moreover, the number of corruption cases opened between November 2019 and October 2021, due to anonymous complaints, is 16.

Awareness regarding the channels to file anonyms complaints and regarding the fact that there does not need to be certainty in the allegations in order to be able to file a report are also being tackled by the National Strategy of Integrity and Prevention of Corruption. This action can be confirmed on page 56 and it is titled 3.2.4 Carry out a massive communication campaign to disseminate the anonymous complaint mechanisms and requirements, before the Body of Judicial Investigation (OIJ).

(Refer to recommendation 1(a) for the National Strategy of Integrity and Prevention of Corruption)

Text of issue for follow-up 17(b):

Whether Costa Rica has created an export credit programme [2009 Recommendation XII and 2019 Export Credit Recommendation].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Up to November 2021, Costa Rica has not created an export credit programme.

Text of issue for follow-up 17(c):

Whether Costa Rica has created an ODA programme [2009 Recommendation XI(ii) and 2016 ODA Recommendation].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Up to November 2021, Costa Rica has not created an ODA programme.

Text of issue for follow-up 17(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].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

At the present moment, Costa Rica does not have cases whose investigation has been completed, thus, it is not possible to provide evidence regarding this recommendation. We will keep you informed of the on-going investigations regarding foreign bribery.

Text of issue for follow-up 17(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].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

At the present moment, Costa Rica does not have cases whose investigation has been completed, thus, it is not possible to provide evidence regarding this recommendation. We will keep you informed of the on-going investigations regarding foreign bribery.

Text of issue for follow-up 17(f):

Whether the foreign bribery offence under Article 55 LAC covers non-pecuniary bribes [Convention Article 1].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

At the present moment, Costa Rica does not have cases whose investigation has been completed, thus, it is not possible to provide evidence regarding this recommendation. We will keep you informed of the on-going investigations regarding foreign bribery. However, there are on-going domestic corruption cases where non-pecuniary bribes were allegedly given.

Text of issue for follow-up 17(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].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There are two on-going cases of domestic corruption, both declared as organized crime, with extensive coverage by the press, where the owners of the companies, with the highest managerial level and authority, provided orders and money to middle and lower managers for the commitment of crimes of corruption. Currently the highest-level managerial authority are under custody (pre-trial detention), with an approximate loss of about \$ 125 million. You may consult the news in the following links:

<https://www.prensa.com/mundo/empresario-carlos-cerdas-de-meco-seguira-presos-en-costa-rica/>

<https://delfino.cr/2021/10/melida-solis-y-carlos-cerdas-pasaran-cinco-meses-mas-en-prision-preventiva>

There is also a recent case that involves several mayors in the country, where the managers and owners of the investigated company are also being held responsible. These crimes were also directed and authorized by the highest-level managerial authority and executed by lower-level personnel. You may consult the news in the following links:

<https://www.elmundo.cr/costa-rica/fiscalia-pedira-medidas-cautelares-contra-alcaldes-implicados-en-caso-diamante/>

<https://www.crhoy.com/nacionales/8-puntos-claves-para-entender-el-caso-diamante/>

Additionally, since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed

before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 165 to 172 of Annex 1.

Text of issue for follow-up 17(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].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

At the present moment, Costa Rica does not have cases whose investigation has been completed, thus, it is not possible to provide evidence regarding this recommendation. We will keep you informed of the on-going investigations regarding foreign bribery

Text of issue for follow-up 17(i):

The burden of proof for successor liability under Article 3 CLL [Convention Article 2; 2009 Recommendation III(ii) and Annex I.B].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

According to articles 63, 67 and 92 of the CPP, in Costa Rica the burden of proof always relies on the Public Prosecution Service. At the present moment, Costa Rica does not have cases whose investigation has been completed, thus, it is not possible to provide evidence regarding this recommendation. We will keep you informed of the on-going investigations regarding foreign bribery.

Text of issue for follow-up 17(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].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In the case of Costa Rica, the compliance model is not envisaged as a defence to eliminate the liability of legal persons. Only its effective implementation would allow companies to have an attenuation of the penalty.

For greater clarity, in the proposed bill 22428 (Annex 1), an amendment was incorporated to article 4 of Law 9699, according to which i) the liability criterion of “commission by omission” of article 2 of the enacted Law, is included; and ii) the word “gravely” is eliminated to further clarify that it is not a defence and consequently an implemented corporate model will not except a person from liability. Therefore, by such modification we clarify that persons will be held criminally liable for not having prevented the commission of crimes by their officials, whether they are high-ranking or not, or through intermediaries.

In order to access more information regarding the bill and its progress, kindly refer to Annex 1. In order to view the legal reform that will tend to this recommendation refer to lines 165 to 172 of Annex 1.

Text of issue for follow-up 17(k):

Whether the available fines for SMEs are effective, proportionate and dissuasive [Convention Article 3].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Since the publication of the Phase 2 Report, Costa Rican authorities have worked in an interinstitutional manner to execute an integral and articulated response to the recommendations set by the Working Group on Bribery. One of the biggest results of this taskforce is a draft bill that was filed before Congress by the Ministry of Justice, on March 9th, 2021. The draft bill tends to most of the recommendations in the Phase 2 Report, it is an ambitious effort to continue to deliver the reforms that will allow us to attain best practices in the domain of the fight against corruption and, particularly, against foreign bribery. In order to access more information regarding the bill and its progress, kindly refer to Annex 1.

In order to view the legal reform that will tend to this recommendation refer to lines 173 to 183 of Annex 1.