

# EXPORTING CORRUPTION

Progress report 2020: Assessing enforcement of  
the OECD Anti-Bribery Convention

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## **Exporting Corruption**

Progress Report 2020: Assessing Enforcement of the OECD Anti-Bribery Convention

Lead author: Gillian Dell

Contributors: Guilherme France (lead researcher), Jane Ellis, Jen Pollakusky, Andrew McDevitt and all the country experts

Reviewers: Adam Földes, Sara Brimbeuf, Susan Hawley, Julius Hinks, Aram Khaghaghordyan, Anna Lutz, Maira Martini, Teresita Chavez Rodriguez, Johannes Wendt

Text editor: Stephanie Debere

Cover: Travel mania/Shutterstock.com

Thanks to Thomas Chalaux, OECD and the International Senior Lawyers Project

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Full report ISBN: 978-3-96076149-5

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# EXECUTIVE SUMMARY

Bribery of foreign public officials has huge costs and consequences for countries across the globe and those costs have become more severe during the COVID-19 pandemic. With so many cases of foreign bribery occurring in health care, we cannot afford for corruption to cost any additional lives.

Transparency International's 2020 report, *Exporting Corruption*, rates the performance of 47 leading global exporters, including 43 countries that are signatories to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention, in cracking down on bribery of foreign public officials by companies operating abroad.

The report shows how well – or poorly – countries are following the rules.

More than 20 years after the Convention was adopted, most countries still have a long way to go in meeting their obligations. In fact, active enforcement has significantly decreased since our last report in 2018.

## IN A NUTSHELL



47

**COUNTRIES ANALYSED**



83%

**OF GLOBAL EXPORTS AFFECTED**

## Top cases of foreign bribery

More than a decade ago, increased enforcement against foreign bribery, especially in the United States, exposed egregious, multi-country bribery schemes of companies like Siemens and BAE Systems to the detriment of the people in the countries affected.

Enforcement uncovered large-scale bribery of high-level officials by companies like Halliburton, enabling them to win major infrastructure projects. These cases sent shockwaves worldwide.

Yet, despite these scandals, bribery continues to be used by companies from major exporting countries to win business in foreign markets.<sup>1</sup> In recent years, multinationals like Airbus, Ericsson, Odebrecht, Rolls Royce and many more have been caught red-handed in systematic and widespread bribery schemes.

Corruption in international business transactions undermines government institutions, misdirects public resources, and slows economic and social development. It distorts cross-border investment, deters fair competition in international trade and discriminates against small and medium-sized enterprises.

## Foreign bribery during COVID-19

Those costs have increased during the COVID-19 pandemic. The pervasive cross-border corruption in health care will cost additional lives unless robustly countered.

But the dangers of corruption during COVID-19 go beyond the health sector. Triggered by the pandemic, a global economic crisis is also depleting public treasuries.

Wasting precious public resources on corruption-fuelled deals with unscrupulous companies and intermediaries is even more deadly and damaging than before.

As companies' profits shrink, the temptation will grow for them to win business in foreign markets at any cost and by any means. The states where multinationals are headquartered may hold back foreign bribery enforcement on short-sighted economic grounds.

The need for robust foreign bribery enforcement is as urgent today as when the OECD Anti-Bribery Convention was first adopted in 1997. Now more than ever, we need stronger foreign bribery

enforcement and international cooperation and coordination.

## About the report

*Exporting Corruption* is an independent assessment of the enforcement of the OECD Anti-Bribery Convention (short for OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions), which requires parties to criminalise bribery of foreign public officials and introduce related measures. This is the thirteenth edition of the report.

Country implementation of the Convention is monitored in successive phases by the OECD Working Group on Bribery (OECD WGB), which is made up of representatives of the 44 signatories to the OECD Anti-Bribery Convention. The reviews also cover implementation of the 2009 Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Recommendation). The 2009 Recommendation is being updated by the OECD WGB.

### Classification

The report classifies countries into four enforcement categories: Active, Moderate, Limited and Little or no Enforcement.

Countries are scored based on enforcement performance at different stages, namely the number of investigations commenced, cases opened and cases concluded with sanctions over a four-year period (2016-2019).

Different weights are assigned according to the stages of enforcement and the significance of cases.

Country share of world exports is also factored in.

The report covers 43 of the 44 parties to the Convention. Iceland is not included, due to its small share of global exports. In addition, the report assesses foreign bribery enforcement in China, Hong Kong SAR, India and Singapore.

While not part of the OECD Convention, China is the world's leading exporter, with nearly 11 per cent of global exports. The others are also major exporters, each with a share of approximately 2 per cent of global trade.

All four countries are also signatories of the UN Convention against Corruption (UNCAC), which requires countries to criminalise foreign bribery. The analysis of Hong Kong SAR is separate from China, as it is an autonomous territory, with a different legal system and its export data is compiled separately.

The OECD Convention was adopted in 1997 to address the fact that:

**Bribery is a widespread phenomenon in international business transactions...which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions.**

OECD Convention preamble

The report assesses enforcement performance and highlights key gaps in information about enforcement, as well as slow country progress in introducing central public beneficial ownership registers, a crucial tool for detecting, investigating and preventing foreign bribery and related money laundering.

In addition, the report examines the critical issues of victims' compensation, international cooperation, parent-subsidiary liability and country performance in improving legal frameworks and enforcement systems to address foreign bribery.

## Key findings

### 1. Active enforcement is down significantly.

Only four countries actively enforce against foreign bribery, which represents 16.5 per cent of global exports, a decrease of more than one-third (39 per cent) since 2018.

### 2. Moderate enforcement has more than doubled. Nine countries moderately enforce

against foreign bribery, more than double the four countries in 2018. This represents an increase in share of world exports from 3.8 per cent to 20.2 per cent since 2018.

### 3. No country is immune to exporting foreign bribery. Nearly every country has companies, employees, agents, intermediaries and facilitators involved in foreign bribery or related money laundering.

### 4. Most countries fail to publish adequate enforcement information. Most countries do not publish national statistics on foreign bribery enforcement. Courts often do not publish judgements and information on non-trial resolutions is frequently inadequate.

### 5. Lack of public information on beneficial ownership hinders enforcement. Results show very slow progress in establishing central public beneficial ownership registers of companies and trusts. Such registers are key to prevention, detection and investigation of foreign bribery.

### 6. Compensation of victims is rare. The countries, groups and individuals harmed by foreign bribery rarely receive compensation, and most confiscated proceeds of foreign bribery wind up in the state treasuries of the countries exporting corruption.

### 7. International cooperation is increasing, but significant obstacles remain. Insufficient or incompatible legal frameworks, limited resources and expertise, lack of coordination, jurisdictional competition and long delays hinder progress in international cooperation.

### 8. Weaknesses in legal frameworks and enforcement systems persist. Despite some improvements, significant weaknesses in laws and institutions hamper enforcement in nearly every country. Problems include weak or non-existent whistleblower protection, low sanctions, inadequate training of enforcement officials, insufficient resources and limited independence of enforcement authorities.

### 9. Major non-OECD Convention exporters still fail to enforce. There is inaction in China, Hong Kong SAR and India against foreign bribery and related money laundering. Singapore has taken only small steps.

## Recommendations

Countries must do more to enforce against foreign bribery, including those that are signatories to the OECD Anti-Bribery Convention, as well as other major global exporters. Key measures to improve enforcement include:

1. **Ensure transparency of enforcement information.** Countries should publish up-to-date statistics on all stages of foreign bribery enforcement as well as on mutual legal assistance (MLA) requests. They should also publish court judgements and extensive information on non-trial resolutions, as called for by the OECD WGB. Publicly available statistics are key to determining how the enforcement system is functioning, and case information is crucial for assessing effectiveness and fairness. The OECD WGB should update its 2009 Recommendation to include a recommendation on transparency of enforcement information, carry out a horizontal assessment of the issue across all parties and develop guidance for countries.
2. **Expand the OECD WGB's annual report and create a public database of enforcement information.** The OECD WGB's annual enforcement data should include updated year-on-year data on all stages of foreign bribery enforcement and cover new developments and challenges. Given its special access to statistical data and case information, the OECD WGB should also create a public database of foreign bribery enforcement information to assist law enforcement efforts across countries, victims' claims, and investigative work by journalists and civil society activists.
3. **Improve beneficial ownership transparency.** To enhance prevention, detection and investigation of foreign bribery, countries should establish public central registers containing beneficial ownership information on companies and trusts and introduce sanctions for individuals and companies that do not comply. The OECD WGB should update its 2009 Recommendation to include a recommendation on this subject and assess performance in country reviews.
4. **Introduce victims' compensation as standard practice.** The OECD WGB should develop guidelines to assist exporting countries in granting compensation to victims in foreign bribery cases and countries should implement them. These should include timely notice to victims, recognition of a broad class of victims and wide range of harms, the possibility of claims by non-state victims and their representatives, and standards for the transparent and accountable return of assets. The OECD WGB should update its 2009 Recommendation accordingly and OECD WGB country reviews should evaluate country compensation arrangements.
5. **Improve international cooperation.** Major global exporters should improve their legal frameworks, invest the necessary resources and build the required expertise for international cooperation. They should respond to MLA requests in a timely fashion and use joint investigation teams for cross-border investigations. They should also engage early with the affected countries. The OECD WGB should conduct a horizontal assessment of MLA performance and coordination of multi-jurisdictional cases and settlements, in collaboration with the UN Office on Drugs and Crime (UNODC) and other relevant bodies.
6. **Improve and expand international structures for cooperation.** The OECD WGB should facilitate discussions on expanding existing regional and international structures and bodies or creating new ones to improve international cooperation in enforcement. The International Anti-Corruption Coordination Centre, Eurojust and the European Public Prosecutor's Office all provide examples to build on.
7. **Explore increased liability of parent companies for subsidiaries.** The OECD WGB and individual countries should conduct an in-depth review of established law and practice in this area. To help improve anti-corruption compliance, they should consider introducing parent company responsibility for taking adequate measures to prevent foreign bribery and related money laundering in all subsidiaries and controlled entities. At a minimum, they should require that ownership chains are declared in foreign bribery cases.
8. **Address weaknesses in laws and enforcement systems and call out non-**

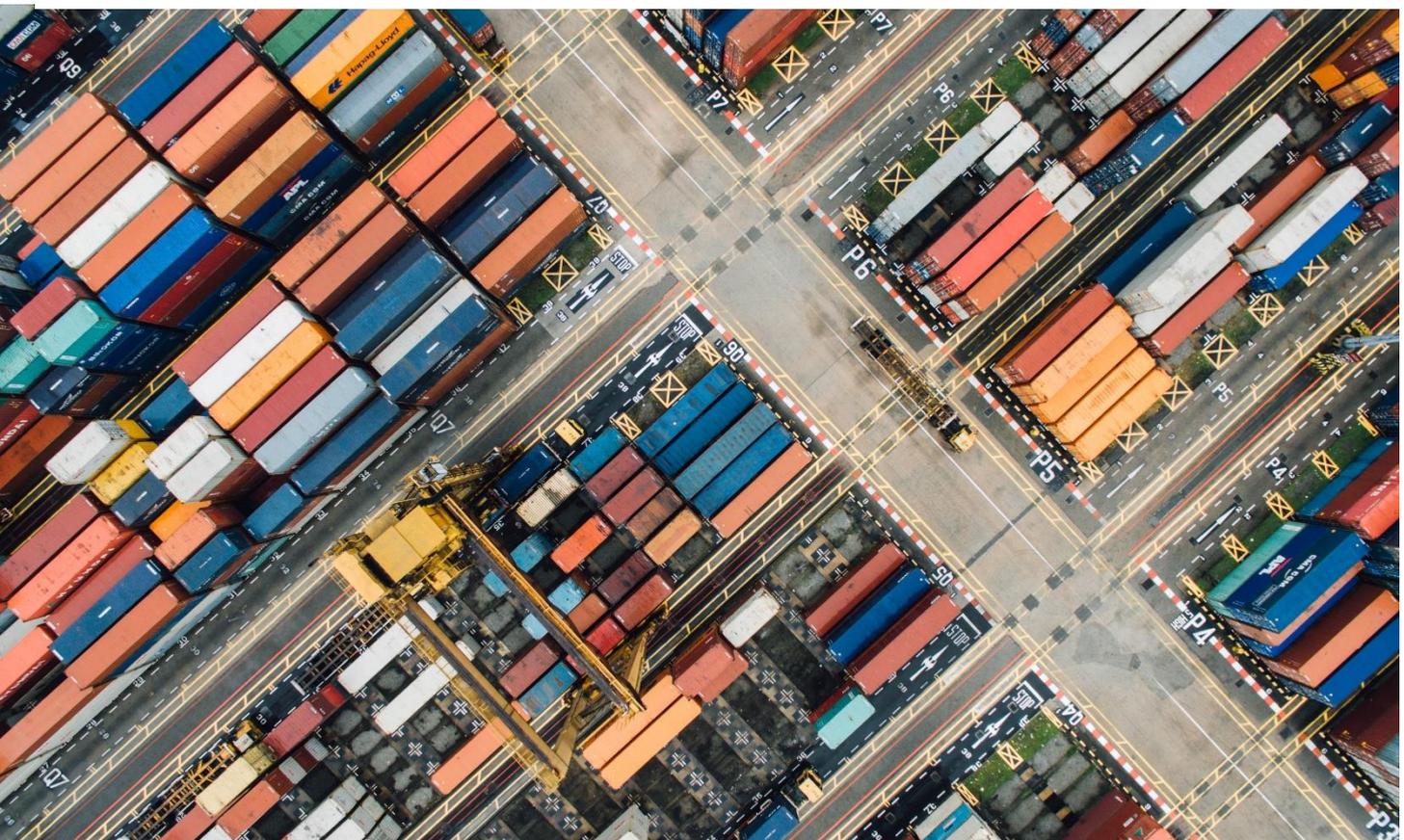
**compliance.** Countries should address weaknesses hindering enforcement, including relating to money laundering, accounting offences and confiscation. They should discuss the results of OECD WGB reviews with national stakeholders and present plans to address shortcomings. The OECD WGB should continue to conduct follow-up, make public statements and carry out high-level visits to countries that fail to enforce laws against foreign bribery and implement OECD WGB recommendations. It should coordinate with other anti-corruption review mechanisms, such as the UNCAC Implementation Review Mechanism and the Council of Europe's Group of States against Corruption (GRECO), as well as the Financial Action Task Force, to point out country inadequacies. It should also consider, as a last resort, a series of steps towards suspending members that persistently fail to pursue foreign bribery allegations over a period of years.

- 9. Establish high standards for non-trial resolutions.** Countries should ensure that non-trial resolutions meet standards of transparency, accountability and due process, with clear guidelines and judicial review. Non-trial resolutions should provide effective, proportionate and dissuasive sanctions and

those who paid and received the bribes should be named in the published documents. The OECD WGB should include a new recommendation on non-trial resolutions in its revisions to the 2009 Recommendation.

- 10. Enlist wide support to promote foreign bribery enforcement in non-OECD Convention countries.** The OECD WGB and member countries should raise enforcement issues with respect to non-OECD Convention countries at the UN, G20 and in other international forums. This should include issues on both the supply and demand side.

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# MAP AND ENFORCEMENT TABLE

## GLOBAL MAP OF ENFORCEMENT LEVELS



**TABLE 1: INVESTIGATIONS AND CASES (2016 - 2019)**

Country	% Share of exports Average 2016- 2019*	Investigations commenced (weight of 1)				Major cases commenced (weight of 4)				Other cases commenced (weight of 2)			
		2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019
<b>Active Enforcement (4 countries) 16.5% global exports</b>													
US	10.4	9	45	7	11	1	5	5	8	1	1	2	1
UK	3.6	7	12	9	7	2	1	1	1	1	0	1	0
Switzerland	2.0	14	14	7	4	0	0	0	1	0	1	0	1
Israel	0.5	3	5	2	0	1	0	0	0	0	0	0	0
<b>Moderate Enforcement (9 countries) 20.2% global exports</b>													
Germany	7.6	8	9	6	4	1	1	0	0	3	2	2	5
France	3.5	6	6	6	6	2	1	3	0	0	0	0	1
Italy	2.6	11	10	0	2	1	1	0	1	3	1	1	1
Spain	2.0	2	2	4	3	1	3	0	3	0	1	0	0
Australia	1.3	5	3	3	3	0	0	1	0	0	1	1	0
Brazil	1.1	3	3	9	9	0	0	0	0	0	0	0	0
Sweden	1.1	3	2	2	4	0	2	0	0	0	0	0	0
Norway	0.6	0	1	1	0	0	0	0	0	0	0	0	0
Portugal	0.4	3	0	0	1	0	1	0	0	0	0	0	0
<b>Limited Enforcement (15 countries) 9.6% global exports</b>													
Netherlands	3.1	4	4	4	4	0	0	0	0	1	1	0	0
Canada	2.3	0	0	0	2	0	0	0	0	1	0	0	0
Austria	1.0	0	1	1	0	0	0	0	1	1	1	0	0
Denmark	0.8	4	1	1	4	0	0	0	0	0	0	0	0
South Africa**	0.4	4	4	3	3	0	0	0	0	0	0	0	1
Argentina**	0.3	3	5	2	0	0	0	0	0	0	1	0	0
Chile**	0.3	3	7	1	0	0	0	0	0	0	0	0	0
Greece	0.3	0	1	0	0	0	0	0	0	1	0	0	0
New Zealand**	0.2	4	1	2	0	0	0	0	0	0	0	0	0
Colombia**	0.2	5	5	5	5	0	0	0	0	0	0	0	0
Lithuania**	0.2	2	0	1	0	0	0	0	0	0	0	0	0
Slovenia	0.2	0	0	1	1	0	0	0	0	0	0	0	0
Estonia**	0.1	0	1	0	0	0	0	0	0	0	0	1	0
Costa Rica**	0.1	0	0	0	2	0	0	0	0	0	0	0	0
Latvia**	0.1	3	0	1	2	0	0	0	0	0	0	0	0
<b>Little or No Enforcement (19 countries) 36.5% global exports</b>													
China***	10.7	0	0	0	0	0	0	0	0	0	0	0	0
Japan	3.8	0	0	0	1	0	0	0	0	0	0	1	0
Korea (South)	2.9	0	1	0	0	0	0	0	0	1	0	1	0
Hong Kong***	2.3	0	0	0	0	0	0	0	0	0	0	0	0
India***	2.1	0	0	0	0	0	0	0	0	0	0	0	0
Mexico	2.0	0	0	3	0	0	0	0	0	0	0	0	0
Ireland	1.9	0	0	1	0	0	0	0	0	0	0	0	0
Russia	1.9	0	0	0	1	0	0	0	0	0	0	0	0
Singapore***	1.8	0	1	0	0	0	0	0	0	0	0	0	0
Belgium	1.8	1	4	0	0	0	0	0	0	0	0	0	0
Poland	1.3	1	1	1	0	0	0	0	0	0	0	0	0
Turkey	0.9	0	0	0	1	0	0	0	0	0	0	0	0
Czech Republic	0.8	0	0	1	0	0	0	0	0	0	0	1	0
Luxembourg	0.6	0	0	0	0	0	0	0	0	0	0	0	0
Hungary	0.5	0	0	0	0	0	0	0	0	0	0	0	0
Finland	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Slovakia	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Peru	0.2	0	0	0	0	0	0	0	0	0	0	0	0
Bulgaria	0.2	0	0	0	0	0	0	0	0	0	0	0	0

Country	Major cases concluded with subst. sanctions (weight of 10)				Other cases concluded with sanctions (weight of 4)				Total points	Minimum points required for enforcement levels depending on share of world exports		
	2016	2017	2018	2019	2016	2017	2018	2019	Past 4 years	Active	Moderate	Limited
<b>Active Enforcement (4 countries) 16.5% global exports</b>												
US	30	15	22	26	10	8	10	9	1236	416	208	104
UK	3	2	1	2	1	0	0	1	147	144	72	36
Switzerland	2	1	0	2	1	2	1	3	125	80	40	20
Israel	1	0	1	0	0	0	0	1	38	20	10	5
<b>Moderate Enforcement (9 countries) 20.2% global exports</b>												
Germany	1	1	2	1	9	10	10	12	273	304	152	76
France	0	0	1	2	0	0	2	4	104	140	70	35
Italy	1	0	0	0	1	1	0	1	69	104	52	26
Spain	0	0	0	0	0	1	0	0	45	80	40	20
Australia	0	0	0	0	0	1	1	1	34	52	26	13
Brazil	1	0	0	0	0	0	2	0	42	44	22	11
Sweden	0	0	0	0	1	0	0	0	23	44	22	11
Norway	0	1	0	0	0	0	0	1	16	24	12	6
Portugal	0	0	0	0	0	0	0	0	8	16	8	4
<b>Limited Enforcement (15 countries) 9.6% global exports</b>												
Netherlands	1	1	0	0	1	0	0	0	44	124	62	31
Canada	0	0	1	2	0	0	0	1	38	92	46	23
Austria	0	0	0	0	1	0	0	1	18	40	20	10
Denmark	0	0	0	0	0	0	0	0	10	32	16	8
South Africa**	0	0	0	0	0	0	0	0	16	16	8	4
Argentina**	0	0	0	0	0	0	0	0	12	12	6	3
Chile**	0	0	0	0	0	0	1	0	15	12	6	3
Greece	0	0	0	0	0	0	0	0	3	12	6	3
New Zealand**	0	0	0	0	0	0	0	0	7	8	4	2
Colombia**	0	0	0	0	0	0	1	0	24	8	4	2
Lithuania**	0	0	0	0	0	0	0	0	3	8	4	2
Slovenia	0	0	0	0	0	0	0	0	2	8	4	2
Estonia**	0	0	0	0	0	0	1	0	7	4	2	1
Costa Rica**	0	0	0	0	0	0	0	0	2	4	2	1
Latvia**	0	0	0	0	0	0	0	0	6	4	2	1
<b>Little or No Enforcement (19 countries) 36.5% global exports</b>												
China***	0	0	0	0	0	0	0	0	0	428	214	107
Japan	0	0	0	0	0	0	0	1	7	152	76	38
Korea (South)	0	0	0	0	3	1	1	0	25	116	58	29
Hong Kong***	0	0	0	0	0	0	0	0	0	92	46	23
India***	0	0	0	0	0	0	0	0	0	84	42	21
Mexico	0	0	0	0	0	0	0	0	3	80	40	20
Ireland	0	0	0	0	0	0	0	0	1	76	38	19
Russia	0	0	0	0	0	0	0	0	1	76	38	19
Singapore***	0	1	0	0	0	0	0	0	11	72	36	18
Belgium	0	0	0	0	0	0	0	0	5	72	36	18
Poland	0	0	0	0	0	0	0	0	3	52	26	13
Turkey	0	0	0	0	0	0	0	0	1	36	18	9
Czech Republic	0	0	0	0	0	0	0	0	3	32	16	8
Luxembourg	0	0	0	0	1	0	0	0	4	24	12	6
Hungary	0	0	0	0	0	0	0	0	0	20	10	5
Finland	0	0	0	0	0	0	0	0	0	16	8	4
Slovakia	0	0	0	0	0	0	0	0	0	16	8	4
Peru	0	0	0	0	0	0	0	0	0	8	4	2
Bulgaria	0	0	0	0	0	0	0	0	0	8	4	2

\* OECD figures

\*\*Without any major case commenced during the past four years a country does not qualify as being a moderate enforcer, and without a major case with substantial sanctions being concluded in the past four years a country does not qualify as being an active enforcer

\*\*\*Non-OECD Convention country.

# GLOBAL HIGHLIGHTS

This report analyses foreign bribery enforcement in 47 countries and classifies each country in one of four enforcement categories: Active, Moderate, Limited, and Little or no.

Only four of the 47 countries surveyed actively enforce against foreign bribery and only nine countries moderately enforce against companies that pay bribes abroad.

Nearly three-quarters of all countries have limited to little or no enforcement of foreign bribery cases, making up nearly half of all global exports.

This includes half of all G20 countries and eight of the top 15 global exporters.

Our research shows that between 2016 and 2019, the countries opened at least 421 investigations and 93 cases, and concluded 244 cases with sanctions, including 125 major cases concluded with substantial sanctions.

## ENFORCEMENT LEVEL



## Improvers and decliners

Active enforcement against foreign bribery has significantly decreased by more than one-third since 2018.

In 2020, only four out of 47 countries, making up 16.5 per cent of all global exports, actively enforced against foreign bribery, compared to seven countries and 27 per cent of global exports in 2018. The **United States**, the **UK**, **Switzerland** and **Israel** maintained their positions as active enforcers.

Six countries, accounting for 6.8 per cent of global exports, have improved their level of enforcement since 2018. These are **France**, **Spain**, **Denmark**, **Colombia**, **Slovenia** and **Estonia**. While no countries moved up to active enforcement, two countries – France and Spain – moved to moderate enforcement, with Spain jumping two levels from little or no enforcement.

In France, the Sapin II legislation introduced in 2017 gave enforcement authorities new tools. In Spain, a rising focus on anti-corruption efforts boosted enforcement.

Four countries – Colombia, Denmark, Estonia and Slovenia – improved from little or no enforcement to

limited enforcement. Denmark brought no cases and its improvement is due to an increase in the number of its investigations. The same holds for Slovenia, which increased the number of its investigations from one to two.

Enforcement levels in four countries, accounting for 11.3 per cent of global exports, have declined since 2018.

Two major exporters, **Germany** and **Italy**, dropped from active to moderate enforcement, as did **Norway**. **Hungary** declined from limited to little or no enforcement.

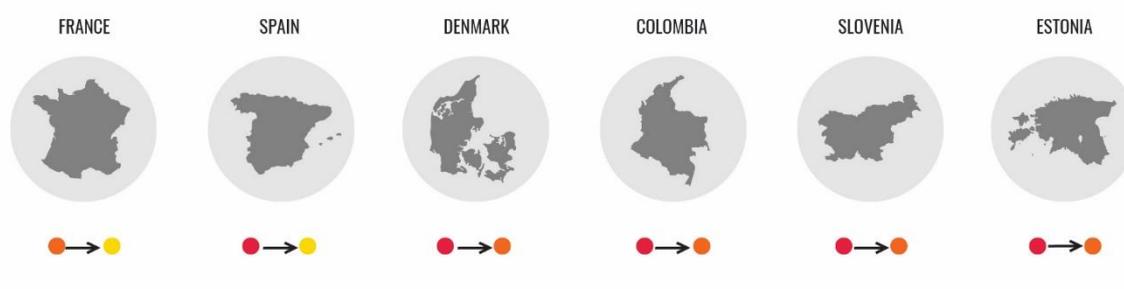
Germany's strong anti-bribery enforcement against individuals was not matched by comparably strong enforcement against companies.

In Italy, despite important new laws and a strict anti-corruption legal framework, lack of resources undermined the capacity of enforcement authorities to pursue and punish foreign bribery. Norway saw a string of acquittals, which contributed to its decline.

**Peru**, **Costa Rica** and **Latvia** are classified for the first time in this report, the former in little or no enforcement and the latter two in limited enforcement.

## IMPROVERS AND DECLINERS

### IMPROVERS



### DECLINERS



# TRANSPARENCY OF ENFORCEMENT INFORMATION

Our assessment shows that most OECD Convention countries are still failing to make foreign bribery enforcement information transparent. This includes statistical data and information on court judgements or settlements.

The OECD WGB has repeatedly commented in country reviews on the importance of published statistics on foreign bribery enforcement and public information about concluded cases.

The OECD WGB Phase 4 review questionnaire requires countries to provide data covering each stage of the foreign bribery enforcement process.<sup>2</sup> This shows the kind of data that countries should regularly collect and publish.

Yet public information about enforcement is lacking.

## Importance of public information on enforcement

Compiling statistics on foreign bribery enforcement and making these publicly available is essential to enable assessment of performance of the enforcement system, as the OECD WGB has pointed out in several country reviews.<sup>3</sup>

Public information about concluded cases makes it possible to determine whether sanctions for foreign bribery are effective, proportionate and dissuasive. Public information helps raise awareness of the risks of foreign bribery and how companies can manage those risks.<sup>4</sup>

Transparency about cases and offenders also facilitates debarment and other non-criminal sanctions, civil actions and criminal pursuit of implicated foreign public officials, as well as

research and scrutiny by oversight agencies, journalists, academics and civil society groups.<sup>5</sup>

Naming offenders and the countries where bribes are paid acts as a deterrent and highlights which companies have failed to manage risks. Publishing details of corruption schemes is essential to better understand the loopholes and inadequacies in the enforcement framework that need to be addressed.

This information also raises awareness of the grave impacts of foreign bribery, ranging from detrimental effects on government budgets and services to interference with political party financing.

In most cases, the public interest in knowing details of case dispositions outweighs the defendants' right to privacy or the public interest in rehabilitation of offenders. Naming perpetrators both in the courtroom and in written case resolutions is a basic element of due process.

## Country in focus: Colombia

In Colombia, the Superintendency of Corporations imposed a 5 billion peso (US\$1.8 million) fine in 2018 on water conglomerate Inassa over charges of foreign bribery, stating that the firm allegedly either paid or offered bribes to public officials in Ecuador in 2016. As part of the decision, the regulator required the company to publish an extract of its ruling "in a medium of wide circulation and in a visible part of its website".<sup>6</sup>

## Information is incomplete

Most OECD Convention countries still fail to publish foreign bribery enforcement information, including statistical data and information on charges filed and outcomes in cases of foreign bribery and related money laundering.

As a result, in many countries the best sources of information about investigations and cases are independent media outlets and investigative journalists.

Enforcement authorities in some countries publish annual reports on anti-bribery enforcement, with partial data and brief, selected case information. Others issue press releases or run databases with short summaries of the status of cases. These are helpful, but not a substitute for statistics and comprehensive published information on cases commenced and concluded.

For example, in **Canada**, an annual report is prepared for the House of Commons. In **France, Latvia, Mexico, Poland** and **Spain**, enforcement authorities also publish annual reports that highlight pending investigations and cases.

In some countries, like **Lithuania**, the **UK** and the **United States**, enforcement authorities regularly issue press releases about charges filed and outcomes.

In **France**, and the **Netherlands**, prosecutors also often issue press releases in significant foreign bribery cases, including when a settlement is concluded, sometimes naming the company involved.

Both the Prosecutor's Office and the Office of the Comptroller General in **Brazil** publish a considerable amount of information in online databases about pending and concluded cases. In **India**, a non-OECD Convention country, the Central Bureau of Investigation website provides case-related information about different enforcement stages.

## Statistics are not published

OECD Convention countries provide annual data on cases concluded with sanctions to the OECD WGB, which is published in the OECD WGB's annual enforcement data reports.<sup>7</sup> For most countries, this is the only official data on foreign bribery enforcement which is publicly available.

While some countries publish enforcement statistics, most fail to publish separate statistics on foreign bribery enforcement.

In some countries, like **Argentina**, the data on foreign bribery can be obtained on request. In others, it is not compiled. In **Bulgaria**, the Supreme Judicial Council specifically mandated in 2016 separate reporting of foreign bribery data by the courts, but in practice it is difficult to extract this data from public sources.

The example of **Chile** is notable. The Public Prosecutor's Office and the Financial Analysis Unit publish detailed statistics on the number of crimes reported and investigated, cases opened and cases concluded on a quarterly and annual basis. This includes separate data on foreign bribery enforcement.

## Court decisions are often hard to access

Almost all countries provide information on judgements at some court levels.

Countries providing free online access to court decisions at all levels include **Australia, Bulgaria, Estonia, Lithuania, Mexico, Slovakia** and **Spain**, although the information is often anonymised, which substantially reduces the benefits of access.

Extensive online access is also available in the **Czech Republic, Israel, South Korea, Poland, Russia, South Africa** and **Switzerland**. In non-OECD Convention countries, **China** offers considerable public access through three databases of court cases.

In other countries there are limitations on access to court decisions. In **Canada**, for example, court judgements are only available online by subscription, for a restricted audience. In other countries they can be obtained only in person from the relevant court. In many countries, only decisions of higher courts can be accessed. In **Peru**, no court decisions are available to the public.

Information about charges filed in foreign bribery cases is even more difficult to access than case outcomes – unless prosecutors choose to make announcements based on the public interest, as in countries such as **France**, the **UK** and the **United States**. Another source of such information is company filings with securities oversight bodies like the US Securities and Exchange Commission.

## Information about non-trial resolutions is restricted

Non-trial resolutions or settlements can help enforcement authorities and companies to expedite case dispositions and reduce costs. These benefits should be offered in a manner that is transparent and accountable. Transparency of non-trial resolutions is especially important when they are used without judicial oversight, as occurs in several OECD Convention countries.<sup>8</sup>

In practice, there is a lack of adequate access to information about non-trial resolutions in most of the countries surveyed that use them.

The **United States** publishes extensive information about deferred prosecution agreements, but not about non-prosecution agreements and declinations.

At federal level in **Switzerland**, the Office of the Attorney General prepares anonymised, redacted extracts of summary penalty orders, which can be accessed on-site with some restrictions. In the **Netherlands** settlement agreements are not published in full.

**“ Lack of publicity casts doubt on the quality of the justice done and can give the impression of allowing certain accused persons to enjoy preferential treatment without the fairness of that treatment being verifiable**

OECD Phase 4 Report on Switzerland, 2018<sup>9</sup>

## The OECD WGB could help

The OECD WGB collects statistics and case information from the parties to the OECD Anti-Bribery Convention during reviews and at its *tour de table*. It could play an important role in increasing enforcement transparency by publishing year-on-year statistics about all stages of foreign bribery enforcement (investigations, cases commenced, cases concluded) in its annual enforcement data report. It is also uniquely placed to establish a database of information about foreign bribery enforcement, including documents relating to cases commenced and concluded, as well as public information on investigations.

### Country in focus: Brazil

In Brazil, leniency agreements resulting from the Operation *Lava Jato* investigations<sup>10</sup> are only partially accessible to the public in heavily redacted, anonymised versions providing little information.<sup>11</sup>

The annexes where the foreign bribery conduct is detailed remain under seal. This hinders public understanding of the offences committed and impedes independent evaluation of the proportionality and dissuasive effect of sanctions imposed.

Enforcement authorities and members of the public in the affected countries are deprived of key information that would help them to follow up on the domestic bribery cases.

Some of the leniency agreements, such as the one with Odebrecht, include confidential provisions requiring implicated companies to seek out officials in countries where they bribed to settle pending matters.<sup>12</sup>

Such arrangements foster opaque deal-making and deprive the public of the information needed to pressure any reluctant law enforcement officials into fully investigating domestic aspects of the corruption scheme.

# BENEFICIAL OWNERSHIP TRANSPARENCY

Secret ownership of companies and trusts is an obstacle to prevention, detection and investigation of corrupt transactions, including laundering of the proceeds of crime in foreign bribery cases.

Beneficial ownership refers to the natural person or persons who ultimately own or control an asset. As recognised by the OECD WGB, public central registers of the beneficial ownership of companies and trusts would reduce bribery and money laundering opportunities and enhance detection and investigation of foreign bribery and related money laundering cases.<sup>13</sup> Yet opaque ownership is still allowed in most of the countries covered in this report, creating obstacles to enforcement.<sup>14</sup>

## Shell companies facilitate foreign bribery

Foreign bribery cases over the last two decades reveal frequent use of shell companies to assist in the concealment of bribe payments and kickbacks.<sup>15</sup> Multinationals using shell companies have included Airbus, Odebrecht, Fresenius, Mobile TeleSystems (MTS) and SNC Lavalin, among many others.

The International Consortium of Investigative Journalists (ICIJ) identified 17 shell companies used in connection with the Saipem deal in Algeria alone.<sup>16</sup>

## Public central registers would help

A Transparency International study in 2019 found that in 26 countries evaluated, enforcement authorities relied on reporting entities, such as financial institutions, corporate service providers, lawyers, notaries, accountants and real estate

agents, as the main source of beneficial ownership information. This presented significant obstacles to tracking transactions and tracing culprits. The study also found that countries performed better in investigations when they had a central beneficial ownership register.<sup>17</sup>

Public access to central registers makes them more useful and accurate by enabling investigators to gain speedier access and allowing watchdog organisations to monitor the information.

## Progress is slow

The EU's 4th Anti-Money Laundering Directive of 2015 requires all EU countries to create a central register accessible to competent authorities and to members of the public with a legitimate interest.

The deadline for implementation was June 2017. However, as of June 2020, infringement procedures were pending against 13 EU member states due to the lack of or delay in the notification of national transposition measures or their incompleteness.<sup>18</sup>

The EU's 5th Anti-Money Laundering Directive expanded previous obligations, broadening the group of entities subject to the rule and those entitled to inspect the information contained in the register. The directive requires public access to the register for EU-based companies and access for competent authorities to the register of trusts. While the deadline for implementation was January 2020,

only 11 member states (41 per cent) had fully complied as of June 2020.<sup>19</sup>

According to our research, only seven out of the 47 countries surveyed in this report have central registers which are publicly available with no restrictions, while 17 countries have no central register at all.

Even where there is a central public register, important elements are needed to ensure its usefulness.<sup>20</sup>

Registers should be adequately resourced and contain information in an open data format on the beneficial owners of all corporate entities operating in the country, including foundations, trusts and partnerships.

The definition of a beneficial owner should be clearly and narrowly specified, and registers should provide for the timely collection and verification of appropriate information, and effectively sanction those who do not comply.

**Austria** and **Denmark**, for example, have automated cross-checks against government databases. Austria also has automated sanctions if information is missing and warns users that a company has potentially incomplete or wrong information.

In Denmark, if beneficial ownership information is not checked, a company will not be able to incorporate.<sup>21</sup> The **Czech Republic**, in contrast, does not impose any sanctions on companies for failure to register.

**TABLE 2: BENEFICIAL OWNERSHIP**

Status	Countries
 <b>Central register publicly accessible without obstacles</b>	<b>Bulgaria, Denmark, Latvia, Luxembourg, Poland</b> (not for trusts), <b>Slovenia</b> (hard to use), the <b>UK</b> (except for Overseas Territories and Crown Dependencies)
 <b>Central register, publicly accessible with paywall or other restrictions</b>	<b>Austria, Belgium, Estonia, Ireland, Portugal, Slovakia, Sweden</b> (majority of companies) – all have paywalls, some also other restrictions  <b>Germany</b> : Registers centrally connected (fee payable for each access)  Non-OECD: <b>India</b>
 <b>Central register, not publicly accessible</b>	<b>Brazil, Czech Republic, Costa Rica, Finland, France, Spain</b> – all require a lawful or legitimate interest  Non-OECD: <b>Singapore</b>
 <b>No central register, but concrete steps to implement</b>	<b>Colombia</b> (legislation), <b>Italy</b> , the <b>Netherlands</b> (legislation), <b>Norway</b> , <b>Peru</b> , <b>Mexico</b> (preliminary steps), <b>Greece</b> (central public register established, but not currently accessible)
 <b>No central register</b>	<b>Argentina, Australia, Canada, Chile, Hungary</b> (law, but no register), <b>Israel, Japan, South Korea, Lithuania</b> (preliminary steps as of March 2020), <b>New Zealand, Russia, South Africa, Switzerland, Turkey, United States</b>  Non-OECD: <b>China</b> and <b>Hong Kong</b>

# COMPENSATION OF VICTIMS

Bribery of foreign public officials is far from a victimless crime.

Those harmed by foreign bribery should be represented and compensated in foreign bribery proceedings. International standards call for states to provide access to remedy for corruption victims and for companies to repair the harm done. National legal frameworks and practice show this can be achieved in foreign bribery cases, although it is seldom done. More detailed guidance is needed for compensation in foreign bribery cases.

## Foreign bribery harms victims

Foreign bribery often causes serious harm to those affected, together with adverse impacts on human rights.<sup>22</sup> In large-scale foreign bribery cases, the harm may be diffuse, indirect and widely shared, resulting from diversion of state funds and the negative impact on state institutions.<sup>23</sup>

States may suffer measurable financial damage from paying higher prices, obtaining lower quality goods and services or making unnecessary purchases through procurements influenced by cross-border bribery.<sup>24</sup> States may also lose vital revenues from corruptly obtained business authorisations, licences or permits, or bribery to secure favourable tax or customs treatment.<sup>25</sup>

Companies that lose out in a procurement process or licence award influenced by corruption may suffer direct, concrete and individual harm.

Consumers may experience indirect, but measurable harm, such as where bribery to gain a licence leads to higher utility or telecoms prices for users.

Illicitly obtained permits and licences may also cause individuals and groups to suffer loss of health, livelihood or housing, or may result in damage to the environment.

## International standards cover victims' remedies

Countries have a duty to protect human rights in other countries by enforcing existing laws that directly or indirectly regulate businesses' adverse effects on human rights. This is highlighted by the UN Guiding Principles on Business and Human Rights, which have been incorporated into the OECD Guidelines for Multinational Enterprises.<sup>26</sup> Given the nexus between corruption and adverse human rights impacts, this duty to protect includes enforcement against foreign bribery.

International standards regarding victims' remedies include:

- + 1985 UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which provides some guidance on access to justice and fair treatment, restitution, compensation, assistance and victims of abuse of power.<sup>27</sup>
- + UNCAC Article 32, which calls on States Parties to protect and enable victims to have their views and concerns presented and considered during criminal proceedings against offenders.
- + UNCAC Article 35, which provides for States Parties to introduce measures ensuring that those who have suffered damage from corruption "have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation".<sup>28</sup>
- + Other provisions in the UNCAC chapter on asset recovery also address victims' remedies, including Articles 53(b) on measures to permit

courts to order compensation and Article 57(3)(c) referencing compensation of victims.<sup>29</sup>

However, there is no detailed international guidance on compensation of victims in foreign bribery cases.

## National laws provide for victims' compensation

Many national legal frameworks allow for remedies for crime victims, whether through crime victims statutes, through *partie civile* status in proceedings in civil law countries,<sup>30</sup> recognition of damage mitigation by offenders, or special provisions in legislation on non-trial resolutions or settlements. The basis for such claims includes contractual restitution, tort damages and unjust enrichment.<sup>31</sup>

A wide range of options for compensation of victims of corruption were analysed in a 2016 UNODC report.<sup>32</sup> A 2019 OECD report on non-trial resolutions in foreign bribery cases outlined the opportunities for direct compensation to victims in such cases in 27 jurisdictions.<sup>33</sup>

The **UK** is notable in having introduced in 2018, "general principles to compensate overseas victims (including States) in bribery, corruption and economic crime cases".<sup>34</sup>

Countries making provision for compensation in the context of settlements include **Canada, France, the Netherlands** and the **United States**.<sup>35</sup>

In some countries, such as **Czech Republic, Mexico, Spain** and the **United States**, mitigation of damages by the offender may be considered as a mitigating circumstance in relation to criminal liability.<sup>36</sup>

## Compensation is rare in foreign bribery cases

In practice, there are few examples of victims' restitution or compensation in foreign bribery enforcement proceedings.

In the **UK**, small amounts of restitution or compensation to states have been awarded in a handful of cases to date.<sup>37</sup>

However, in recent major settlements the UK Serious Fraud Office did not seek compensation and the court decisions in those cases have been unnecessarily restrictive in applying case law limiting compensation to clear and simple cases.<sup>38</sup>

In **France** and **Switzerland**, *partie civile* status has been granted to affected states, and in at least three cases, some compensation was granted.

For example, in 2007, in a French money laundering case against a former Nigerian energy minister, the court awarded Nigeria €150,000 (US\$177,000) as compensation for *prejudice moral* (nonpecuniary damages).<sup>39</sup>

In the **United States**, of an estimated 500 cases under the Foreign Corrupt Practices Act (FCPA),<sup>40</sup> only a handful of settlements or judgements involving foreign bribery resulted in restitution, with small awards made to the affected state.<sup>41</sup>

More often than not, disgorged profits from corrupt deals secured by foreign bribery remain in the national treasuries of supply-side countries, while the people affected by the corruption are "left out of the bargain".<sup>42</sup>

For example, in the Airbus case, billions of dollars in fines and confiscated proceeds were paid into state coffers in **France**, the **UK** and the **United States** without any compensation to the affected countries or people.

### Airbus case

2020 saw the largest foreign bribery settlement of all time, as Airbus, a global provider of civilian and military aircraft based in France, agreed to pay nearly US\$4 billion in combined penalties to France, the UK and the United States to resolve foreign bribery charges.

Claimants face hurdles in the form of rules restricting which victims qualify to make claims, limitations on standing for non-state victims' representatives and on collective redress, requirements setting a high bar for proving causation and challenges to quantification of harm.<sup>43</sup>

There are also several other reasons why victims' compensation is infrequent:

- + Where states are concerned, if those in power are the beneficiaries of international corruption, they are unlikely to have an interest in claiming compensation for the victims.

- + State and non-state victims may be held back by lack of information about proceedings under way in exporting countries. This is particularly the case with settlements which are often negotiated in secret.
- + Enforcement agencies in some supply-side countries reportedly reason that if they provide compensation to victim states, the funds will be recycled into further corruption.<sup>44</sup>

## The law on diffuse harm is evolving

Consideration should be given to operationalising the concepts of ‘diffuse harm’, ‘social damage’ and ‘collective damage’ in assessing compensation in foreign bribery cases.

The law on diffuse harm is evolving in many countries in the corruption context as it did when environmental crimes first became actionable. The concept of social damage and related concepts are recognised in several countries and are associated with compensation for damages to the public interest. This includes damage to the environment, to the credibility of institutions, or to collective rights such as health, security, peace, education or good governance.<sup>45</sup>

**Costa Rica** is a pioneer among OECD Convention countries in allowing compensation claims by the state for ‘social damages’.<sup>46</sup> In **France**, the courts have accepted claims for compensation for non-pecuniary damages (*prejudice moral*) made by state representatives in corruption cases.<sup>47</sup> **Peruvian** prosecutors have claimed compensation for economic harm to the state in cases of corruption of national public officials.<sup>48</sup> Some states provide for non-pecuniary reparations for diffuse harm.<sup>49</sup>

Outside the corruption arena, the **United States** recognises “community restitution” in connection with certain drug offences where there is no identifiable victim but the offence causes public harm.<sup>50</sup>

## Expansive standing models exist

“Standing” (*locus standi*) refers to whether the complainants are legally entitled to bring a case to court. Compensation of victims in criminal and civil corruption cases relating to harm from foreign bribery may turn on recognition of their standing.

This is of particular importance for non-state representatives of victims in foreign bribery cases seeking compensation for collective harm, where

state representatives are unable or unwilling to bring claims or are disqualified, as in grand corruption cases.

Some countries, such as the **United States**, have restrictive standing rules, usually requiring a plaintiff to demonstrate a personal injury that is particular and concrete, rather than broad, diffuse or abstract.

Lessons can be learned from other jurisdictions, where broad standing provisions allow citizens or civil society organisations to bring claims in the public interest. For example, in **Spain**, all citizens can invoke the right to reparation in matters that involve the public interest and do not need to show direct, personal harm.<sup>51</sup> In **France**, the supreme court ruled in favour of allowing an anti-corruption association, TI France, to file a complaint as *partie civile* in a major money laundering case, acting in the collective interest.<sup>52</sup> Other countries with liberal standing rules for citizens or civil society organisations include **Argentina**, **Colombia**, and **South Africa**.<sup>53</sup>

## Country in focus: Democratic Republic of Congo

The people of DRC are starting to forge a path for victims in foreign bribery cases. In January 2020, Congolese citizens working with the UK NGO RAID filed claims<sup>54</sup> in relation to a UK Serious Fraud Office investigation of ENRC, a mining company.<sup>55</sup> The investigation is focused on allegations of fraud, bribery and corruption around the acquisition of substantial mineral assets in the DRC.

In Belgium, in May 2020, Congolese citizens applied to be *partie civile* in a long-running investigation by Belgian prosecutors of Semlex, a passport printing company operating in several countries in Africa, and the subject of two exposés by Reuters.<sup>56</sup>

## Damages can be calculated

Measuring the damage caused by corruption can be a challenge in case of claims of diffuse, collective harm.

It should be recognised that foreign bribery can cause harm far out of proportion to the bribe paid or the benefits gained by the offenders. As noted in the recent interim report by the FACTI Panel, a US\$1 million bribe can easily create US\$100 million worth

of damage, in the form of additional costs and poor investment decisions.<sup>57</sup>

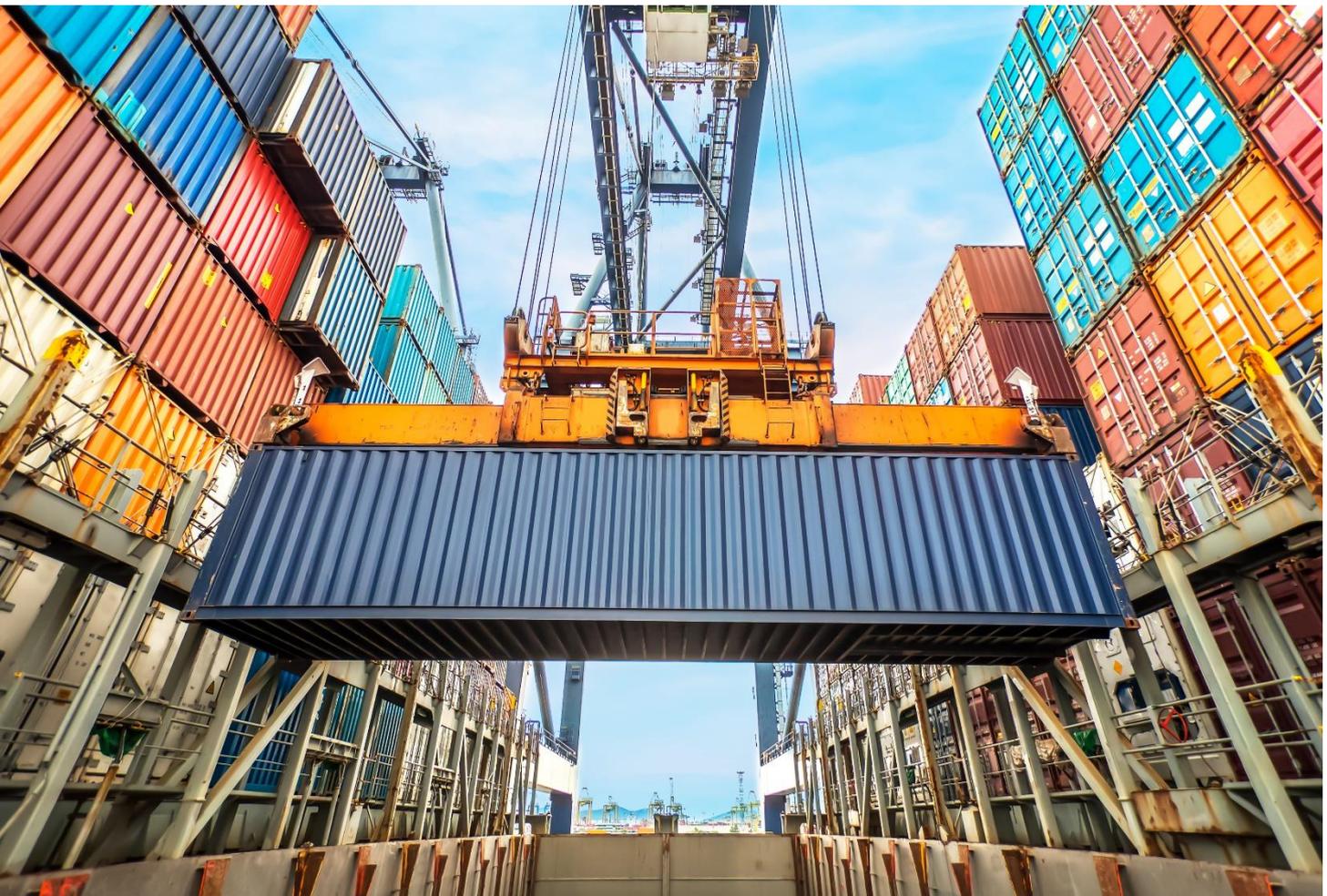
In considering social damage awards, an affected state or group of victims should, at a minimum, be awarded the confiscated assets or “disgorged profits” recovered. Where appropriate, a sum could be subtracted to cover the costs of the enforcing jurisdiction. Beyond that, formulae can be developed for calculating social damages.

### **Accountable asset return is possible**

To counter concerns about misuse of returned funds, there are emerging standards for the transparent and accountable return of assets, including the 2017 Global Forum on Asset Recovery principles.<sup>58</sup>

In addition, models for organising such returns already exist.<sup>59</sup> In Nigeria, the World Bank has assisted with the accountable administration and monitoring of US\$321 million in embezzled Abacha II funds, returned by Switzerland in 2017.<sup>60</sup> Civil society groups are also actively monitoring the use of the funds in the framework of the MANTRA project.<sup>61</sup>

Photo: Mulpix/Shutterstock.com



# INTERNATIONAL COOPERATION

International cooperation is fundamental in foreign bribery and related money laundering investigations and cases, especially given significant cross-border challenges involved.

International cooperation refers to formal mutual legal assistance (MLA), extradition and informal exchanges of information for intelligence gathering purposes where lawfully allowed. Another form of cooperation among countries consists in reaching joint multi-country settlements or other arrangements for handling cases. While such cooperation is important, there are persistent challenges and new structures could help.

## International cooperation is key

Effective international cooperation between countries is crucial for the successful investigation, prosecution and sanctioning of international corruption offences because suspects, evidence, witnesses and proceeds of corruption may be located in multiple jurisdictions.

For this reason, the OECD WGB supports biannual meetings of law enforcement officials

## Challenges to mutual legal assistance

Increasingly, there are examples of effective international cooperation in investigations.

However, despite some successful examples, many of the challenges to international cooperation and MLA identified in our 2018 report remain, including inadequate legal frameworks, limited resources, lack of coordination and long delays.

In some countries there is a lack of an effective legal basis for cooperation related to MLA. In **Australia**, for example, there are barriers to providing MLA to countries that apply civil or administrative liability to

legal persons and obstacles to international foreign bribery investigations.

Difficulties arise in **Austria** in cases which involve non-EU member states with which the country has no treaties on cooperation in criminal matters.<sup>62</sup>

Differences in legal and procedural frameworks present another challenge. A Transparency International Brazil report in June 2019 about MLA requests made by and received from Brazilian authorities in the country's Operation *Lava Jato* investigations found that **Argentina's** response to a high number of requests was poor, due to differences in the two countries' legislation.<sup>63</sup>

Delays in responses to MLA requests and administrative barriers create further hurdles.

**South Korean** prosecutors are reportedly reluctant to file MLA requests, because they must decide whether to prosecute within three months.<sup>64</sup>

The lack of resources and training for foreign bribery enforcement in numerous OECD Convention countries also can hinder effective MLA work by their enforcement authorities. But **Peru** showed in 2017 and 2018 that even a country with resource constraints could send 68 MLA requests to the Brazilian authorities conducting the *Lava Jato* investigations.<sup>65</sup>

Dual criminality requirements may also hamper MLA for foreign bribery enforcement. Since **Hong Kong** has no foreign bribery offence, an MLA request relating to foreign bribery may not satisfy its dual criminality requirement for coercive MLA (eg. search warrant) unless the underlying conduct constitutes a crime under Hong Kong law. A pervasive issue in many cases is also the fact that

countries where the bribery took place may not respond to MLA requests or may not be considered trustworthy.

## Coordinated handling of cases

In addition to international cooperation in investigations, coordination between enforcement authorities in bringing charges and concluding non-trial resolutions can also help to ensure robust enforcement across borders. In recent years, several important global settlements, such as in the Siemens, Odebrecht and Airbus cases, have involved multiple countries, albeit seldom those affected by the bribery.

Such coordination is challenging across borders but provides a crucial opportunity to help smaller and less experienced countries build their enforcement capacities.

Many non-US companies have been snared in robust US FCPA enforcement, which has sometimes meant that their home countries do not engage in enforcement on grounds of their application of an international double jeopardy (*ne bis in idem*) principle.<sup>66</sup>

## New infrastructure could help

A key approach to improving international cooperation in multi-jurisdictional cases is the formation of joint investigation teams and information-sharing agreements. Cooperation can also be boosted by international meetings of law enforcement officials, such as the OECD WGB-organised meetings of prosecutors.

While these approaches provide a valuable basis for *ad hoc* cooperation, dedicated coordination bodies could provide more ongoing, sustained support to international investigations, helping to overcome legal, bureaucratic and language barriers. They could also enable the pooling of resources among enforcement authorities.

More permanent structures at international, regional or sub-regional levels to enhance international cooperation should be considered. Successful models include the International Anti-Corruption Coordination Centre, launched in July 2017 to assist with effective coordination of grand corruption investigations, including foreign bribery cases.<sup>67</sup>

Other examples are the European Union Agency for Criminal Justice Cooperation (Eurojust), which

supports coordination and cooperation between national investigating and prosecuting authorities within the European Union (EU),<sup>68</sup> and the European Public Prosecutor's Office, currently being set up, which has powers to investigate and prosecute crimes against the EU budget in participating EU member countries.<sup>69</sup>

The continuity of bodies of this kind enables them to acquire valuable experience and know-how in assisting or carrying out cross-border enforcement.

## Data on MLA is lacking

Publication of data on MLA requests is especially relevant for foreign bribery enforcement, as it enables monitoring of the level of international cooperation and how countries are performing.

However, few countries publish statistics on MLA requests made and received. While **Australia, Brazil, Bulgaria, France, Lithuania** and **Spain** publish MLA data, they do not distinguish between foreign bribery-related and other MLA requests.

# PARENT COMPANY LIABILITY FOR SUBSIDIARIES

Holding parent companies liable for failure to prevent illicit activities of companies they own or control is increasingly recognised as an important tool to help prevent foreign bribery.

The OECD's 2016 study *on Liability of Legal Persons for Foreign Bribery* found a considerable lack of clarity in most of the 41 countries studied regarding the conditions for parent company liability for subsidiaries and affiliates.<sup>70</sup> OECD WGB country reviews have also found inadequacies in this regard.

Parent companies should be held responsible for a subsidiary's lack of adequate procedures to prevent foreign bribery.

## Parent company liability would help improve integrity

Ensuring parent company liability for subsidiaries and affiliates would help raise standards of integrity across corporate groups. It would act as an important deterrent and serve the interests of justice, including for victims.<sup>71</sup>

Certain levels of ownership imply both control and benefit from the activities of subsidiaries or group members as far as foreign bribery is concerned.

Therefore, principles of limited liability and separation of entities should be restricted to encourage economically and socially responsible parent-subsidiary and company group behaviour in relation to foreign bribery and other offences.<sup>72</sup>

Requiring that ownership chains be declared in foreign bribery cases and named in official press releases and reports about those cases could deter

unscrupulous actors and help track patterns within corporate groups.

In the context of anti-money laundering, 25 per cent ownership qualifies a natural person as a beneficial owner or controller. This threshold could be adopted to determine whether a parent company is jointly or partially liable for corrupt activities of entities in a company group.

Liability could also be based on contractual rather than ownership relations.

## Rules are unclear in many countries

In most countries, parent companies are liable for subsidiaries when the parent participates in, or directs, a subsidiary's wrongful conduct.

In some countries, the parent company may also be liable if it knew of or ratified the acts of its subsidiary.

A small minority of countries explicitly foresee liability in cases of legal or functional control.

The OECD study in 2016 also showed that the legislation in many countries leaves uncertain the full range of conditions for parent company liability.

## Country examples to consider

Country examples, including some provided in the OECD study, show models to consider for holding parent companies liable for their subsidiaries.

In the **United States**, in the context of FCPA enforcement, parent companies can be held liable for violations by subsidiaries under traditional agency principles.<sup>73</sup> At the same time, under the FCPA's accounting requirements, an issuer's responsibility to maintain accurate books and records extends to the books and records of the subsidiaries and affiliates under its control, including foreign subsidiaries.<sup>74</sup>

Thus, a subsidiary's misstated financial records may potentially result in an FCPA books and records violation for its parent company.

Parent-controlled or affiliated companies in **Brazil** are jointly liable for the "perpetration of acts" covered by the corporate liability law. In **Italy**, any company in a corporate group can be liable if any relationship exists, organic or even de facto.

In **Slovenia** a parent company can be held liable if it "benefited from the bribe given by a subsidiary". This approach potentially encompasses wrongdoing that objectively benefits a parent company, even though the subsidiary that committed the offence may not be controlled by, or otherwise acting for, the parent company at the time of the offence.<sup>75</sup>

In 2010 in **Norway**, a parent company was held liable without fault for environmental damage caused by a subsidiary before it was acquired by the parent. The court attached weight to the shareholder being a company rather than an individual investor.<sup>76</sup>

In the **UK** liability can be imposed if a legal person failed to prevent an offence by a related legal person deemed to be an "associated person".

**France's** Sapin II legislation provides a good example of how to design corporate responsibility throughout the ownership chain. It requires large companies to introduce an anti-corruption compliance programme, which applies equally to parent companies and their subsidiaries and controlled entities with head offices in France.

Logically, this requirement should apply to subsidiaries and controlled entities with head offices in other countries as well.

The French Duty of Vigilance Law establishes additional standards of parent company responsibility. It requires parent companies to

introduce "vigilance measures" to identify risks and prevent adverse human rights violations and human health, safety and environmental impacts.

These violations or impacts could result from the parent companies' own activities, from operations of companies they control, or from operations of their subcontractors and suppliers, with whom they have an established commercial relationship.<sup>77</sup>

These models offer the possibility of promoting higher standards throughout corporate groups and should be considered as part of an OECD WGB discussion of best practices in parent company liability for subsidiaries.

### Skoda JS a.s. case in Ukraine

Parent company liability for subsidiaries in foreign bribery cases would mean additional deterrence.

This is illustrated by a case in Ukraine, where two intermediaries are on trial in relation to a tender award by state enterprise NNEGC Energoatom to Czech company Skoda JS a.s. for the supply of equipment for nuclear power stations.<sup>78</sup>

The Czech company is a subsidiary of Netherlands-registered OMZ B.V., which is part of the Russian OMZ Group (Uralmash-Izhora Group), in turn owned or controlled by Russia's state-owned Gazprombank.<sup>79</sup>

With parent company responsibility to ensure adequate anti-corruption preventive measures in its subsidiaries, the Dutch and Russian parent companies might be held liable if the Czech company were found liable for foreign bribery.

# TRENDS IN LEGAL FRAMEWORKS AND ENFORCEMENT SYSTEMS

Since our 2018 report, many countries have made improvements to their national legal frameworks and enforcement systems, while a few have regressed.

Many countries still have significant deficiencies in laws, institutions and processes which hinder enforcement. These range from weak anti-money laundering requirements and oversight, to lack of whistleblower protection, or severe lack of resources and limited training to handle complex cross-border cases.

## Positive developments

In the **European Union**, the 4th and 5th Anti-Money Laundering Directives, together with the Whistleblower Protection Directive, are poised to improve national legal and institutional frameworks.

Once transposed into national law, these directives should help improve the detection and investigation of corruption and money laundering offences.

In **Chile**, new legislation in 2018 expanded the scope of the foreign bribery offence, increased related sanctions and extended the statute of limitations.

Legislative amendments in **South Korea** expanded the scope of foreign bribery and increased fines and penalties.

In **Italy**, long-awaited legislation in 2019 extended the statute of limitations and increased sanctions for bribery.

**Latvia** made several improvements to its legal framework, including the introduction of a new

whistleblower protection law in 2019. The country also made improvements to anti-money laundering laws and amended provisions on confiscation of criminally acquired property. **Lithuania** also adopted a whistleblower protection law in 2019.

Some countries have strengthened their enforcement systems. In **Mexico**, a Special Anti-Corruption Prosecutor was appointed in 2019 and in **Slovakia**, a new Whistleblower Protection Office was due to start operation.

In **South Africa**, a Multi-Agency Task Team was established to help coordinate foreign bribery investigations and in the **United States** there was an increase in enforcement against actors on the demand side of foreign bribery.

Another notable development concerns enforcement against two banks, ING in the **Netherlands** and PKB Privatbank in **Switzerland**, which were held accountable for failure to prevent foreign bribery-related money laundering.

The **Netherlands** also brought charges against an accounting firm, EY, for failure to report unusual transactions in a foreign bribery-related case, but it is unclear how that case concluded.<sup>80</sup>

In **Switzerland**, two foreign bribery investigations were triggered by complaints by an NGO, Public Eye, one against Credit Suisse<sup>81</sup> and one against Glencore, a commodity miner and trader.<sup>82</sup>

## Negative developments

In **Argentina**, efforts to introduce non-conviction-based confiscation were thwarted by a lack of agreement between the executive and legislative branches of government.

The **Greek** parliament adopted a new Penal Code and Procedure in June 2019 that downgraded active bribery from a felony to a misdemeanour, with an associated decrease in sanctions, among other points of concern. After a joint ad hoc visit by representatives of the OECD WGB and the Group of States against Corruption (GRECO), and a change of government, the new code was amended in November 2019.

Setbacks in the anti-corruption legal and international framework in **Brazil** in 2019 and 2020 triggered a public statement of concern by the Financial Action Task Force and a High-Level Mission to Brazil by the OECD WGB in November 2019.

The troubling developments in Brazil included a Supreme Court injunction that virtually paralysed the country's anti-money laundering system; growing political interference by the president in anti-corruption institutions; and the approval, in Congress, of legislation detrimental to the independence of law enforcement agencies and the accountability of political parties.<sup>83</sup>

Other countries were notable in their failure to follow through on their OECD Convention obligations. The OECD WGB sent a High-Level Mission to **Sweden** and discussed sending one to **Turkey**, due to concerns about their lack of progress in addressing weaknesses in their frameworks and enforcement frameworks.

In the case of Sweden, the mission appears to have triggered new legislation strengthening the liability of legal persons.

## Continuing weaknesses in legal frameworks

Despite some improvements in legal frameworks, many inadequacies remain. In **Austria, Costa Rica, Greece, Hungary, Poland, Portugal** and **Russia** there are deficiencies in the legal definition of the offence of foreign bribery.

A lack of adequate protection of whistleblowers in the public or private sectors continues to be a challenge in 25 parties, while a constraining statute

of limitations or other time limits are a problem in **Belgium, Estonia, Germany, Japan** and **Korea**.

In **Australia, Japan** and **Korea**, sanctions are remarkably low, while legal provisions on sanctions for companies are inadequate in countries including **Austria, Colombia, Denmark, Finland, Germany, Greece, Hungary, Israel, Poland, Slovakia, South Africa, Switzerland** and **Turkey**. In some countries, such as **Argentina, Chile** and **Costa Rica**, there are inadequate provisions on asset confiscation.

There are also deficiencies in provisions on corporate liability, in countries including **Denmark, Ireland, Norway, Peru, Poland, Portugal** and **Turkey**, as well as lack of criminal liability of companies in multiple countries and absence of guidelines for companies on an adequate prevention model, in countries including the **Netherlands, Norway, Peru** and **Switzerland** among others.

## Continuing inadequacies in enforcement systems

Inadequacies in the enforcement system, whether a lack of independence of justice institutions or insufficient resources for handling complex cross-border cases, are critical barriers to foreign bribery enforcement.

A recent report by Transparency International France noted that "there can be no real independence without strengthening the means allocated to justice: human and financial resources and the removal of legal obstacles to justice".<sup>84</sup>

The SNC Lavalin case in **Canada** demonstrated the importance of prosecutorial independence. In this case, the justice minister resigned after alleging that members of the government improperly attempted to influence her to offer a non-trial resolution to the company when she was attorney general.<sup>85</sup>

Concerns about the independence of judges or prosecutors have also been raised in **Argentina, Austria, Brazil, Canada, Czech Republic, France, Japan, Latvia, Poland, Russia, Slovakia, Spain** and **Turkey**.

Lack of resources, staff or training for enforcement bodies or the courts are a problem in over 25 countries, including **Argentina, Belgium, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Israel, Italy, Korea, Latvia, Mexico, New Zealand, Peru, Poland, Portugal, South Africa, Spain** and the **UK**.

In 2019, a GRECO report found that the **Belgian** federal police were in crisis, particularly the departments tasked with combatting corruption, which lack resources and staff. Previous *Exporting Corruption* reports and an OECD WGB statement dating back to 2013 also found a serious lack of resources for prosecution services and the appeals court.

Interagency coordination or clarification of overlapping competences among agencies are areas for improvement in **Brazil, Bulgaria, Canada, Colombia, Costa Rica, Denmark, Finland, France, Korea, Latvia, Norway, Spain** and **Switzerland**.

## Non-trial resolutions

Non-trial resolutions or settlements offer an economic way to hold companies accountable for wrongdoing and resolve foreign bribery cases.

Such resolutions can help incentivise self-reporting, boost enforcement of foreign bribery laws and improve corporate compliance. However, they may not act as a significant deterrent to foreign bribery if low standards apply.

In many countries that use non-trial resolutions, information on their outcomes is inaccessible to the public or can be obtained only in anonymised, abbreviated format.

Non-trial dispositions in many countries also fail to meet standards of accountability and due process, lacking clear guidelines and judicial review. Often, they fail to provide effective, proportionate and dissuasive sanctions.

Countries with weaknesses in their approaches to non-trial resolutions include **Belgium, Canada, Chile, Costa Rica, Estonia, France, Germany, the Netherlands, Norway, Switzerland**, and the **UK**.

The OECD WGB Phase 3 Report on **Estonia** recommended that Estonia provide appropriate guidance on what factors it takes into account when entering into a settlement agreement.<sup>86</sup> The OECD WGB also said the country should consider the degree of mitigation of sanctions to ensure that plea bargaining does not impede effective enforcement.

In the **UK**, the recent Airbus judgement suggests an unwelcome shift away from self-reporting as a condition for a deferred prosecution agreement (DPA). DPAs should only be used in cases of strong public interest, with utmost transparency, and to help encourage self-reporting by others in the future.

Transparency International's recommendations on settlements in 2015 and its joint letter to the OECD in 2018, sent with three other civil society organisations, propose standards for addressing these issues.<sup>87</sup>

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# CHINA AND OTHER MAJOR EXPORTERS (NON-OECD)

Major exporters like China, Hong Kong, India and Singapore have a responsibility and obligation to combat foreign bribery.

**China** criminalised bribery of foreign public officials following its ratification of the UN Convention against Corruption, which requires countries that are parties to do so. There have been no known examples of enforcement by China against foreign corrupt practices by its companies, citizens or residents, even though Chinese companies and individuals have been the subject of publicly reported investigations and charges in numerous other countries.

As the world's leading exporter, with more than 10 per cent of global exports annually, China has a special responsibility with respect to the practices of its companies and businesspeople abroad. In view of its status, China has a significant impact on trade practices globally.<sup>88</sup>

**Hong Kong, India and Singapore** lack specifically targeted legislation to prohibit bribery of foreign public officials. Only in Singapore has there been any enforcement activity in the last four years.

In **India**, bribery of foreign public officials is not criminalised at all, despite the fact that the country is a party to the UN Convention against Corruption (UNCAC), which requires it.

Major exporters such as China, Hong Kong, India and Singapore have an important role to play in tackling the supply side of corruption in international trade and helping to prevent a race to the bottom.

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# COUNTRY BRIEFS: OECD CONVENTION COUNTRIES

We commend the OECD WGB for its continued outstanding work and for encouraging the participation of civil society and the private sector in monitoring implementation of the OECD Anti-Bribery Convention. We encourage parties to the Convention to translate their country reports into their national language, present them to parliament, hold public consultations on the reports and promptly announce plans to address deficiencies.

To complement the OECD WGB country reports, we present in this section country reports for 43 of the 44 OECD Anti-Bribery Convention countries.

These reports are based on responses from experts in Transparency International chapters in Convention countries, as well as from pro bono lawyers. They cover recent foreign bribery cases and investigations in each country, and address issues such as access to information on enforcement, and inadequacies in the legal framework and enforcement system.

This year, the reports include a special focus on beneficial ownership transparency.

## ARGENTINA

 Limited enforcement

0.3% of global exports

### Investigations and cases

In the period 2016-2019, Argentina opened 10 investigations, commenced one case and concluded no cases with sanctions.

In 2019, the OECD WGB noted in its Phase 3bis Follow-Up Report on Argentina that one foreign bribery case was at trial and 10 new investigations had been initiated since 2017.<sup>89</sup> Also in 2019, Argentina reported that foreign bribery investigations were underway relating to the companies **Techint, Transener, Telespazio, Bioart, Oil Fuels, Agribusiness, Interpampas, Contreras Hnos, Lab Esme, Tenaris, Unetel** and **Corporación America**. It also reported on four preliminary inquiries in process concerning **Electroingeniería, Camisea, Galileo** and **Isolux Bolivia**, and two investigations that were closed (**Riovia, Kollector**).<sup>90</sup>

Federal prosecutors filed charges against four **Unetel** executives in May 2017 and judicial proceedings are ongoing.<sup>91</sup> The executives are alleged to have paid bribes of more than US\$500,000 to public officials in El Salvador, to obtain a contract to supply the management system for the country's public transport service.

The Prosecutor's Office for Economic Crimes and Money Laundering (PROCELAC) is investigating allegations that **Techint** and its Brazilian subsidiary **Confab Industrial** paid bribes of more than US\$9 million to Brazilian officials in exchange for contracts with **Petróleo Brasileiro S.A. (Petrobras)**, the Brazilian state-owned oil giant.<sup>92</sup> PROCELAC is also investigating allegations about **Techint's** role in the payment of bribes to win construction contracts in **Angra 3**, a nuclear power plant in Brazil.<sup>93</sup> **Techint** is also under investigation by Brazilian and Italian authorities.<sup>94</sup>

### Recent developments

The entry into force of the Corporate Criminal Liability Law<sup>95</sup> has led the Public Prosecutor's Office (PPO) to increase its role in relation to foreign bribery. This in turn has led to an improvement in

the internal detection system and the development of preliminary investigative proceedings.

In January 2019, President Macri led an effort to enact legislation on non-conviction-based confiscation through a Decree of Necessity and Urgency (DNU). The OECD WGB has called on Argentina to address this issue on numerous occasions, but efforts were paralysed for two years in the National Congress. The decree must still be approved by both chambers of Congress to be fully valid.

Through a decree in 2019, President Macri created the National Witness Protection Agency, in an attempt to improve the protection of whistleblowers and witnesses in Argentina.<sup>96</sup> This followed an unsuccessful attempt to bring the whistleblower protection programme into the purview of the judiciary. With the change in government, President Alberto Fernández revoked the decree in February 2020.<sup>97</sup>

## Transparency of enforcement information

Argentina does not publish statistics on foreign bribery investigations, cases commenced or cases concluded, but this information can be sought through Freedom of Information requests. The PPO publishes an annual report containing information on general trends in foreign bribery enforcement, but no information about cases. The latest available report is for 2018.<sup>98</sup> Information on mutual legal assistance (MLA) requests is not published by the Ministry of Foreign Affairs or the PPO, but can theoretically be obtained through Freedom of Information requests.

The Judicial Information Centre of the Supreme Court of Justice houses a dedicated “Observatory of Corruption” which publishes all judgments and resolutions related to corruption.<sup>99</sup> However, the information is not clearly presented and resolutions relating to foreign bribery are difficult to access without specific information on the file (e.g. file number or case name), due to the restrictive search mechanism.

## Beneficial ownership transparency

There is no centralised register for company beneficial ownership information in Argentina. Instead, several oversight bodies collect information on the beneficial owners of legal persons, such as the General Inspection of Justice (IGJ)<sup>100</sup>, the

Financial Intelligence Unit (UIF)<sup>101</sup> and, since April 2020, the Federal Administration of Public Revenue.<sup>102</sup> There is also no central register for beneficial ownership of trusts. Different entities collect information regarding trusts, namely the UIF,<sup>103</sup> the IGJ<sup>104</sup> and the National Value Commission.<sup>105</sup> Though there are no specific provisions on this, law enforcement authorities have access to beneficial ownership information, but that information is not accessible to the public.

## Inadequacies in legal framework

One of the main deficiencies pointed out by the OECD WGB in its Phase 3bis report in 2017 is Argentina’s lack of a legal framework for whistleblower protection relating to foreign bribery. In addition to hindering detection and investigation, this leads to a significant risk to people who report irregularities and wrongdoings. In particular, there is no provision for anonymous reports.<sup>106</sup> The Argentinian legal framework for confiscation and forfeiture of proceeds of crime (“extinction of domain”) is also deficient, failing to provide a clear structure that guarantees that the value of confiscated assets corresponds to what was paid as a bribe and to whatever profits it generated. Nor does the framework provide for how the forfeited proceeds will be used.

## Inadequacies in enforcement system

Lack of independence of judges continues to be a significant problem in Argentina. The selection process for lower judges involves the participation of three bodies – the Council of the Magistracy, the executive branch and the National Congress – which provides opportunities for political interference. Delays in appointments are also common, leading to many vacant positions, which are often filled by interim or surrogate judges.<sup>107</sup> This violates guarantees of due process. The OECD WGB has noted that the lack of independence of prosecutors remains an issue.<sup>108</sup> The limited amount of resources available for investigators and prosecutors is also an impediment to stronger enforcement efforts against foreign bribery. Most prosecutors in Argentina lack sufficient knowledge and expertise to thoroughly investigate complex foreign bribery cases, while judicial proceedings are excessively long.<sup>109</sup>

A Transparency International Brazil report in June 2019 about MLA requests made and received from Brazilian authorities in the country’s Operation *Lava*

*Jato* investigations found that Argentina's response to a high number of requests was poor, due to irreconcilable differences in the two countries' legislation.<sup>110</sup>

## Recommendations

- Publish statistics and information on foreign bribery investigations and cases, as well as on MLA requests
- Create a centralised public register of beneficial ownership information
- Strengthen the regulatory framework allowing for the extinction of domain
- Create a special regime to recover assets in corruption cases, instituting a clear and transparent procedure for how the recovered funds will be used
- Strengthen the existing whistleblower protection system following international standards to ensure protective measures for people who report corruption allegations
- Ensure the independence of the judiciary
- Enact measures aimed at reducing the length of judicial proceedings.

# AUSTRALIA

## Moderate enforcement

1.3% of global exports

### Investigations and cases

In the period 2016-2019, there were 14 investigations commenced, three cases commenced and three cases concluded with sanctions.

In December 2019, in its Phase 4 Follow-up Report on Australia, the OECD WGB expressed concern about the continued low level of foreign bribery enforcement in the country, given the size of Australia's economy and the high-risk regions and sectors in which its companies operate.

In 2018, the Australian Federal Police (AFP) charged **Sinclair Knight Merz Pty (SKM)** (since 2013, **Jacobs Group (Australia) Pty Ltd**) and its former chief executive with conspiring to bribe foreign officials in the Philippines and Vietnam to secure infrastructure projects.<sup>111</sup> The investigation reportedly started in 2013, when the World Bank reached a settlement with SKM.<sup>112</sup> There are claims in the media that a government minister and AusAid were informed about allegations in 2012, but aid contracts continued to be awarded to SKM.<sup>113</sup> Also in 2018, after a three-year AFP investigation, a director of

trading company **Radiance International Pty Ltd**, Mozammil Bhojani, was charged with conspiracy to bribe two government officials in Nauru to secure favourable phosphate shipments for the company. The first hearing in his case was scheduled for June 2020.<sup>114</sup> A case relating to **Securrency/Note Printing Australia** concluded in November 2018 with the sentencing of the last individual prosecuted.<sup>115</sup> Prosecutions of four accused were permanently stayed by the High Court of Australia at the same time, on the basis that the Australian Criminal Intelligence Commission unlawfully used coercive powers to help the AFP question them.<sup>116</sup> In 2019, the AFP dropped its investigation into alleged payments totalling AU\$200,000 (US\$130,000) from gaming company **Tabcorp** to the Cambodian prime minister's family, considering it was not possible to obtain the evidence required for a criminal prosecution.<sup>117</sup>

In December 2018, the former CFO of **Leighton Holdings Ltd (CIMIC)** since 2015,<sup>118</sup> Peter Gregg, was convicted following a trial on two counts of falsifying company books.<sup>119</sup> The charges, brought by the Australian Securities and Investment Commission (ASIC) related to Leighton's operations in the Middle East, including in the Iraqi oil industry, and in Asia. Mr Gregg, acting on behalf of Leighton, allegedly made two payments totalling AUD\$21 million (US\$13.5 million) to a UAE company, **Asian Global Projects and Trading FZE**, for "marketing and advisory" services in relation to false steel supply deals. These payments were then backdated in Leighton's books in order to appear legitimate.<sup>120</sup> Mr Gregg was sentenced to a total of two years in home detention.<sup>121</sup>

The company Leighton has not been charged with any offence in Australia, with a long-running AFP investigation ongoing since 2012.<sup>122</sup> Claims against Leighton came to public attention in a 2016 expose of **Unaoil** by the Australian newspaper *The Age* and the *Huffington Post*, based on a leak of 10,000 confidential documents.<sup>123</sup> In the UK, the Serious Fraud Office started criminal proceedings against **Unaoil Ltd** and **Unaoil Monaco** in mid-2018, relating to alleged corrupt payments to secure the award of a contract worth US\$733 million for **Leighton Contractors Singapore PTE Ltd** for a project to build two oil pipelines in southern Iraq.<sup>124</sup> In the United States, in a Unaoil-related case brought by the US Department of Justice (DoJ) in 2019, court documents reportedly alleged that senior Leighton executives were involved in offering bribes to win construction jobs in Iraq worth up to US\$2 billion.<sup>125</sup> According to media reports in 2019,

CIMIC entered an “investigation agreement” with the DoJ.<sup>126</sup> Also in 2019, CIMIC settled a long-running class action with investors over allegations that its senior executives had knowledge of corrupt behaviour relating to the Unaoil bribery scandal that hit the company's share price.<sup>127</sup>

## Recent developments

In early 2020, the Australian Senate's Legal and Constitutional Affairs Legislation Committee recommended that the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019 be passed by the Senate.<sup>128</sup> The Bill aims to enhance the tools available to enforcement agencies and prosecutors to tackle corporate crime, including by: (a) simplifying the requirements to be met under the offence of bribery of a foreign public official (b) introducing an offence of failure of a company to prevent foreign bribery by an associate, and (c) implementing a Commonwealth deferred prosecution agreement (DPA) scheme.<sup>129</sup> In addition, the Australian Law Reform Commission is reviewing corporate criminal responsibility, focusing on “the need for effective laws to hold corporations to account for criminal misconduct”.<sup>130</sup>

Whistleblower protections in the private sector were strengthened when the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 came into force in July 2019, increasing penalties, requiring public companies to have a whistleblower policy and eliminating good faith requirements.<sup>131</sup>

In November 2019, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the anti-money laundering (AML) regulator, announced that it had applied for civil penalty orders in the Federal Court against **Westpac Banking Corporation** (Westpac) alleging “systemic failures to comply with Australia's AML-CTF [Countering Financing of Terrorism] laws”.<sup>132</sup> AUSTRAC alleges that Westpac breached money laundering laws more than 23 million times and failed to report more than AU\$11 billion (US\$7.7 billion) in payments into and out of Australia.<sup>133</sup> In December 2019, the Australian Prudential Regulation Authority launched its own investigation into Westpac.<sup>134</sup>

## Transparency of enforcement information

The AFP investigates bribery and corruption allegations at the Commonwealth/Federal level in Australia which encompass any allegations of

foreign bribery.<sup>135</sup> The Australian Securities and Investment Commission (ASIC) is the corporate regulator and may be involved in foreign bribery investigations and prosecutions where there are corporate books and records offences.<sup>136</sup> The AFP and the Commonwealth Director of Public Prosecutions (CDPP) do not publish statistics regarding investigations, prosecutions or case outcomes. The Attorney-General's Department publishes annual statistics on requests for mutual legal assistance (MLA) made and received in relation to criminal matters, but does not distinguish foreign bribery.

The AFP may issue media releases when filing charges and ASIC issues releases when a case concludes. Australian courts publish all their decisions and remarks made during sentencing.<sup>137</sup>

## Beneficial ownership transparency

There are no central registers of beneficial ownership of companies or trusts in place, despite a previous Australian government commitment to introduce one. The Open Government Partnership website lists the Australian government's commitment to beneficial ownership transparency as “delayed”.<sup>138</sup> In 2018, ASIC highlighted practical challenges to such reforms and queried the benefits,<sup>139</sup> while in 2019, the Australian Treasury Department reportedly denied that it had made a commitment to implement a beneficial ownership register.<sup>140</sup>

## Inadequacies in legal framework

The proposed DPA scheme, if the 2019 Bill is passed, does not require a corporation to make a formal admission of criminal liability, although it must include a statement of facts for each offence. For a DPA to be approved, the CDPP must be satisfied that it is in the public interest. If so, the approving officer must be satisfied that the terms of the DPA are in the interests of justice, and are fair, reasonable and proportionate. There is no requirement to publish the reasons for approving the DPA.<sup>141</sup>

The facilitation payments defence remains, despite concerns that such payments are often de facto bribes and that the defence is incompatible with UNCAC commitments.<sup>142</sup> Proposed improvements regarding public-sector whistleblower protection remain to be introduced.<sup>143</sup> There continues to be no debarment regime for companies convicted of bribery and corruption.<sup>144</sup> The anti-money

laundering legal framework does not cover real estate agents, accountants, auditors and lawyers.

## Inadequacies in enforcement system

Australia's enforcement system remains inadequate and prosecutions remain low.<sup>145</sup> The SKM case sparked criticism of the perceived lack of resources dedicated to tackling foreign bribery, with reports focusing on the delay of almost five years between the AFP announcing its investigation and the matter going to court.<sup>146</sup> The investigation of Leighton Holdings has been ongoing since 2012. However, in 2019, the OECD WGB noted in its Phase 4 Report on Australia a significant increase in the AFP budget allocated to foreign bribery investigations.<sup>147</sup> With regard to the confiscation of assets and monies in foreign bribery cases, the amounts seized by the authorities are low when compared to the value of the bribes and contracts obtained. The OECD WGB concluded that the sanctions imposed were "remarkably low" and raised serious doubts as to whether the current enforcement regime is sufficiently dissuasive.<sup>148</sup> No steps have been taken to address the OECD WGB's criticisms. The WGB also expressed concern in 2019 that Australia had taken no steps to ensure that it can provide MLA to Parties to the Convention that apply civil or administrative (not criminal) liability to legal persons.<sup>149</sup>

## Recommendations

- Publish statistics on foreign bribery investigations, prosecutions and case outcomes
- Develop a database of foreign bribery investigations and enforcement outcomes
- Adopt laws on the disclosure of beneficial ownership and establish a publicly accessible central register to increase transparency around corporate beneficial ownership
- Pass the 2019 Crimes Legislation Amendment (Combatting Corporate Crime) Bill as soon as possible
- Abolish the facilitation payments defence
- Remove exemptions from the Anti-Money Laundering and Countering Financing of Terrorism Act, so that real estate agents, accountants, auditors and lawyers are covered by the regime
- Introduce a debarment regime granting agencies the power to preclude companies found guilty of foreign bribery offences from being awarded contracts
- Expand the scope of MLA laws to allow requests to be made for civil or administrative proceedings.

# AUSTRIA

## ● Limited enforcement

1% of global exports

## Investigations and cases

In the period 2016-2019, Austria opened at least two investigations, commenced three cases and concluded two cases with sanctions. The two investigations were reported in the media.

In November 2019, the trial concluded of five defendants in the **OeBS** case, relating to alleged bribery of central banks in Azerbaijan and Syria to gain business for banknote printing company OeBS, a subsidiary of the Austrian National Bank.<sup>150</sup> Each defendant was convicted of paying bribes to obtain orders for banknotes and coins.<sup>151</sup> The sanctions imposed were prison sentences ranging from 16 to 21 months. The trial against one legal person is pending.<sup>152</sup>

After a long-running investigation, two former managers of **Siemens Österreich** were charged with breach of trust, having allegedly spent €17 million (US\$19.4 million) between 2001 and 2006 to bribe public officials in South-East Europe.<sup>153</sup> Their trial began in June 2017 in the Regional Court of Vienna.<sup>154</sup> In August 2018, one manager was acquitted and one was sentenced to a partial prison sentence, which was appealed to the Vienna Higher Regional Court.<sup>155</sup>

The Austrian company **Bewag** (now **Energie Burgenland**) and nine former employees were charged with paying bribes of about €600,000 (US\$685,000) to secure the power supply contract for a wind farm in Hungary.<sup>156</sup> The trial commenced in 2016 and in 2017, the court of first instance declared four convictions and five acquittals.<sup>157</sup> On appeal, the Supreme Court cancelled parts of the verdict and remanded the charges of bribery back to the Eisenstadt Regional Court. All parties were subsequently acquitted.<sup>158</sup>

In Romania, the Anti-Corruption Agency brought charges of conspiracy to commit bribery and influence peddling against Austrian citizen Joseph H., former local manager of the Austrian construction company **Swietelsky**.<sup>159</sup> He was accused of paying bribes to high officials – including

Romania's then finance minister – to secure during the period 2005-2014 renovation work on the country's railway line.<sup>160</sup> A total of €20 million (US\$22 million) was allegedly paid in bribes via offshore companies.<sup>161</sup> The manager pleaded guilty and was sentenced to three years in prison by a Romanian court in May 2019, subsequently converted to probation.<sup>162</sup> In Austria, an investigation by the Austrian Financial Crime Directorate into the case was reported underway in April 2018, possibly implicating the company itself,<sup>163</sup> and pre-trial proceedings were ongoing in 2020.<sup>164</sup>

## Recent developments

Austria has updated its legislation pursuant to the 5th EU Anti-Money Laundering Directive of 2018.<sup>165</sup> It has also implemented changes to the criminal code in accordance with the EU Directive 2019/713 on combatting fraud and counterfeiting of non-cash means of payment, to ensure some definitions relevant to anti-corruption, such as “person in a leading position”, are consistent with EU legislation.<sup>166</sup>

Austria has campaigned for the establishment of an EU-wide register for politically exposed persons (PEPs) to promote transparency in European tax havens and for the suppression of letterbox companies.<sup>167</sup> On 31 January 2018, the Austrian Ministry of the Interior published an anti-corruption strategy.<sup>168</sup> Austria is updating its handling of mutual legal assistance (MLA) treaty requests by publishing and further clarifying online forms.<sup>169</sup>

A recent scandal has increased focus in Austria on existing lobbying legislation dating to 2012.<sup>170</sup>

## Transparency of enforcement information

There is no easily accessible statistical information on foreign bribery enforcement. The Ministry of Justice receives reports on open investigations from the Federal Bureau for the Prevention of Corruption<sup>171</sup> and the Central Public Prosecutor's Office for Economic Crimes and Corruption.<sup>172</sup> While each cooperates with the other, each also has a different reporting schedule. As such, it was not possible to determine the actual number of investigations for this report. In September 2019, the Austrian parliament resolved that the Minister of Justice must present “statistics on corruption cases”, including analyses of the cases.<sup>173</sup> This

information is due to be provided in the next Annual Security Report, expected to be published in 2020.<sup>174</sup> Statistical information on court decisions and cases concluded in Austria is publicly available,<sup>175</sup> but no distinction is made for foreign bribery cases.<sup>176</sup> The Austrian authorities publish statistics on the number of MLA requests made to and received from other countries, but not specifically related to foreign bribery cases.<sup>177</sup>

Austria's Legal Information System is provided by the Federal Ministry for Digitisation, and publishes all decisions of the High Court of Austria.<sup>178</sup> Decisions of other courts are also published, in some cases with names redacted.

## Beneficial ownership transparency

There is a central register of beneficial ownership information which provides public extracts containing the minimum information mandated by the 5th EU Anti-Money Laundering Directive. The register comprises 358,894 companies designated as legal entities, of which 284,164 are exempt from the reporting obligation, because they have already entered their beneficial owners in the register of companies or associations.<sup>179</sup> The register was established under the Beneficial Owners Register Act, which came into force in 2018 to prevent money laundering and terrorist financing and to assist in investigations of foreign bribery, among others.<sup>180</sup> It contains essential information on the beneficial owners of companies, foundations and trusts. Law enforcement authorities, the public prosecutor and judicial authorities have full access to the register,<sup>181</sup> while more limited access is available to the public.<sup>182</sup> Legal persons must obtain and maintain up-to-date beneficial ownership information and provide this to the register.<sup>183</sup> Sanctions for missing or incorrect reports can be up to €200,000 (US\$228,000).

## Inadequacies in legal framework

The Central Public Prosecutor's Office for Economic Crimes and Corruption has noted that it is not possible to prosecute bribery of a person offering future benefits in anticipation of having a governmental position.<sup>184</sup> While there is an online “whistleblower hotline”,<sup>185</sup> whistleblowers are only protected subject to strict conditions, which does not encourage them to cooperate. There is a lack of legal certainty about the reward for cooperation by companies in investigative proceedings and for cooperation as a mitigating factor to reduce

penalties for companies. Private companies are not obliged to self-report to anti-corruption authorities.<sup>186</sup> Sanctions for legal persons for the bribery of foreign public officials remain too low.<sup>187</sup>

Where international investigations involve non-EU member states with which there are no treaties on cooperation in criminal matters, cooperation still relies on traditional judicial assistance based on reciprocity.<sup>188</sup> This can hinder foreign bribery investigations.

Austrian legislation on political parties has weaknesses, such as insufficiently strong lobbying laws and inadequate accountability of state authorities, including with respect to financing from abroad.<sup>189</sup>

### Inadequacies in enforcement system

Although there are measures in place, including a “Council of Instruction”, to protect the independence of the Central Public Prosecutor’s Office for Economic Crimes and Corruption, greater independence is required. For example, there should be an independent court decision in cases where the minister of justice uses the right to issue instructions.<sup>190</sup> Investigative practices could be improved – in particular, investigative authorities could use external compliance monitors.<sup>191</sup>

### Recommendations

- Publish more detailed enforcement data, including separate statistics on foreign bribery enforcement
- Extend laws to ensure protection of whistleblowers and stimulate their cooperation with law enforcement authorities during investigations
- Extend the regulation for “crown witnesses” and introduce the *ne bis in idem* principle to ensure full witness protection from prosecution
- Apply lower penalties for foreign bribery to companies that cooperate in investigations
- Increase financial sanctions for legal persons so they are proportionate and dissuasive
- Provide full prosecutorial independence to avoid potential political and economic influence
- Continue to increase the number of qualified staff in relevant enforcement agencies
- Improve international investigations mechanisms, ensure cooperation through international channels and relax principles which hinder international investigations where jurisdictions with lenient laws are involved
- Make legislation on lobbying more generally transparent to enable tracking of lobbying efforts
- Adopt more stringent rules for political party financing, including

monitoring to ensure that funding sources are clear, to avoid illegal lobbying and to protect against bribery and illicit financing from other countries.

## BELGIUM

### Little to no enforcement

**1.8% of global exports**

### Investigations and cases

In the period 2016-2019, there were at least five investigations, an unknown number of cases commenced and no known cases concluded with sanctions. The number of investigations is based on media reports.

In 2017, the Brussels public prosecutor’s office was reported to be investigating a multi-million dollar deal reached between Belgian company **Semlex** and the Democratic Republic of Congo to produce biometric passports; this followed a Reuters investigative report about the contract.<sup>192</sup> Belgian police reportedly searched the company’s headquarters in 2018,<sup>193</sup> but the authorities have made no further comment on the investigation since then. The Organized Crime and Corruption Reporting Project (OCCRP) ran a story in 2019 about investigations in Kyrgyzstan concerning alleged irregularities in a multi-million dollar procurement of biometric passports won by a Lithuanian company that, according to OCCRP, has a Belgian company behind it.<sup>194</sup> OCCRP released a further report in 2020 alleging Semlex bribery in Madagascar to win a lucrative contract to produce passports.<sup>195</sup> In May 2020, Congolese citizens and international campaign groups filed a petition to be recognised as *partie civile* (civil party) to the ongoing investigation in Belgium.<sup>196</sup> No other ongoing cases in Belgium involving foreign bribery are cited here, because they are not public or are unknown to the authors.

In other jurisdictions, an Argentinian company, 50 per cent owned by the Belgian dredging company **Jan De Nul**, was cited in the media in connection with the major *cuadros* (bribe books) scandal, referring to alleged bribes paid by construction companies to members of the Argentine

government in exchange for advantageous contracts during the Kirchner era.<sup>197</sup>

## Recent developments

There have been no significant developments in Belgium since the *Exporting Corruption* Report 2018.

## Transparency of enforcement information

Belgium does not publish statistics on the number of opened foreign bribery investigations, cases commenced or cases concluded, nor does it publish any data on requests for mutual legal assistance made and received. A November 2015 general prosecutor's circular requires recording of data for economic, financial and corruption offences, but does not require their publication.

There is an official database for court decisions<sup>198</sup> (*jurisprudence*), though this does not include out-of-court criminal settlements. However, each court can autonomously decide whether to publish its rulings and as such, the database mostly contains rulings of the Supreme Court (*Cour de cassation*). There are several other databases that can be used to find court decisions, but as is the case in numerous jurisdictions, these are accessible only to those with a paid subscription.<sup>199</sup>

## Beneficial ownership transparency

There is a central register of ultimate beneficial ownership (UBO) information on companies and trusts. The beneficial ownership information of companies is accessible to law enforcement agencies and is also open to the public, with some limitations on content (e.g. address and date of birth might not be listed).<sup>200</sup> The information on trusts is only accessible to law enforcement agencies and persons with a legitimate interest. The central register was introduced after transposition of the 4th EU Anti-Money Laundering Directive of 2015 into Belgian law in 2017<sup>201</sup> and into a regulation in 2018.<sup>202</sup> Information on the new legislation on UBOs was set out by the Federal Public Service – Finance<sup>203</sup> and the register can be accessed through the service's website.<sup>204</sup> UBOs must be registered for trusts or other similar legal entities or arrangements.<sup>205</sup> This is done in the same register as the one used for companies. Companies and trusts have been required to comply since 2019.

## Inadequacies in legal framework

The statute of limitations framework does not allow adequate time to conduct foreign bribery investigations and prosecutions. The statute of limitations generally applicable to corruption cases is five years, although with suspension and interruption rules, the limitation period can be extended in practice to a maximum of 10 years (although exceptions may apply). Belgium currently has no legislation for the protection of whistleblowers in the private sector, though like all EU Member States it will be required to transpose the EU Directive on Whistleblower Protection by the end of 2021. The dual criminality requirement for foreign bribery remains.<sup>206</sup>

## Inadequacies in enforcement system

In 2019, the Council of Europe's Group of States against Corruption (GRECO) report on Belgium found that the Belgian Federal Police is in crisis – in particular, the departments tasked with combatting corruption.<sup>207</sup> It lacks resources, is suffering an exodus of personnel towards the better resourced local police forces and has an ageing workforce. According to the unions, there is a shortfall of about 2,500 staff members in a total workforce of 12,000.<sup>208</sup>

According to GRECO, the specialised anti-corruption unit, the Central Anti-Corruption Office, saw staff numbers fall from 120 in the 2000s to 66 in 2018, with only 39 of these 66 posts being filled. As a result, the office is reported to have become "purely reactive", conducting inquiries solely in response to complaints or press articles, and has neglected the proactive elements of anti-corruption police work.<sup>209</sup>

There is no evidence of Belgium implementing previous OECD WGB recommendations to make public the settlements concluded in foreign bribery cases.

## Recommendations

- Publish statistics on the number of opened foreign bribery investigations, cases commenced and cases concluded
- Introduce legislation that protects whistleblowers in the private sector and implements the EU Directive on Whistleblower Protection in a manner consistent with international best practice
- Extend the limitation period for foreign bribery to allow adequate time for investigations and prosecutions
- Remove the requirement of dual criminality for prosecution of bribery of foreign

officials and trading in influence • Publish criminal settlements in foreign bribery cases, as part of a reform to increase transparency of settlements • Increase funding and resources for public bodies tasked with combatting corruption (especially the Federal Police), enabling them to adopt a proactive rather than reactive approach.

## BRAZIL

### Moderate enforcement

#### 1.1% of global exports

#### Investigations and cases

In the period 2016-2019, Brazil opened 24 investigations, commenced no cases and concluded three cases with sanctions.

**Embraer**, the aircraft manufacturer, entered settlements of foreign bribery allegations with US<sup>210</sup> and Brazilian authorities in 2016, concerning bribes paid to officials in the Dominican Republic, India, Mozambique and Saudi Arabia.<sup>211</sup> In 2018, 10 of its senior executives were criminally convicted in Brazil for foreign bribery in the Dominican Republic,<sup>212</sup> with all but one appealing their convictions. In addition, a former Embraer executive was sanctioned by the Brazilian Securities and Exchange Commission (CVM) for not abiding by his fiduciary duty by participating in the bribery of a high-level official in the Dominican Republic.<sup>213</sup> Also in 2018, Embraer was convicted by Dominican authorities and ordered to pay an additional US\$7 million in fines, double the amount paid in bribes to secure the sale of eight combat planes to the country's Air Force.<sup>214</sup>

In July 2018, the Brazilian conglomerate **Odebrecht** and the Office of the Comptroller General (CGU) and the Office of the Attorney General (AGU) concluded a leniency agreement relating to foreign bribery allegations.<sup>215</sup> Odebrecht had previously entered into a global settlement in 2016 with US, Swiss and Brazilian authorities (the Brazilian Federal Prosecutor's Office) which provided for at least US\$2.6 billion in global penalties, with 80 per cent to be paid to Brazil.<sup>216</sup> As part of the global settlement, Odebrecht admitted to paying approximately US\$778 million in bribes to government officials,

their representatives and political parties associated with more than 100 projects in 12 countries, including Brazil. The CGU/AGU agreement imposed a US\$10 million fine specifically for the foreign bribery allegations and included a provision that required the company to contact officials in 11 countries where wrongdoing took place and to settle those issues. Since then, according to Brazilian authorities, Odebrecht has signed agreements with seven countries, including Colombia, Dominican Republic, Guatemala, Mexico, Panama, Peru and another undisclosed country. Besides these seven, there is no public information about any agreements reached with five further countries mentioned in the 2016 global settlement: Angola, Argentina, Ecuador, Mozambique and Venezuela. Odebrecht's dealings in other countries, such as Portugal and El Salvador, have also been under investigation by the Operation *Lava Jato* Taskforce.<sup>217</sup> (For more details, see the case study in the *Exporting Corruption* Report 2018.)

In 2018-19, the CGU and AGU signed leniency agreements with three other companies investigated by the *Lava Jato* Taskforce: **Andrade Gutierrez, Camargo Correa** and **Engevix/Nova Participações**.<sup>218</sup> As the alleged foreign bribery involving these companies took place before the entry into force of the Anti-Corruption Law, they were not sanctioned for those offences. However, the leniency agreements require them to initiate settlement negotiations with the authorities in two other countries (not made public), and they may be sanctioned under the terms of the agreements if this obligation is not fulfilled. Camargo Correa has been mentioned in the media in connection with alleged bribes paid to officials in Argentina, Bolivia, Peru and Venezuela.<sup>219</sup> It is also under investigation in Andorra for secret bank accounts held in the **Banca Privada d'Andorra**, reportedly used to funnel bribes.<sup>220</sup> Andrade Gutierrez's business interests in Venezuela<sup>221</sup> and Peru<sup>222</sup> and Engevix's in Peru<sup>223</sup> have also been under scrutiny by the authorities.

The Operation *Lava Jato* investigations have also reached the international dealings of other Brazilian construction companies. **OAS** is under investigation for alleged payment of bribes to officials in Bolivia, Chile and Peru,<sup>224</sup> while **Queiroz Galvão** and **UTC** have been investigated by Brazilian and Peruvian authorities on allegations of bribes paid in exchange for public contracts in Peru.<sup>225</sup>

Global Witness has claimed in a report that Brazilian infrastructure company **Asperbras** paid US\$50 million in bribes to the son of Denis Sassou-

Ngusso, President of the Republic of Congo, in exchange for public contracts worth US\$675 million. Global Witness alleges that this was done through a series of shell companies registered in Cyprus by a Portuguese intermediary.<sup>226</sup> The company has also been accused by a former Brazilian finance minister of bribing Brazilian officials to facilitate its entry into the Angolan market.<sup>227</sup>

## Recent developments

There were several setbacks to Brazil's anti-corruption legal and institutional framework in 2019 and 2020, threatening efforts to combat corruption in general and foreign bribery in particular.<sup>228</sup> These triggered concerned reactions from international organisations, including a public statement by the Financial Action Task Force (FATF) in October 2019<sup>229</sup> and a High-Level Mission to Brazil by the OECD WGB in November 2019.<sup>230</sup>

Some of the setbacks highlighted the vulnerabilities of institutional advances which had not been cemented into law. President Bolsonaro exercised allegedly politically motivated interference in virtually all anti-corruption bodies, including the Public Prosecutor's Office (MPF), the Federal Police, the Federal Revenue Services and the country's Financial Intelligence Unit (COAF).<sup>231</sup> The COAF was also subject to immense institutional instability: within a year it was transferred to the Ministry of Justice, then to the Ministry of the Economy and, finally, to the Central Bank – a highly unusual institutional set-up.<sup>232</sup> Efforts against money laundering were also impacted by a provisional Supreme Court decision which severely restricted the sharing of information on suspicious financial transactions between the COAF and other law enforcement agencies. This decision was reversed in late 2019, but it paralysed money laundering investigations for months.<sup>233</sup>

In 2019, the Law on Abuse of Authority was introduced, with the goal of ensuring public officials who abuse their powers are sanctioned. While the country needs to address the problem of systemic abuse of authority, the 2019 law will potentially deter investigators, prosecutors and judges from pursuing corruption cases involving powerful public- and private-sector actors, due to the vague and undefined provisions in the law. These leave ample room for retaliation against justice officials. The OECD WGB had expressed concerns about the law prior to its approval.<sup>234</sup>

Another significant development was the enactment of the Anti-Crime Law in December 2019. Regarding foreign bribery, the law fell well short of the necessary reforms to the country's enforcement system. It introduced a new feature to the Brazilian judicial system – the "investigating judge" – which, despite being praised as a necessary criminal justice reform, may result in even slower judicial proceedings and high costs.<sup>235</sup> The Anti-Crime Law also provides for extended confiscation in criminal cases, and modest improvement of the whistleblowing system in the public sector.

## Transparency of enforcement information

There are no consolidated statistics on foreign bribery enforcement, partly due to decentralised enforcement mandates. The Department for Asset Recovery and International Legal Cooperation within the Ministry of Justice publishes monthly statistical reports on requests for mutual legal assistance (MLA).<sup>236</sup> Transparency International Brazil was also able to obtain information on MLA requests specifically in the context of Operation *Lava Jato*.<sup>237</sup> The evidence of low levels of cooperation between authorities in Latin America – and the subsequent push to improve them – demonstrated the importance of transparency of enforcement data.

The MPF maintains a regularly updated, publicly accessible database of all ongoing procedures (investigations and cases), including those related to foreign bribery.<sup>238</sup> It also publishes information on leniency agreements and plea bargains signed with companies<sup>239</sup> and runs specific and user-friendly websites with information on high-profile cases, such as Operation *Lava Jato*.<sup>240</sup> The CGU also provides a database with information on its proceedings to investigate and punish foreign bribery, though there is limited information on the details of each case.<sup>241</sup> A list of opened proceedings,<sup>242</sup> as well as the leniency agreements signed between the CGU and companies, is also available.<sup>243</sup> Some information on different aspects of leniency agreements – such as fines and other penalties, enforcing authority, name of the company – are made available by the CGU and the MPF, but many remain completely or partially under seal, including the annexes where the foreign bribery conduct is described in detail. No public information is provided on the countries where bribes were paid, which may protect officials who were involved in corruption and remain in power.

Court decisions are published in full on courts' online systems and official gazettes, as long as there are no confidentiality issues.<sup>244</sup>

## Beneficial ownership transparency

Brazil has a central register of beneficial ownership information which is not accessible to the public. A beneficial ownership definition was introduced into the Brazilian legal framework in 2016 by the Federal Revenue Service's Ordinance n° 1.634, which also required all legal persons to provide information about their beneficial owners to the National Register for Legal Persons, maintained by the revenue service.<sup>245</sup> The information is accessible to law enforcement authorities, and the ordinance provided for it to be made public. This was expected in open-data format. However, in 2018, Ordinance n° 1.863 came into force, changing the legal framework to separate beneficial ownership data from other information kept by the Federal Revenue Service, so that the information on beneficial owners will not be available to the public.<sup>246</sup>

## Inadequacies in legal framework

While the country's anti-money laundering framework had for years been praised by the FATF, its efficacy is now in question due to recent events. Besides the above-mentioned Supreme Court decision halting the sharing among agencies of information on suspicious financial transactions, and changes to the COAF's institutional set-up, the COAF's director was also fired by President Bolsonaro in 2019. This instability coincides with the COAF's role in revealing a corruption and money laundering scheme allegedly involving the President's son, Senator Flavio Bolsonaro.<sup>247</sup>

A recent change in Brazil's jurisprudence to bar imprisonment before all appeals have been exhausted is likely to seriously aggravate the long-standing impunity of white-collar crimes, especially considering the country's sluggish judicial system and the inadequate procedural rules on statutes of limitation.<sup>248</sup> Whistleblower protection in Brazil remains inadequate, especially in relation to the private sector. Even in the public sector, protections for whistleblowers are insufficiently detailed and clear.

## Inadequacies in enforcement system

While efforts and results in investigations, prosecutions and the recovery of assets related to

grand corruption have improved, especially with Operation *Lava Jato*, it remains an open question whether the terms of leniency agreements between companies and the CGU/AGU will lead to effective and dissuasive sanctions in relation to foreign bribery offences. The provision that requires companies to contact officials in countries where wrongdoing took place and to settle those issues has had limited impact so far. There is a risk of perpetuating impunity in transferring the enforcement responsibility to foreign authorities who may have little interest in or capacity to investigate and prosecute these cases. The lack of transparency about the terms of these agreements is also problematic – their annexes, where the foreign bribery conduct is further detailed, remain under seal. Information about the negotiation of these settlements has been insufficient and there is little guarantee the agreements will be adequate and proportionate.

Beyond the setbacks to Brazil's anti-corruption legal and institutional frameworks mentioned in the previous sections, efforts to interfere politically with and dismantle the successful model of taskforces within the Federal Prosecutor's Office also threaten the country's ability to investigate and prosecute grand corruption and foreign bribery.<sup>249</sup>

Sérgio Moro, the former judge of Operation *Lava Jato*, resigned in protest in 2020 after President Bolsonaro fired the Director of the Federal Police. Such high-level changes in the Ministry of Justice have once again raised questions about the ministry's central role in facilitating international cooperation and its vulnerability to political interference and leaks of information about investigations.<sup>250</sup>

## Recommendations

- Improve transparency and publication of decisions and leniency agreements, including their annexes, related to major cases of foreign bribery and money laundering
- Approve legislation on beneficial ownership transparency, ensuring the register is publicly accessible
- Adopt and implement the bill related to whistleblower protection included in the "New Measures against Corruption"
- Ensure the independence and autonomy, with accountability, of Brazil's anti-corruption bodies, including the Federal Police and the Public Prosecutor's Office.

# BULGARIA

## Little or no enforcement

**0.2% of global exports**

### Investigations and cases

In the period 2016-2019, there were no known foreign bribery investigations, cases commenced or cases concluded with sanctions.

### Recent developments

In early 2018, Parliament passed the European Investigation Order Act, transposing the Directive 2014/41/EU regarding the European Investigation Order in criminal matters.<sup>251</sup> In mid-2019, legislation was adopted implementing the EU Council Framework Decision 2008/909/JHA on mutual recognition of judgements in criminal proceedings.<sup>252</sup> Since 2017, the EU Cooperation and Verification Mechanism (CVM), set up in 2007, has undertaken yearly reviews of the country's efforts to reform the judiciary and fight corruption and organised crime. Following a 2017 CVM recommendation, the government established a National Monitoring Mechanism for the fight against corruption and organised crime, judicial reform and the rule of law. It also established a Coordination and Cooperation Council ("post-monitoring council"), which will be responsible for monitoring progress with judicial reform and the fight against corruption, once the CVM is dissolved.<sup>253</sup>

### Transparency of enforcement information

Enforcement data is partially published, but foreign bribery data is not easily accessible. In 2016, the Supreme Judicial Council mandated separate treatment of foreign bribery cases when collecting and providing summarised statistics on court activities.<sup>254</sup> In 2017, the Chair of the Supreme Court of Cassation ordered that data about all corruption and related cases, including foreign bribery, be published monthly.<sup>255</sup>

The Supreme Judicial Council statistics are published twice a year and contain aggregated numbers of cases commenced and concluded by national

courts, broken down by instances. However, foreign bribery enforcement data is difficult to access.<sup>256</sup> The Supreme Judicial Council also publishes data, often with delay, regarding investigations carried out by the Prosecutors' Office and by the National Investigation Office.<sup>257</sup> This data is broken down by chapters of the Criminal Code only, and is therefore not comparable with the information from the courts. This prevents the tracking of cases by offence. The Prosecutor's Office publishes in its annual reports statistical data on requests for mutual legal assistance (MLA) made and received.<sup>258</sup> However, there is no breakdown by type of crime. Data regarding MLA requests to and from courts is not published.<sup>259</sup>

Court decisions and other actions are published in full, except for personal and corporate data.<sup>260</sup> This generally applies at all levels, though in practice some courts do not do it. The Supreme Judicial Council maintains a dedicated website, which can be searched for decisions.<sup>261</sup>

Both the Supreme Judicial Council and the Prosecutor's Office declined to provide information about foreign bribery enforcement for this report.

### Beneficial ownership transparency

Company beneficial ownership information is part of the records of the Commercial Register, which is centralised, electronic and publicly available.<sup>262</sup> A declaration of beneficial owners is compulsory for all companies registered in Bulgaria, pursuant Article 63 of the Measures against Money Laundering Act.<sup>263</sup> The same obligation is also imposed on companies registered in tax havens operating in Bulgaria in certain sectors.<sup>264</sup> The Commercial Register indicates the ownership of companies and the natural persons engaged in their control bodies.<sup>265</sup> However, there are still legal mechanisms which allow a person to exert control over a company without formally being among the owners or members of its control bodies.

Trusts, trust funds and other similar foreign legal entities are required to keep records of beneficial owners in the BULSTAT Register.<sup>266</sup> Similar to the Commercial Register, the BULSTAT Register is an electronic database with free access to most of its data.<sup>267</sup>

### Inadequacies in legal framework

The legal framework does not provide for adequate protection of whistleblowers against retaliation in

both the public and private sectors,<sup>268</sup> although the channels for receiving reports on wrongdoing are comparatively well developed.

As noted in the Concept for Penalty Policy 2020-2025, adopted by the Council of Ministers in May 2020, one of the most serious shortcomings is the frequent changes in anti-corruption legislation.<sup>269</sup> For instance, the 2018 Prevention of Corruption and Forfeiture of Illegal Assets Act has been amended eight times.<sup>270</sup> Frequent amendments reduce the effectiveness of the legal framework and prevent a comprehensive and qualitative impact assessment of the legislation.<sup>271</sup>

## Inadequacies in enforcement system

Grand corruption crimes are almost never prosecuted and punished. Shortcomings in the enforcement system include the heavy workload of the judiciary and law enforcement authorities, and the lack of adequate training and expertise of enforcement authorities. A key shortcoming, however, as indicated by the European Court of Human Rights in 2016, is the systematic problem of ineffective criminal investigations. The CVM has made substantial recommendations on this issue, some referring to the process for initiating criminal investigations, the role of preliminary enquiries and the possible need for judicial review of prosecutorial decisions not to open an investigation.<sup>272</sup>

There are many anti-corruption bodies in Bulgaria – the Supreme Judicial Council, the Ministry of Justice, the National Council for Anti-Corruption Policies, the Commission for Prevention of Corruption and Illegal Asset Forfeiture, the above-mentioned new National Monitoring Mechanism, to name a few. This requires further efforts at coordinating and inter-agency cooperation.

The CVM has also noted that “a particular challenge in the Bulgarian context – faced by institutions such as the new anti-corruption agency and the prosecution service – is the need for anti-corruption institutions to build public trust and gain a reputation over time for independence and professionalism in their work”.<sup>273</sup>

Shortcomings in MLA practice are mainly connected to lack of skills in making and processing MLA requests, heavy workload of practitioners and insufficient language skills.<sup>274</sup> After the establishment of the National Judicial Network for International Cooperation in Criminal Proceedings, there has been gradual improvement in this area.<sup>275</sup>

## Recommendations

- Collect and make publicly available statistical open data, including on sanctions imposed on legal persons for corruption-related crimes, in the same form for preliminary enquiries, investigations and court cases
- Comprehensively regulate the protection of whistleblowers reporting corruption-related acts in the public and private sectors
- Update the National Strategy for Preventing and Combatting Corruption, taking into account the CVM’s recommendations
- Strengthen law enforcement agencies’ capacity and improve inter-agency cooperation and international cooperation in the detection and investigation of foreign bribery
- Provide training to judges, prosecutors and investigators on foreign bribery offences.

# CANADA

## ● Limited enforcement

2.3% of global exports

## Investigations and cases

In the period 2016-2019, Canada opened at least two investigations, opened one case and concluded four cases with sanctions. There are no publicly available statistics on the number of investigations commenced.

The single case commenced concerned the charges filed against the president of **Canadian General Aircraft** in 2016 for violation of the Corruption of Foreign Public Officials Act (CFPOA) by conspiring to offer a bribe to officials in Thailand in order to secure the sale of a commercial plane to Thai Airways, the national airline of Thailand.<sup>276</sup> However, these charges were stayed in November 2017 for undisclosed reasons.<sup>277</sup> Convictions were handed down in 2019 on two individuals involved in the **Cryptometrics Canada** case, where bribes were offered to an Indian minister in a failed bid to win a major contract to supply security-screening equipment to Air India.<sup>278</sup>

The most high-profile case in this period involved **SNC-Lavalin Group Inc** and two of its subsidiaries, **SNC-Lavalin Construction Inc (SLCI)** and **SNC Lavalin International Inc**. The case concerned a

scheme whereby payments were made to Libyan officials to secure contracts for the benefit of SLCI and to obtain payments on amounts owed to SLCI by a Libyan government agency, the Great Man-Made River Authority.<sup>279</sup> Charges of fraud and foreign corruption were laid against all three entities in 2015, but the case was ultimately settled with a plea by SLCI to a single charge of defrauding the government of Libya. In the terms of the settlement endorsed by a Quebec Superior Court judge in December 2019, SLCI agreed to the appointment of an independent monitor and a monetary penalty of CDN\$280 million (US\$209 million), the largest penalty for fraudulent behaviour in Canadian history.<sup>280</sup> However, as the judge only endorsed the dollar amount of the fine and not the separate submissions presented by the prosecution and the defence, his rationale for doing so is ambiguous. This is unfortunate, as the facts presented in the submissions of the parties suggest the joint fine amount was at a substantial discount to what might have been imposed based on the gravity of the offence and the amounts involved. SLCI's former president was charged with multiple counts, convicted in December 2019 and sentenced to concurrent prison terms, meaning 8 years, 6 months incarceration.<sup>281</sup>

**MagIndustries**, a Toronto-based mining company, was investigated by Canadian authorities for allegedly paying bribes to Congolese officials in exchange for reduced taxes and expropriation permits, among other favours.<sup>282</sup> Internal investigations reportedly confirmed four under-the-table payments, totalling about US\$76,500. The authorities ultimately decided in 2017 not to file charges.<sup>283</sup>

In other jurisdictions, **Kinross Gold**, another Canadian mining company, agreed to pay US\$950,000 in the United States to settle a case with the Securities and Exchange Commission for having failed to introduce anti-corruption programmes and internal accounting controls when it acquired African subsidiaries, which especially impacted business conducted in Mauritius.<sup>284</sup> Also in the United States, a Canadian clean fuel technology company, **Westport Fuels Systems**, and a former top executive agreed in 2019 to pay more than US\$4.1 million to resolve charges of bribes paid to Chinese officials to obtain business.<sup>285</sup>

## Recent developments

Remediation agreements – as deferred prosecution agreements are called in Canada – were integrated

into Canadian law under the Criminal Code of Canada, which came into force in September 2018.<sup>286</sup> The rushed legislative process made it seem to many that remediation agreements were slipped into Canadian law as a concession to powerful corporate interests, rather than as a legitimate enforcement tool.<sup>287</sup> This issue came to the fore in 2019 with the so-called “SNC-Lavalin scandal”, which involved allegations that the Prime Minister’s Office attempted to influence the Minister of Justice to offer SNC-Lavalin a remediation agreement, contrary to the advice of the Director of the Public Prosecution Service, which had determined that SNC Lavalin did not meet the criteria for such an agreement.<sup>288</sup> Once this decision was made, the criminal proceedings continued as before toward a trial on the merits. Ultimately, the prosecution and SNC-Lavalin agreed to settle the charges with a plea bargain and a joint sentencing submission, both of which were presented to Justice Claude Leblond of the Superior Court of Quebec on 18 December 2019.<sup>289</sup>

In January 2020, the Public Prosecution Service of Canada (PPSC) issued a Guideline for remediation agreements.<sup>290</sup> However, the guideline is of limited value as they are focused primarily on the process and procedure to be followed, rather than on how the facts and circumstances should be evaluated in a given case.

The government held public consultations in 2017 about how to strengthen Canada's corporate accountability toolkit. It also sought input on the Integrity Regime, an administrative policy that sets out certain ethical conditions applicable to businesses bidding for federal contracts. The federal government also undertook public consultations in 2020 on improving the transparency of corporate beneficial ownership information, including the consideration of adopting a publicly accessible register.<sup>291</sup>

## Transparency of enforcement information

There are some published and updated statistics on foreign bribery enforcement available in Canada. However, these do not include information on open investigations. There are no official sources for statistics on requests for mutual legal assistance made by Canada or received from other countries.

Under the CFPOA, the Minister of Foreign Affairs, the Minister for International Trade and the Minister of Justice and Attorney General of Canada are

required to jointly prepare a report on the implementation and enforcement of the OECD Anti-Bribery Convention and CFPOA. The Minister of Foreign Affairs must submit this report to the House of Commons each year. The reports are posted on a Government of Canada website.<sup>292</sup>

Court decisions are technically publicly available documents. While significant improvements have been made, especially with free, online databases such as the Canadian Legal Information Institute, there is not always an electronic version of a decision available, especially where reasons are rendered orally by the court or where there is a guilty plea and joint submission on sentence. The SNC-Lavalin plea deal is a prominent example of an important case decision not available on a free, publicly accessible website.

### Beneficial ownership transparency

There is no central register of beneficial ownership of companies in Canada, but introduction of such a register is under consideration at federal and provincial levels. In 2019, the federal government amended the Canadian Business Corporations Act to require all federally incorporated companies to maintain beneficial ownership records and provide them to law enforcement authorities “as soon as possible” if requested. Amendments were passed in April 2020 to include increased requirements for designated non-financial persons and businesses to report beneficial ownership information on entities with whom they do business.<sup>293</sup> These amendments will come into force on 1 June 2021.<sup>294</sup>

### Inadequacies in legal framework

At present, the CFPOA offences are subjective *mens rea* offences that target reckless or intentional conduct. This sets a high burden on prosecutors. The burden is even higher where the defendant is a business organisation, because under Canada’s rules for organisational criminal liability, proof of corporate recklessness or intention is drawn from proof beyond a reasonable doubt that senior members of a corporation know about corrupt activities. In practical terms, this is difficult to prove without an admission.

Under Canadian law, prosecutors are not required to provide reasons for their decisions and they rarely, if ever, do so in practice. However, in the context of remediation agreements, since court approval is limited to the final agreement as negotiated, it has been suggested that prosecutors

should provide public information about how they decide when such agreements are in the public interest, to ensure consistency across cases. The handling of the SNC-Lavalin case led the OECD WGB to express concerns about the independence of Canadian prosecutors and the risks of improperly factoring “national economic interest” into the assessment of the public interest in inviting an organisation to negotiate a remediation agreement in cases of foreign corruption, contrary to Article 5 of the OECD Anti-Bribery Convention.<sup>295</sup>

### Inadequacies in enforcement system

The 2016 “Jordan” decision has caused upheaval in criminal and regulatory cases in Canada.<sup>296</sup> The case saw the Supreme Court set strict time limits within which those charged with crimes must be tried, in order to protect the constitutional right to be tried within a reasonable time (para 11b of the Canadian Charter of Rights and Freedoms). There are few exceptions to the time limits. This presents a practical challenge for the overburdened and under-resourced Canadian courts, especially in complex criminal cases, such as those involving economic crime. In general, court cases that take longer than the timeframes set out in “Jordan” have been stayed or dismissed, which has happened in corruption cases.<sup>297</sup>

The Royal Canadian Mounted Police (RCMP) has exclusive jurisdiction to investigate foreign corruption, which is carried out by a special group of investigators. The limited RCMP expertise and financial resources are split between a number of high-priority types of crime, including money laundering, cyber-crime and terrorism.<sup>298</sup> Federal prosecutors at the Public Prosecution Service of Canada handle complex prosecutions involving economic crimes, but the staff is still limited and needs to be expanded. By contrast, a centralised agency would bring together people with relevant expertise within government and allow development of tools. It would also have the advantage of centralising data collection and ensuring timely dissemination of information on foreign bribery enforcement.

There is a lack of guidance to corporations in terms of what an appropriate preventive ethics and compliance programme should look like. Similarly, there is not enough guidance on what is expected when providing cooperation to authorities, the process applicable to receiving and evaluating voluntary disclosure, and methodologies for calculating fines.

## Recommendations

- Increase transparency of court decisions, preferably via a central agency
- Create a publicly accessible centralised register of beneficial ownership information
- Promptly enact the detailed regulations needed to support full implementation of the remediation agreement regime, in particular providing essential guidance on those aspects not directly addressed in the current legislation, such as the structure of agreements and the conditions applicable to the appointment of monitors
- Increase transparency about how prosecutors evaluate the public-interest criteria when assessing whether it is appropriate to invite an organisation to negotiate a remediation agreement
- Consider the merits of creating a “Failure to Prevent” offence with a negligence-based fault (either penal negligence or strict liability) as an additional option for anti-corruption enforcement
- Increase police resources dedicated to corruption cases
- Consider alternatives to enable addressing corruption cases in a more expedited manner – through either the creation of a separate regulatory, quasi-criminal justice body to handle these cases or the attribution of this competence to the Competition Bureau of Canada, with appropriate resources in either case
- Provide guidance on the appropriate standards of a corporate compliance programme, and on post-crime cooperation between corporations and the authorities.

# CHILE

## ● Limited enforcement

0.3% of global exports

### Investigations and cases

In the period 2016-2019, Chile commenced nine investigations, commenced no cases and concluded no cases with sanctions.

The 2016 conviction in the *Fragatas* case was upheld on appeal in 2018.<sup>299</sup> Chilean authorities opened an investigation in 2018 into allegations that **Blue Oil** – a British Virgin Islands-based oil company owned by Chilean businessman Matías Rojas – and its subsidiaries interfered in the 2012 presidential election in Guatemala by financing the Patriotic

Party campaign.<sup>300</sup> Blue Oil allegedly transferred US\$155,000 to the Patriotic Party using fake invoices issued by shell companies controlled by the party, whose candidate, Otto Pérez Molina, was ultimately elected President.<sup>301</sup> A Chilean investigation into a case involving the **LATAM Airlines Group**, the parent company of **LAN Airlines**, was reopened in 2014 and later concluded without charges. In the United States, LATAM entered into a three-year deferred prosecution agreement with the Department of Justice in July 2016. Executives at the company were alleged to have executed a fictitious US\$1.1 million consulting agreement with officials at the Argentine Ministry of Transportation. The purported consultant allegedly funnelled payments to local labour union officials in exchange for the union agreeing to accept lower wages and not to enforce costly labour rules. This generated profits of more than US\$6.7 million for LATAM.<sup>302</sup>

## Recent developments

In November 2018, new legislation (Law n° 21.121) was enacted, increasing sanctions for a host of corruption-related offences and effecting amendments to the foreign bribery offence.<sup>303</sup> The scope of the offence was widened, facilitation payments were included, the prison sanction for foreign bribery was increased and the statute of limitations for foreign bribery was significantly extended.<sup>304</sup> The legislation also criminalised private-to-private corruption.

## Transparency of enforcement information

The Chilean Public Prosecutor’s Office and the Financial Analysis Unit (in cases of money laundering and financing of terrorism) publish detailed statistics on the number of crimes reported and investigated, cases opened and cases concluded on a quarterly and annual basis.<sup>305</sup> This includes data on foreign bribery enforcement. The Public Prosecutor’s Office does not publish any information on requests for mutual legal assistance (MLA) sent or received, but this is available through an official request for information.

The courts publish case information via an online database which allows any person to access judicial decisions and see the status of ongoing cases, the individuals involved and the case files.<sup>306</sup>

## Beneficial ownership transparency

There is no centralised register for beneficial ownership information in Chile. However, plans to create one have been included in the country's 2018-2020 Action Plan with the Open Government Partnership.<sup>307</sup> Following Circular n° 57/2017 from Chile's Financial Intelligence Unit, all financial institutions must request and keep beneficial ownership information from the legal persons with whom they maintain relations.<sup>308</sup> Law enforcement authorities may also access this information directly through companies, but, as with financial institutions, this may delay investigations.

## Inadequacies in legal framework

While "conditional suspension" and abbreviated procedures have increasingly been used to resolve corruption cases, transparency and accountability remain lacking. There is little guidance from the Public Prosecutor's Office as to when and how to use these procedures. Judicial oversight is insufficient, and the lack of transparency prevents the public from determining the appropriateness of decisions.<sup>309</sup>

There is no protection for whistleblowers in either the private or public sectors.

## Inadequacies in enforcement system

There is not enough guidance on the elements of an effective prevention model or compliance programme for companies. Certification of the effectiveness of compliance programmes is under-regulated, leading to uneven implementation among companies. This is often not duly considered by prosecutors.<sup>310</sup>

Other issues mentioned by the OECD WGB in its Phase 4 Report on Chile in 2018 include deficiencies in the framework and practice regarding confiscation of the proceeds of corruption and premature termination of cases.<sup>311</sup> The report also noted delays in requests for bank information and MLA requests.

A lack of training for prosecutors and judges jeopardises efforts to increase enforcement of foreign bribery regulations, as does the lack of awareness of the issue, including in the diplomatic corps.

## Recommendations

- Collect and publish detailed statistics on foreign bribery investigations and cases, as well as on MLA requests
- Create a public centralised register for beneficial ownership information
- Develop comprehensive whistleblower protection legislation that guarantees protection and confidentiality, and provides incentives to promote the reporting of corruption
- Increase transparency and accountability for conditional suspensions and abbreviated procedures
- Issue guidelines on effective prevention models for companies
- Provide more awareness-raising and training on the offence of bribery of foreign public officials, especially among prosecutors, judges and diplomatic personnel
- Include companies in anti-corruption policy discussions.

# COLOMBIA

## Limited enforcement

0.2% of global exports

## Investigations and cases

In the period 2016-2019, Colombia opened 20 investigations, commenced two cases and concluded one case with sanctions.

In 2018, **Sociedad Interamericana de Aguas y Servicios (Inassa)**, a Colombian subsidiary of Spanish-owned water utility company **Canal Isabel II**, was ordered by the business regulator, the Superintendency of Corporations, to pay a fine of about US\$1.8 million for bribing two Ecuadorian officials to expedite payments in connection with government contracts.<sup>312</sup> The decision also required Inassa to publish an extract of the regulator's ruling "in a medium of wide circulation and in a visible part of its website".

The agricultural company, **Vram Holding**, is reportedly under investigation for how it obtained a US\$6 million contract to build a baseball stadium in Venezuela.<sup>313</sup> The company has already been sanctioned with a US\$50,000 fine for obstruction of justice.<sup>314</sup> Another company, **AGM Desarrollos**, is, according to media reports, under investigation for the possible bribery of officials in El Salvador in

exchange for public lighting services.<sup>315</sup> In February 2020, the Colombian Prosecutor's Office opened an investigation into **Avianca**, a commercial airline,<sup>316</sup> after the airline reported to the US Securities and Exchange Commission in a 2019 filing that it may have committed foreign bribery by providing free and discounted airline tickets to government employees in several countries.<sup>317</sup>

## Recent developments

Recently enacted legislation instituted a new sanction for legal persons convicted of foreign bribery, namely, debarment from participating in public procurement proceedings.<sup>318</sup> Other provisions on conflicts of interest,<sup>319</sup> and asset and interest declarations, were also signed into law.<sup>320</sup>

The Superintendency of Corporations has engaged in a variety of capacity-building exercises. In 2019, it held 32 training sessions on foreign bribery for private-sector entities. It has published handbooks, made online training courses available<sup>321</sup> and produced a regulation providing guidance on Law 1,778/2016, implementing the OECD Anti-Bribery Convention into domestic legislation.<sup>322</sup>

## Transparency of enforcement information

There are no published separate statistics on foreign bribery-related investigations and cases. Information on mutual legal assistance requests sent and received is not available to the public.

There is no publicly accessible database for foreign bribery cases. The Superintendency of Corporations publishes its administrative decisions on corporate liability.<sup>323</sup> Court decisions are public and available online, but prompt access is limited due to the time it takes for sentences to be published and the difficulty of navigating court websites. There have to date been no court decisions in foreign bribery cases.

## Beneficial ownership transparency

There is no central register of beneficial ownership information. Law 2,010/2019 provided for creation of a Unified Register of Effective, Final or Real Beneficial Owners, but there is no public information about its implementation. The public has access to the Unified Company Register,<sup>324</sup> which has only basic information on legal persons. The Financial Action Task Force has noted that

“while basic information of legal persons is updated annually and accessible in the public registries and supervisors' databases, the authorities have difficulty obtaining accurate and up-to-date information on the beneficial ownership (BO) of complex corporate structures when there is foreign ownership or control involved”.<sup>325</sup>

## Inadequacies in legal framework

Colombia has administrative liability for corporations. There is no provision for corporate criminal liability, which would offer better avenues for effective and dissuasive sanctions. The OECD WGB noted in its Phase 3 Report in 2019 that detection of foreign bribery is jeopardised by the continued absence of whistleblower protection legislation in Colombia and by the lack of visibility and accessibility of public channels for reporting foreign bribery.<sup>326</sup> A positive note in this respect is the creation of a reporting channel within the Superintendency of Corporations.<sup>327</sup>

## Inadequacies in enforcement system

Colombian authorities have yet to demonstrate efforts to enforce against foreign bribery-related money laundering, according to the OECD WGB's 2019 report. Better guidance and more training are needed on identifying and reporting foreign bribery “to leverage the AML [anti-money laundering] regime for the detection of foreign bribery”.<sup>328</sup>

Although there are improvements in inter-agency cooperation between law enforcement authorities, this should be strengthened to ensure sustainability of efforts. In particular, the OECD WGB has recommended enhanced cooperation and coordination between the Superintendency of Corporations and the Prosecutor General's Office. The limited resources allocated for the investigation of the complex circumstances of foreign bribery cases makes this cooperation even more important.

While the creation of a specialised unit for financial investigations in the Prosecutor's Office was a positive step, foreign bribery may be connected to a host of other crimes under the jurisdiction of other prosecutors. This raises the need for specific training for all prosecutors, and awareness-raising efforts among law-enforcement agencies.

The discretion of the Prosecutor General to use the “principle of opportunity” in any investigation may represent a risk to the prosecution of foreign bribery cases.

## Recommendations

- Improve collection and availability of aggregated data on investigations and cases of foreign bribery, including data on international cooperation
- Ensure timely access to court decisions
- Enact legislation which provides protection to whistleblowers in the public and private sectors
- Increase public discussion on the relevance of a law on criminal liability of legal persons
- Continue providing capacity building to prosecutors and judges related to complex cases that involve transnational bribery
- Continue improving training and technical capacities of accountants and auditors to prevent and detect transnational bribery cases
- Improve cooperation between law enforcement agencies and increase resources available to them
- Provide greater clarity on the criteria used by the Prosecutor General to resort to the “principle of opportunity” in cases involving transnational bribery
- Continue promoting awareness of foreign bribery risks in the private sector.

# COSTA RICA

## Limited enforcement

**0.1% of global exports**

### Investigations and cases

In the period 2016-2019, Costa Rica opened two investigations, commenced no cases and concluded no cases.

The only public data available on the investigations concerns the countries where the bribery was allegedly carried out: Brazil and Panama. A further investigation relating to bribery in Guatemala was opened in 2020.

In the same period, several foreign bribery allegations surfaced in the media about foreign bribery and money laundering predicated on foreign bribery. In December 2017, the Costa Rican construction company **MECO** signed a leniency agreement with Panamanian authorities, following investigations that, according to media reports, revealed it had paid US\$9.4 million to officials in the country’s Ministry of Public Works. The bribes were reportedly paid in exchange for public infrastructure

contracts and to expedite proceedings and payments related to the contracts.<sup>329</sup>

Another Costa Rican construction company is alleged to be involved in a corruption scheme supposedly orchestrated by the Minister of Communication, Infrastructure and Housing from Guatemala. This case was investigated by the International Commission against Impunity in Guatemala in 2016 and the trial is pending. It relates to the alleged payment of bribes to obtain public contracts and to cancel debts owed by the company to the government.<sup>330</sup>

## Recent developments

In 2019, Costa Rica enacted legislation on corporate liability, which comprehensively addresses issues such as the standard of liability, sanctions and procedure.<sup>331</sup> Additionally, a new false accounting offence was established and the available sanctions against natural and legal persons (apart from small and medium-sized enterprises) have been increased.<sup>332</sup>

## Transparency of enforcement information

The judiciary publishes statistics on criminal cases on its website, including the number of cases for each type of crime.<sup>333</sup> As there are no foreign bribery cases, this category is not included in the statistics. No statistics are available on requests for mutual legal assistance.

Only judgements in criminal cases that are concluded in high-level courts such as Chamber III of Cassation are published.<sup>334</sup>

The OECD WGB noted in its Phase 2 Report in March 2020 the need for Costa Rica to improve the transparency of non-trial resolutions and collaboration agreements with cooperating offenders.<sup>335</sup>

## Beneficial ownership transparency

Costa Rica has a central register of beneficial ownership information (the Register of Transparency and Ultimate Beneficial Owners) which is not accessible to the public. It was established pursuant to Law n° 9.41 passed in 2016, which was complemented by an Executive Decree in 2018.<sup>336</sup> The decree determined that the Central Bank would set up an online platform where beneficial ownership data should be submitted by

legal persons.<sup>337</sup> The verification of the register's information has been automated through cross-checking several public databases.<sup>338</sup>

## Inadequacies in legal framework

There are some deficiencies in the definition of the foreign bribery offence in Costa Rica. Under the current formulation, it does not cover some of the most common means of committing the crime. Further, it requires proof of direct intent. Recklessness or wilful blindness is not enough. The OECD WGB in its Phase 2 Report in March 2020 warned that this could leave unpunished most cases of foreign bribery committed through intermediaries. It also stated that "the notion of *conclusión* allows an individual to escape liability if he/she is solicited for a bribe by a foreign official".<sup>339</sup>

The OECD WGB identified further concerns: 1. When property subject to confiscation is not available, authorities should be permitted to confiscate other property of equivalent value 2. Extradition should not be limited to crimes committed outside Costa Rica and which produced effects in the foreign state; nationals should be prosecuted in lieu of extradition without a request by a foreign state, and 3. provisions on special investigative techniques should be explicitly extended to foreign bribery cases.<sup>340</sup>

There is insufficient protection for whistleblowers, which hinders the reporting of foreign bribery, while "provisions on special investigative techniques should be explicitly extended to foreign bribery cases".<sup>341</sup>

## Inadequacies in enforcement system

The OECD WGB's March 2020 review of Costa Rica had tough words for the country on several counts.<sup>342</sup> According to its report, "Costa Rican authorities do not make full use of the available sources of allegations, including the media". It also said, "in terms of enforcement, Costa Rica did not proactively investigate foreign bribery allegations, or prioritise the enforcement of this crime in practice, due to, among other things, a lack of resources".

There is significant concern, including on the part of the OECD WGB, about the effect of the overlapping mandates of the Public Prosecution Service and the Attorney General's Office on foreign bribery enforcement. The OECD WGB has warned that lack of coordination between them "may waste resources and jeopardise cases". This is especially

important given the scarce resources available for law enforcement agencies.<sup>343</sup> National economic interest may also influence sanctions and lead to the termination of a foreign bribery case, which is not allowed under Article 5 of the OECD Convention. The OECD WGB has also noted that the freezing of bank accounts should be used more frequently.

## Recommendations

- Improve the collection and publication of statistics by the judiciary, especially as it relates to investigations and cases of corruption
- Ensure that the Register of Transparency and Ultimate Beneficial Owners of the Costa Rican Central Bank is accessible to the public
- Improve the definition of foreign bribery to cover all aspects of this crime and eliminate the defence of *conclusión*
- Adopt comprehensive legislation to protect whistleblowers from retaliation
- Clarify the overlapping roles of the Prosecution Services and the Attorney-General as they relate to foreign bribery offences
- Increase the resources for law enforcement agencies
- Ensure that national economic interests do not affect foreign bribery enforcement
- Increase the freezing of bank accounts
- Fully use all available sources to detect foreign bribery, including the media and reporting by public officials
- Encourage companies to adopt anti-corruption compliance programmes.

# CZECH REPUBLIC

 Little or no enforcement

0.8% of global exports

## Investigations and cases

In the period 2016-2019, the Czech Republic opened one investigation, still pending,<sup>344</sup> commenced one case and concluded no cases.

The OECD WGB's Phase 4 Report on the Czech Republic in 2017 noted with concern that "17 years after ratifying the Convention, the Czech Republic has still not prosecuted a case of foreign bribery, which is cause for concern, especially in view of the export-oriented nature of the Czech economy. In addition, Czech exports include high-risk sectors for bribery, such as machinery and defence materials,

and many of the Czech Republic's export destinations for arms are at high risk of corruption.<sup>345</sup> In 2018, the Czech Republic started a prosecution in relation to alleged bribery in the Ukraine.

In other jurisdictions, according to media reports, the Latvian Bureau for Preventing and Combatting Corruption initiated a bribery and money laundering case in December 2018 involving Czech and Polish companies and arrested the Sales Area Director of the Czech company **Škoda Transportation**. The Bureau alleges that the companies bribed Riga City Council officials and the Riga transport company (*Rigas Satiksme*) in relation to three tenders between 2013 and 2016.<sup>346</sup> In Ukraine in 2018, the anti-corruption agency (NABU) conducted investigations and filed charges alleging bribery and money laundering against two intermediaries in relation to the tender award by state enterprise NNEGC Energoatom to Czech company **Skoda JS a.s.** for the supply of equipment for nuclear power stations. NABU claims Škoda JS a.s. transferred an overcharge of €6.4 million (US\$7.3 million) to a Panamanian company.<sup>347</sup> The Czech company is a subsidiary of Netherlands-registered **OMZ B.V.**, which is part of the Russian **Uralmash-izhora Group** or **OMZ Group**, in turn owned or controlled by Russia's state-owned **Gazprombank**.<sup>348</sup>

## Recent developments

The government issued an anti-corruption action plan for 2018-2022 which includes plans for several pieces of legislation that respond to the OECD WGB's recommendations.<sup>349</sup> The Czech anti-money laundering law – the Act on Some Measures Regarding Legalisation of the Proceeds from Illegal Activities and Terrorism Financing (AML Act) – is being amended to reflect the requirements of the 5th EU Anti-Money Laundering Directive.<sup>350</sup>

On 30 June 2020, the Ministry of Justice submitted a Bill on Protection of Whistleblowers, transposing the EU Whistleblower Protection Directive 2019/1937 into an interdepartmental comment procedure. The Bill is expected to be ready for governmental approval by the end of 2020, before being sent to Parliament. If approved, it will establish a Whistleblower Protection Agency as a reporting channel and will require employers to establish "reliable channels". It will also introduce a system to protect whistleblowers from potential retaliation.

The Ministry of Justice has presented to the government an amendment to the Public

Prosecutor's Office Act. The Bill aims to protect chief public prosecutors, as well as the Supreme Public Prosecutor, from potential undue political influence. It introduces fixed terms for their offices and their possible removal only via a disciplinary proceeding. Obligatory selection procedures are required for chief district, regional and high public prosecutors. However, the Bill is controversial and therefore its progress within the legislative procedure is complicated. The potential for undue political influence will remain, as the Minister of Justice will nominate the majority of members of the selection committee appointing chief prosecutors, and the term of office of the existing chief prosecutors will be limited with immediate effect. It is difficult to predict the further progress and final wording of the Bill within the legislative procedure.

## Transparency of enforcement information

The police make public monthly statistics on criminal investigations, which are based on sections of the Criminal Code.<sup>351</sup> As foreign bribery is not a separate crime, it is not possible to identify from the statistics which investigations concern foreign bribery. Neither the Prosecution Service nor the Ministry of Justice publishes information on investigations.

The Ministry of Justice is responsible for the statistics on mutual legal assistance (MLA), which are updated monthly.<sup>352</sup> Each statistic is marked with a code, which identifies the agency receiving the request, but does not distinguish foreign bribery. The Prosecutor General's Office adopted an amendment to the General Instruction No. 10/2011, which entered into force on 10 October 2017. This instruction obliges all public prosecutors to inform the international department of the Prosecutor General's Office about MLA requests sent abroad and foreign applications for MLA concerning suspicion of foreign bribery committed by a Czech national or company. The Supreme Court, Supreme Administrative Court and both High Courts generally publish their decisions electronically, in full.<sup>353</sup> The Municipal and Regional Courts and the District Courts are also starting to publish some of their decisions. Anyone can ask for a specific court decision and receive it in an anonymised form.<sup>354</sup>

## Beneficial ownership transparency

There is a central Register of Beneficial Owners which is not publicly accessible. Only registered

entities and designated authorities can have full access to the register free of charge.<sup>355</sup> Those who can prove a lawful interest can gain partial access to the requested information.<sup>356</sup>

The Amendment to the Act on Public Registers of 2018 established the central register.<sup>357</sup> Any legal person or trust must submit an application to the registrar court that maintains the Public Register or Commercial Register (i.e. the publicly accessible register of most of the legal entities in the Czech Republic) to have the relevant information entered in the central beneficial ownership register.<sup>358</sup> However, there are no sanctions for corporations or trusts that fail to do so, which means many do not comply with the obligation.

A new Act on the Register of Beneficial Owners transposing the beneficial ownership registration requirements of the 4th and 5th EU Anti-Money Laundering Directives has been proposed and is currently being debated in the Czech Parliament. The new legislation would introduce public access to most beneficial ownership information about registered legal persons. The act also envisages administrative and civil sanctions for non-compliance with beneficial ownership registration duties, and automatic transfer of data from other public registers.

### Inadequacies in legal framework

The crime of foreign bribery is not separately identified in the Criminal Code. Whistleblower protection is only partial in the public and private sectors, under rules applicable to banks and through certain protections under a governmental regulation that applies to public-sector employees. The OECD WGB criticised both these points in its Phase 4 Follow-Up Report on the Czech Republic in 2017.<sup>359</sup>

The Ministry of Justice has submitted to the interdepartmental comment procedure a Bill on Protection of Whistleblowers, transposing the EU Whistleblower Protection Directive.

### Inadequacies in enforcement system

Only one foreign bribery case has been prosecuted to date.<sup>360</sup> Public prosecutors lack sufficient independence. The OECD WGB report in 2017 called for the Czech Republic to ensure the availability of adequate analytical resources for investigating foreign bribery cases. It further called for support to efforts by non-financial obliged entities to detect and report suspicions of money

laundering related to foreign bribery, such as those in the real estate and gambling sectors, tax advisors and legal professionals. This situation remains unchanged.

There are insufficient resources for identification of breaches of the obligations arising under the Anti-Money Laundering Act and the Act on the Public Registers.

### Recommendations

- Introduce more meaningful statistics on foreign bribery investigations, enforcement and resulting sanctions
- Ensure that the Register of Beneficial Owners is accessible to the public and introduce sanctions for entities that fail to apply for beneficial owner registration
- Ensure that comprehensive whistleblower protection legislation is enacted and implemented
- Amend the Criminal Code to introduce a specific crime of foreign bribery, or procedural measures for prosecuting cases which relate to foreign bribery
- Ensure the Public Prosecutor Office Act is enacted and monitor compliance with it
- Increase resources to improve identification of breaches of the obligations arising under the Anti-Money Laundering Act and Act on Public Registers.

## DENMARK

### Limited enforcement

**0.8% of global exports**

### Investigations and cases

In the period 2016-2019, Denmark opened 10 investigations, commenced no cases and concluded no cases.

The largest case of bribery abroad investigated by the Public Prosecutor for Serious Economic and International Crime (SØIK) was against the Danish company **Hempel AS**, which produces paint for ships. After the German authorities began an investigation of Hempel in 2016, Hempel conducted an internal investigation and self-reported to the SØIK in 2017 about illegal sales practices in Germany and other countries in Europe and Asia.<sup>361</sup> In 2019, together with its German subsidiary

**Hempel (Germany)**, it entered settlements with both Danish and German authorities, involving payment of DKK220 million (US\$33.7 million) in fines to the Danish authorities.<sup>362</sup> There is no public information about whether this case involved bribery of foreign public officials or only private-to-private bribery, therefore this case has not been counted for the purposes of this report.

In 2017, the World Bank Sanctions Board debarred Danish company **Consia Consultants APS** in relation to the alleged bribery of government officials in Indonesia and Vietnam.<sup>363</sup> This led to an investigation by the Danish police, but no charges have been filed.<sup>364</sup> Danish financial institutions have been the subject of allegations in connection with serious money laundering cases in recent years.<sup>365</sup>

**Danske Bank** and **Nordea Denmark** were reported to be involved in global corruption and bribery scandals, with more than €200 billion (US\$228 billion) in suspicious transactions reportedly passing through the banks.<sup>366</sup> They have been under investigation in a number of jurisdictions, including Denmark, Estonia, Germany, the UK and the United States.<sup>367</sup>

Several foreign bribery allegations against major Danish companies have been widely reported in the media. **Maersk**, the world's largest shipping company, is being investigated by Brazil's *Lava Jato* Taskforce for allegedly paying US\$3.4 million in bribes related to 11 shipping contracts with Petrobras, worth more than US\$140 million.<sup>368</sup> Construction company **Burmeister & Wain Scandinavian Contractor (BWSC)** has been accused of bribery in relation to tender processes in West Africa and has reported two of its employees to the police in Denmark.<sup>369</sup> The Danish Development Finance Institute co-financed the BWSC projects in West Africa. In June 2020, BWSC was debarred for 21 months by the African Development Bank based on its conclusion that the company was likely to have engaged in fraudulent and corrupt practices in relation to a power generation project in Mauritius.<sup>370</sup> The company **FLSmidth**, which provides services to the mining and cement industries, has been accused of bribery in Tunisia.<sup>371</sup> Danish beer company **Carlsberg** has been accused by a whistleblower (a former employee) of making more than 200 bribery payments in India between 2015 and 2016.<sup>372</sup>

## Recent developments

In recent years, the Prosecutor's Office (SØIK) received a significant budget increase, with

resources for 2019 amounting to DKK104.7 million (US\$16 million) and 217 staff.<sup>373</sup> However, this is primarily an increase intended for money laundering investigations.<sup>374</sup> Political will to significantly increase the resources for combatting foreign bribery has not been demonstrated.

In June 2017, the Danish Parliament adopted the new Danish Anti-Money Laundering Act.<sup>375</sup> An August 2017 review by the Financial Action Task Force (FATF) criticised Denmark for lacking a national anti-money laundering policy and for failing to commit adequate resources to combatting money laundering. It urged the country to "do more to properly assess and understand the risks it is exposed to".<sup>376</sup> The review has reportedly triggered a response by Denmark, including allocation of more resources and greater cooperation.<sup>377</sup> In March 2018, the government published a national strategy for combatting money laundering and financing of terrorism for 2018-2021.<sup>378</sup>

Also in 2018, Denmark adopted an amendment to the Penal Code increasing the prison terms for money laundering from a maximum of six years to eight years, and expanding the scope of the criminal offence so that it also deals with some pre-crimes and criminalises so-called "self-laundering".<sup>379</sup>

## Transparency of enforcement information

Denmark does not publish statistics on foreign bribery investigations or cases, nor does it publish statistics on requests for mutual legal assistance (MLA) made and received.

Important Danish court decisions are published in the official judicial journal, *Ugeskrift for Retsvæsen*,<sup>380</sup> which can be accessed either via a fee-paying subscription or from public libraries. Copies of court decisions can be obtained for a fee from the relevant court if the person requesting knows the case number.<sup>381</sup> However, the public is not informed of cases opened or concluded, which makes it challenging to follow them. Likewise, the public may request information on penalty notices issued to a company, but not a natural person, under a settlement, but as the public is not informed of settlements, this is also somewhat redundant.<sup>382</sup>

## Beneficial ownership transparency

There is a public central register of beneficial ownership of companies in Denmark – the Central

Business Register – as required by the 5th EU Anti-Money Laundering Directive. Since July 2018, it has not been possible to register a company or a trust in Denmark without registering its beneficial owners.<sup>383</sup> If a company fails to register its beneficial owners, the sanction of compulsory dissolution can be applied by a court.

## Inadequacies in legal framework

Danish anti-bribery legislation still does not cover trading in influence. Although it has been encouraged to do so by the OECD WGB, Denmark has not increased the maximum sentence for false accounting offences in the Criminal Code.<sup>384</sup> Regarding corporate liability, the OECD WGB raised substantial concerns in its Phase 3 Follow-up Report in 2015 about “prosecutorial guidelines that reduced the basis for imposing corporate liability”, noting that Denmark planned to issue new guidelines.<sup>385</sup> However, no new guidelines have been issued to date.

Denmark has no specific laws to protect whistleblowers. The new EU Directive on Whistleblower Protection is expected to significantly improve the situation of whistleblowers in Denmark when it is finally transposed. No steps have been taken to establish a clear framework for out-of-court settlements in Denmark.<sup>386</sup> The country has also not yet been successful in getting Greenland and the Faroe Islands to agree to be parties to the OECD Anti-Bribery Convention.

The European Council noted in 2019 that “preventing money laundering and terrorism financing has become a priority for Denmark against the background of a large money-laundering scandal involving the largest financial institution in Denmark. [...] However, challenges remain and the financial supervisor still needs to adopt additional measures and guidelines to strengthen supervision in these areas”.<sup>387</sup>

According to the 2019 FATF Follow-up Report on Denmark, progress has been made in anti-money laundering efforts, but there are still some shortcomings.<sup>388</sup> These include the fact that financial institutions and designated non-financial businesses or professions are not clearly required to take enhanced measures to mitigate their risks, and it is not clear that there are formal requirements to monitor internal controls or take measures to mitigate identified high risks. Financial supervisors such as the Danish Supervisory Financial Authority are also not yet authorised to issue administrative

penalty notices, meaning they still have limited powers to enforce their own orders.<sup>389</sup>

## Inadequacies in enforcement system

The amount of resources allocated to enforcement of the legislation on bribery of foreign public officials has not increased since 2018, which means that SØIK has also not increased the number of prosecutors or investigators working on bribery of foreign officials.

Denmark has also not issued any official guidance on self-reporting for individuals or legal persons.

## Recommendations

- Improve transparency of enforcement information concerning foreign bribery
- Formulate an overall strategy, an action plan and a monitoring framework for more effective implementation of legislation related to combatting bribery of foreign officials
- Adopt holistic whistleblower protection legislation which covers both EU and non-EU regulated policy areas
- Extend foreign bribery legislation to cover Greenland and the Faroe Islands
- Establish a permanent structure within the national authorities to act as the lead institution for implementing this strategy
- Impose significantly higher fines on companies for bribery and introduce other sanctions for natural and legal persons, such as debarment
- Allocate significantly more human and financial resources to investigation and prosecution of bribery of foreign public officials
- Ensure that the police and SØIK have the necessary tools and methods to investigate and prosecute foreign bribery, including, if necessary, to raise the level of penalty to allow the use of special investigative techniques, such as office and home searches
- Ensure that the Danish Development Finance Institution has effective and transparent anti-corruption compliance procedures and practices
- Ensure effective supervision and the enforcement of the anti-money laundering framework.

# ESTONIA

 Limited enforcement

0.1% of global exports

## Investigations and cases

In the period 2016-2019, Estonia opened one investigation, commenced one case and concluded one case with sanctions.

Estonia's prosecutors have launched investigations into **Danske Bank**,<sup>390</sup> **Swedbank's** Estonia branch<sup>391</sup> and **Tallinn Business Bank**<sup>392</sup> in connection with serious money laundering allegations and alleged weak anti-money laundering systems.

### Investigating Danske Bank Estonia

The Estonian branch of Danske Bank was allegedly at the centre of numerous money laundering schemes, many of which have allegedly fed the payment of bribery to foreign officials across the globe.<sup>393</sup> It reportedly played a central role in the Magnitsky scandal<sup>394</sup> and in both the Russian<sup>395</sup> and the Azerbaijani Laundromats.<sup>396</sup>

More than five years after the initial allegations of wrongdoing, the Estonian branch of Danske Bank was shut down by Estonia's banking regulator *Finantsinspeksioon* in 2019.<sup>397</sup> The regulator referred to "large-scale violations of the local rules".

In January 2020, Estonian prosecutors expanded their investigations into more than 10 cases, involving a reported €2 billion (US\$2.3 billion) in transactions.<sup>398</sup> Danske Bank itself conducted an investigation into 15,000 of its customers and €200 billion (US\$222 billion) worth of transactions. After analysing the 6,200 customers with the most risk indicators, it found in 2018 that the vast majority were suspicious.<sup>399</sup>

The Danish regulator found in 2018 that "The majority of Danske Bank customers with relations to the Moldova case (the Russian Laundromat Case), which surfaced in the media in March 2017, became customers of the Estonian branch in the years 2011-2013".<sup>400</sup>

In 2018, a board member of state-owned Estonian Railways was convicted and sentenced to a conditional sentence of 18 months and a fine of €117,000 (US\$134,000) for accepting a bribe from **E.R.S.**, the Estonian subsidiary of a joint venture co-owned at the time by Dutch terminal operator **Vopak**. He was also found responsible for brokering a €72,000 (US\$82,000) bribe to a Russian Railways official. An E.R.S executive was given a conditional

sentence of two years and a fine. Both deals aimed at benefitting the company's train routes.<sup>401</sup>

According to media reports, the former chairman of the state-owned company Latvian Railway, Ugis Magonis, was accused of receiving €500,000 (US\$571,000) to advance the interests of Estonian company **Skinest Rail**, owned by Oleg Ossinovski.<sup>402</sup> Skinest won a contract to supply four diesel locomotives to the Latvian company. After exchanges about whether Latvian or Estonian courts should try Skinest and Ossinovski, proceedings were conducted in the Limbazi and Cesisi courts in Latvia.<sup>403</sup>

**SIA Merks**, the Latvian subsidiary of Estonian construction company **Merko Ehitus**, is under investigation by Latvia's Bureau for Preventing and Combatting Corruption (KNAB) concerning cartel and bribe allegations in multiple procurement proceedings.<sup>404</sup>

## Recent developments

In March 2020, new legislation on money laundering entered into force as part of Estonia's efforts to transpose the 5th EU Anti-Money Laundering Directive. The new law increases protections for whistleblowers and widens the circle of obliged entities who must take into consideration stricter anti-money laundering prevention measures in their activities. It also allows for the creation of a database of bank accounts, which the Financial Intelligence Unit will be able to access. A list of politically exposed persons will be developed, for whom higher requirements will be applied for the prevention of money laundering. The new law also creates stricter requirements for virtual currency service providers.<sup>405</sup>

## Transparency of enforcement information

There are no centralised statistics on foreign bribery enforcement. This information is not included in the Ministry of Justice statistics published annually, which include data on the commencement of criminal proceedings.<sup>406</sup> The Ministry of Justice publishes information on mutual legal assistance (MLA) requests received and sent,<sup>407</sup> and most such requests are registered in the relevant domestic authority document register.<sup>408</sup> Statistics on foreign requests for confiscation are published by the Prosecutor's Office in its annual reviews.<sup>409</sup>

The Estonian Internal Security Service (KAPO) publishes annual reports, in which information on cases is provided, as well as general analysis of risks and anti-corruption efforts.<sup>410</sup>

All court decisions that have entered into force are published and available electronically, including Supreme Court decisions.<sup>411</sup> Publication may only be partial if the decision contains sensitive personal data or if other issues exist, such as business secrecy or pending foreign criminal proceedings.

## Beneficial ownership transparency

There is a centralised register for beneficial ownership information in Estonia, which is accessible to the public, but limited by a paywall. All companies must provide data to the authorities through the commercial register database.<sup>412</sup> A small fee is required per search.<sup>413</sup>

## Inadequacies in legal framework

As the OECD WGB noted in its Phase 3 Follow-Up Report on Estonia 2016, there are some inadequacies in the Estonian legal framework, pointing to the need to amend legislation to toll the statute of limitations following an MLA request and to expand the scope of and sanctions for false accounting offences.<sup>414</sup>

## Inadequacies in enforcement system

The low levels of enforcement in Estonia, noted by the OECD WGB in 2016, are incompatible with the risks and the level of economic activity in Estonia, especially as concerns the financial sector, which has been rocked by scandals. The lack of resources for the analysis of suspicious transactions reports was also an issue highlighted by the OECD WGB.<sup>415</sup>

## Recommendations

- Improve information collection and availability of information on foreign bribery enforcement
- Adopt legal provisions on the suspension of the statute of limitations when Estonia issues an MLA request, as recommended by the OECD WGB
- Ensure that false accounting offences cover all the activities described in the OECD Anti-Bribery Convention
- Increase resources available for anti-money laundering prevention and detection
- Increase awareness of cross-border corruption risks, especially concerning the financial and information technology sectors.

# FINLAND

## Little or no enforcement

**0.4% of global exports**

## Investigations and cases

In the period 2016-2019, Finland opened no new investigations, commenced no cases and concluded no cases with sanctions.

## Recent developments

An amendment was made to the Tax Information Disclosure Act which allows the tax authorities, on their own initiative, to provide otherwise confidential tax information to the police regarding suspected corruption. The Prosecution Service has been reorganised to make it easier to use specialised prosecutors.

The government has begun several projects to improve the enforcement of anti-corruption laws and to implement the recommendations made in the OECD WGB Phase 4 Report in 2017 – including on whistleblower protection, laws concerning publicity of documents, a lobbyist register, money laundering, corporate criminal liability and strategies to fight corruption. These are in preparation and no government measures or proposals have yet been put to Parliament.<sup>416</sup> In early 2020, a guidance document for small and medium-sized enterprises was published, covering corruption, including foreign bribery.<sup>417</sup>

The Financial Action Task Force (FATF) report on Finland in 2019 found significant shortcomings, in particular in the transparency regime applicable to legal persons, the supervisory measures applicable to certain types of “non-financial” businesses (designated non-financial businesses and professions), and the sanctions regime for failure to comply with the requirements for preventive measures in general.<sup>418</sup>

## Transparency of enforcement information

Finnish authorities do not publish statistics on foreign bribery investigations, cases commenced or

cases concluded. The police, the Ministry of Justice, the National Prosecution Authority and the Statistical Centre all publish various statistics about crimes and investigations.<sup>419</sup> However, this information is mostly general, which means extracting relevant information is time-consuming and difficult. Information on requests for mutual legal assistance (MLA) is not publicly available, although according to the OECD WGB, Finland has been active in seeking MLA in foreign bribery cases.<sup>420</sup>

All court decisions are public, unless specifically declared partially or totally confidential (for example, to protect trade secrets). Court decisions and the relevant details of the crime are available to the media and the public on request.

### Beneficial ownership transparency

In 2019, a Beneficial Owner Register was established, covering persons controlling more than 25 per cent of an entity, maintained by the Finnish Patent and Registration Office.<sup>421</sup> Organisations such as limited liability companies and cooperatives were required to file a notification of beneficial owners by 1 July 2020, but this deadline was unlikely to be met. Trusts do not exist in Finland, but foreign trusts are subject to the same rules as domestic companies and other legal entities. The information in the register is not publicly accessible, but is available to agencies requiring access for anti-money laundering purposes and to enforcement authorities in connection with a criminal investigation.

The Beneficial Owner Register was very incomplete at the end of 2019. This should improve after the deadline in 2020, if the Registration Office pressures non-compliant companies. However, there are questions as to the accuracy of the information that is and will be held in the Register.

Banks and companies with anti-money laundering duties must collect information regarding beneficial owners and are required to provide the information to the authorities for crime investigations, on request.<sup>422</sup>

The FATF has determined that Finland should adopt appropriate measures to ensure mitigation of the misuse of legal persons.<sup>423</sup>

### Inadequacies in legal framework

A plea-bargaining regime was introduced in Finland in 2015. While the OECD WGB welcomed this, in its

2017 and 2019 reviews of Finland it raised concerns as to its lack of applicability to legal persons.<sup>424</sup> In relation to individuals, there are few incentives to enter into a plea bargain, given the current extremely low likelihood of conviction in Finland. The OECD WGB also recommended that Finland increase the maximum criminal corporate fine under Chapter 9 of the Criminal Code.<sup>425</sup> This has yet to occur and is not being considered by the government.<sup>426</sup>

Finland lacks clear, comprehensive whistleblower protection legislation, with provisions fragmented across different regulatory instruments specific to sectoral laws. The country has been working on national legislation relevant to whistleblower protection and is now considering how to incorporate the requirements of the EU Directive on Whistleblower Protection.<sup>427</sup>

### Inadequacies in enforcement system

The OECD WGB expressed serious concern in 2019 about Finland's lack of enforcement.<sup>428</sup> The OECD WGB Phase 4 Report highlights insufficient resources committed to foreign bribery cases, a lack of regular training for judges and the lack of specialisation of courts and judges. There have been some training initiatives on the quantification of the proceeds of bribery, but no written guidance has been provided to investigators and prosecutors.

### Recommendations

- Publish statistics on foreign bribery investigations, cases commenced or cases concluded
- Make the Beneficial Ownership Register publicly available
- Increase the maximum penalty for corporate crime
- Introduce legislation and establish whistleblowing channels consistent with the EU Directive
- Increase resources for enforcement authorities to conduct foreign bribery investigations
- Provide training to law enforcement officials and the judiciary on the foreign bribery offence and its application, and consider assigning foreign bribery cases to courts or judges with specialised skills and experience
- Raise awareness of foreign bribery laws among exporting companies.

## FRANCE

 Moderate enforcement

### 3.5% of global exports

## Investigations and cases

In the period 2016-2019, France opened eight investigations, commenced seven cases and concluded nine cases with sanctions.

Following an investigation that started in 2016 (see case study in the *Exporting Corruption* report 2018), the French Financial Prosecutor concluded a Public Interest Judicial Agreement (*Convention Judiciaire d'Intérêt Publique*, CJIP) with **Airbus** in January 2020. Through the settlement, which also involved British and US authorities, the company agreed to pay €3.6 billion (US\$4.1 billion) in global penalties. The largest share of a little over €2 billion (US\$2.3 billion) went to France in the form of a “public interest fine”. The CJIP covered Airbus operations in Middle East countries, China, South Korea, Nepal, Russia and Colombia.<sup>429</sup>

## Recent developments

The CJIP has proven an effective means of sanctioning legal persons involved in domestic and foreign bribery. Six CJIPs have been concluded since the tool was introduced, three of them in foreign bribery cases.<sup>430</sup> It has also provided an impetus for international cooperation, which manifested itself both in the Airbus case<sup>431</sup> – with a joint investigation team composed of the National Financial Prosecutor's Office (PNF) and the UK's Serious Fraud Office, and collaboration with the US Department of Justice – and in the Société Générale case.<sup>432</sup>

In June 2019, the French Financial Prosecutor and the French Anti-Corruption Agency published for the first time guidelines setting forth conditions companies must meet to be eligible to enter into a CJIP, as well as details about how financial penalties are determined.<sup>433</sup>

A 2018 decision by the Court of Auditors expressed concern about the inadequacy of the investigation services specialised in economic and financial crime.<sup>434</sup> In response, in July 2019 the Central Directorate of the Judicial Police created a new sub-directorate for the fight against financial crime.<sup>435</sup> The Ministry of Justice has also committed itself to addressing this issue in the recruitment of magistrates.<sup>436</sup>

The creation of a French Anti-Corruption Agency (AFA) by law in 2016 was a major landmark.<sup>437</sup> In

January 2020, the AFA launched a Multi-Year Anti-Corruption Plan, covering the period 2020-2022, built around four main priorities, including improving detection and international cooperation in anti-corruption efforts.<sup>438</sup> In 2018, the AFA launched an international network of corruption prevention authorities from 20 countries and territories around the world, aiming to foster operational cooperation and information exchange.

A parliamentary report – the Gauvain Report<sup>439</sup> – was published in June 2019 on the impacts on French companies of extraterritorial legal action, including action related to foreign bribery enforcement. The report considered implementation of legal tools to protect French companies thought to be vulnerable, to help them resist legal action by foreign law enforcement authorities. Its recommendations include expanding the legal protection of internal communications and general company information.

## Transparency of enforcement information

Under the Sapin II Law of 2016, the AFA is required to publish an annual activity report. This report includes a statistical analysis of breaches of probity by public- and private-sector actors, but corruption of foreign public officials is not the subject of specific statistics.<sup>440</sup> France also annually provides the OECD WGB with data on cases concluded. According to the annual report of the National Financial Prosecutor's Office (PNF) for 2018, France issued 103 requests for mutual legal assistance (MLA) and received 40 such requests.<sup>441</sup> The PNF does not specify what responses were provided by French and foreign authorities to these requests.

Only 3 per cent of the 3 million court decisions handed down each year in France are accessible to the public.<sup>442</sup> In 2016, the government adopted a Law for a Digital Republic, taking a big step towards fulfilling its promise to make all court decisions publicly and freely accessible.<sup>443</sup> At the end of June 2020, a decree implementing the 2016 Law was enacted.<sup>444</sup> This decree must still be further defined by another decree and its implementation is expected to be gradual over a period of years.<sup>445</sup>

Approved CJIPs are publicised via press releases, and the CJIP and the approval order are published on the AFA website.<sup>446</sup>

## Beneficial ownership transparency

France has a central register of beneficial ownership information, but it is not currently open to the public.<sup>447</sup> The register is expected to be open by the end of 2020, later than the deadline of January 2020 established by the 5th EU Anti-Money Laundering Directive. France transposed the Directive into law in February 2020. Around 70 per cent of entities subject to the scheme had declared their beneficial owners by January 2020, according to the National Council of Clerks of Commercial Courts (*Conseil National des Greffiers des Tribunaux de Commerce*).

A national register of foreign trusts involving a French tax resident, kept by the tax authorities, was created by Law n° 2013-1117 of 6 December 2013 on the fight against tax fraud and serious economic and financial crime. French legislation also provides that the administrator of a trust is required to declare “information relating to the surname, first names, address, date, place of birth and nationality of the beneficial owners of trusts, who are understood to be all natural persons having the capacity of administrator, settlor, beneficiary and, where applicable, protector, as well as any other natural person exercising effective control over the trust or performing equivalent or similar functions”.<sup>448</sup> However, in October 2016, the Constitutional Council held that public access to such information was an infringement of the right to privacy disproportionate to the objective pursued. The register of data on the beneficial owners of trusts is therefore not accessible to the public.<sup>449</sup>

## Inadequacies in legal framework

Existing legal tools must be refined and adapted to enable victims of corruption to obtain compensation for damage caused by the corruption of foreign public officials. The status of victims of corruption, the damage caused and the place of the victim in the new legal mechanisms have yet to be defined. Anti-corruption associations have legal standing to be *partie civile* (civil party) in corruption cases, but this does not fully address the lack of recognition of the status of victims of corruption.

## Inadequacies in enforcement system

Despite some functional guarantees of independence, the AFA is subject to dual supervision – by the Ministry of Justice and the Ministry of

Budget – which may undermine its credibility, as already pointed out by Transparency International France in 2016.<sup>450</sup> Lack of independence is also an issue of concern for the Public Prosecutor’s Office, causing a suspicion of political interference in many court cases. A complete overhaul of the procedures for appointing and managing the careers of magistrates is needed to address this issue.<sup>451</sup>

The glaring lack of resources devoted to the fight against economic and financial crime is regularly criticised. A recent parliamentary report, for example, highlighted the shortage of staff in the PNF and recommended that more judges, clerks and court assistants be recruited without delay.<sup>452</sup> A Council of Europe report of October 2018 also pointed out the lack of resources of the judiciary.<sup>453</sup>

A recent report by Transparency International France noted that “there can be no real independence without strengthening the means allocated to justice: human and financial resources and the removal of legal obstacles to justice”.<sup>454</sup>

Issues remain with the implementation of the CJIP. There has been a lack of self-reporting by companies – none of the three CJIPs concluded in foreign bribery cases were the result of voluntary disclosure to French authorities. There is a risk that the CJIP becomes a tool for risk management by a company once an investigation has been opened, instead of an incentive to self-report and to raise standards. It has also been difficult to assess the CJIPs concluded by the authorities, because most of the content has been shielded by secrecy requirements. The summaries made available provide insufficient information to evaluate them.

## Recommendations

- Publish statistics and information on cases that have reached a final decision
- Promptly set up a publicly accessible beneficial ownership information register
- Strengthen protections of whistleblowers, using the transposition by France of the EU Whistleblower Protection Directive as an opportunity for legislative action
- Strengthen the independence of the French Anti-Corruption Agency and of the Public Prosecutor’s Office
- Define the notion of victim of corruption and adapt French legal tools in an effort to more effectively repair the damages caused by corruption
- Adopt further guidelines on the CJIPs in order to encourage voluntary disclosures by companies and to promote transparency about CJIP negotiations and final agreements
- Increase the budget allocated to the

fight against financial crime • Promote and evaluate efforts to increase the specialisation of investigative services in financial and economic crimes.

# GERMANY

## Moderate enforcement

**7.6% of global exports**

### Investigations and cases

During the period 2016-2019, Germany opened 27 investigations, commenced 15 cases and concluded 46 cases with sanctions.

In 2018, the Office of the Munich Public Prosecutor (Prosecutor's Office) imposed a fine of €81.25 million (US\$92.7 million) on **Airbus Defence and Space GmbH** (Airbus), comprising a confiscation element of €81 million (US\$92.4 million) and a sanction element of €250,000 (US\$295,000).<sup>455</sup> The Prosecutor's Office could not find evidence of bribery of Austrian public officials in the sale to Austria of 18 Eurofighters, but it established that Airbus's former management negligently breached supervisory duties, contrary to the Regulatory Offences Act, by being unable to account for over €100 million (US\$114 million) paid to two shell companies.<sup>456</sup>

In 2018, former **Siemens** board member Uriel Sharef was sentenced to a suspended prison sentence for breach of trust contrary to the Criminal Code.<sup>457</sup> Mr Sharef knew about a slush fund, but failed to return it to the regular accounts of Siemens. His conviction is the only one of a Siemens board member in the entire Siemens corruption scandal.<sup>458</sup>

In the **Kraus-Maffei Wegmann** (KMW) case, prosecutors alleged in 2015 that bribes totalling €7.9 million (US\$8.8 million) were paid to secure a contract for the delivery of 24 Howitzers to the Greek government.<sup>459</sup> The statute of limitations had run out on possible foreign bribery charges, as the alleged bribery had occurred in 2001. Instead, prosecutors charged tax evasion for deducting bribe payments as operating expenses.<sup>460</sup> In 2015, a manager was sentenced to 11 months on probation for aiding and abetting tax evasion and KMW was fined €175,000 (US\$194,000) for tax evasion.

Prosecutors considered the fines too lenient and successfully appealed the sentence, with the appellate court instructing judges in 2017 to impose a fine based on the economic advantage gained.<sup>461</sup> At the retrial, the sentence against the manager was increased in 2019 to 15 months and the fine against KMW to €500,000 (US\$560,000). The fine did not include a confiscation element, as tax benefits had already been returned.<sup>462</sup>

### Recent developments

In April 2020, the Ministry of Justice published major new draft legislation on corporate liability, the Act on Association Sanctions (*Verbandssanktionengesetz*),<sup>463</sup> remedying deficiencies in the existing framework, but stopping short of criminal liability.<sup>464</sup> The law would require prosecutors to investigate cases against legal persons on initial suspicion of a crime and would allow sanctions of up to 10 per cent of turnover against companies with a turnover of more than €100 million (US\$114 million). The draft law contains, inter alia, requirements for corporate internal investigations and allows the prosecutor's office to terminate prosecution when sanctions are to be expected abroad and to provisionally defer prosecution in cases of internal investigations.<sup>465</sup> The draft law would introduce non-trial resolutions in the form of termination of proceedings currently used for natural persons, without specifically providing for access of the press or legal databases to such decisions.

The Federal Debarment Register, established based on legislation passed in 2017, will become operational at the end of 2020.

### Transparency of enforcement data

The Federal Ministry of Justice does not publish enforcement statistics on opened investigations, cases commenced, cases concluded or requests for mutual legal assistance (MLA) made and received. However, it does compile this information for the OECD WGB and makes it available to Transparency International Germany on a confidential basis.

Federal court decisions are generally published in full on the internet. Decisions of the regional or local courts where corruption cases are decided in first instance can appear on the internet,<sup>466</sup> but rarely do.<sup>467</sup> National and regional newspapers report on court cases involving foreign bribery, but the majority of such cases are terminated without trial,

and therefore mostly without involvement of the media.

## Beneficial ownership transparency

There is no comprehensive central beneficial ownership register. However, the Transparency Register (*Transparenzregister*) introduced in 2017, contains beneficial ownership information of companies, unless such information is already included in other public registers, such as the commercial register, the partnerships register, the register of cooperatives, the register of associations or the business register.<sup>468</sup> For most legal entities, the Transparency Register will only provide a link to the Commercial Register (*Handelsregister*),<sup>469</sup> or to some of the other, smaller registers (for partnerships and for cooperatives). In theory, if those registers do not contain beneficial ownership information (e.g. for foundations, trusts and some companies), an entry in the Transparency Register is mandatory. In practice, however, the fact that these registers are not fully integrated makes it almost impossible to verify whether companies that should be disclosing their beneficial owners to the Transparency Register are doing so.<sup>470</sup>

Beneficial ownership information on trusts must be included in the Transparency Register if the trust is profit oriented.<sup>471</sup> Charitable trusts do not need to provide this information. The information in the Transparency Register and the Commercial Register was made publicly available from 2020, subject to some exceptions, e.g. where the beneficial owner can prove a danger of blackmail, kidnap or similar threats.<sup>472</sup> Registration is required, with a penalty of up to €100,000 (US\$116,000) for failure to register and a fee is payable for each access to the register. Access is not automatic for the Transparency Register, which uses a manual check for each case.<sup>473</sup> Access is automatic for the Commercial Register.

## Inadequacies in legal framework

The financial penalties that can be imposed on legal persons are inadequate. The maximum that can be imposed is €10 million (US\$11 million) for intentional commission of criminal offences, and €5 million (US\$5.5 million) for negligent commission.<sup>474</sup> This is inconsistent with the OECD Anti-Bribery Convention requirement of proportionality for legal persons, particularly large companies.<sup>475</sup> Prosecution of offences is at the discretion of the prosecuting authority, allowing possible violation of

the principles of effective, proportionate and deterrent sanctions against companies.<sup>476</sup> As mentioned above, a new law is proposed to address these and other shortcomings.

Compensation is possible if corruption caused damage to individual persons, not the general public – for example, to a competitor in cases of bribery in business transactions. Bribery of public officials is intended to protect the integrity of the office, not any persons. Foreign bribery is therefore treated as a victimless crime in Germany.<sup>477</sup> However, foreign bribery committed by business enterprises may well cause serious human rights violations, for which there is currently no remedy. In 2016, the Council of Europe passed a resolution asking Member States to consider applying legislative and other measures to ensure that business enterprises can be held liable for the commission of offences under, *inter alia*, the UN Convention against Corruption, which includes foreign bribery.<sup>478</sup> This call needs to be heeded in Germany at a time when a law on the liability of business enterprises is being drafted.

Investigations into foreign bribery and MLA requests are complex and time-consuming. The five-year statute of limitations period has in several cases been too short for prosecution of criminal acts such as foreign bribery.

Whistleblower protection in Germany is insufficient, especially in the private sector,<sup>479</sup> where laws are lacking and protection is dependent on relevant court decisions.<sup>480</sup> The EU Whistleblower Protection Directive requires protection for persons reporting breaches of EU law in a work-related context, but not for breaches of national law.<sup>481</sup>

## Inadequacies in enforcement system

German enforcement authorities have not to date prioritised the prosecution of legal persons involved in foreign bribery cases.<sup>482</sup> Until this 2020 report, enforcement in Germany was always characterised by Transparency International as being in the top “active” category in assessments of foreign bribery enforcement in OECD Convention countries. However, this is only true for enforcement against natural persons, not legal persons.<sup>483</sup> Since 2014, there have been 38 cases concluded with sanctions against natural persons, 11 of which – less than 30 per cent – also included sanctioning of legal persons. This may also be a result of inadequate human resources for enforcement authorities.

## Recommendations

- Publish foreign bribery enforcement statistics
- Publish all court decisions, including those from regional and local courts
- Publish basic information about cases of foreign bribery, including terminations of proceedings and cases against companies, in an annual corruption report at the federal level
- Create a single central register of beneficial ownership information that is publicly accessible
- Enact the Act on Association Sanctions (*Verbandssanktionengesetz*), ensuring publication of decisions in legal databases and press access to decisions, and allowing for victims of serious human rights violations to claim damages
- Include protection for whistleblowers reporting on breaches of German law, when transposing the EU Directive into national law
- Increase the statute of limitation for foreign bribery to 10 years
- Prioritise prosecution of legal persons involved in foreign bribery cases and provide adequate human and financial resources and training to prosecutors.

# GREECE

## ● Limited enforcement

0.3% of global exports

### Investigations and cases

In the period 2016-2019, Greece opened one investigation, commenced one case and concluded no cases with sanctions.

In 2016, according to media reports, an Athens public prosecutor charged the CEO of the Greek construction group **Ellaktor** and two other individuals with bribery of Cypriot officials in relation to the construction of a waste management plant in Cyprus.<sup>484</sup> Greek judicial authorities had begun their investigation after first having refused a European Arrest Warrant request by Cypriot authorities for the businessman's extradition to the island for questioning over how his company, **Helector**, a subsidiary of Ellaktor, gained waste management contracts to run two landfills in Paphos.<sup>485</sup> The Athens Appeals Court decided that the CEO's conduct was under Greek jurisdiction and that Greek prosecutors were competent to handle the case. In November 2017, the media reported

that following an investigation, an Athens prosecutor had ordered the prosecution of the three individuals charged.<sup>486</sup> The main investigation by an investigating judge was to follow. Because of changes in Greek legislation, it is likely that the case will be terminated due to the statute of limitations. The case in Cyprus against Cypriot public officials and the subsidiary Helector moved forward and in February 2020, a Cypriot court found several officials and the company guilty.<sup>487</sup> The company was fined €60,000 (US\$70,000) and faced potential confiscation of up to €372,000 (US\$435,000).<sup>488</sup> It was also banned from taking part in public contracts in Cyprus for five years, subject to appeal.<sup>489</sup>

In other jurisdictions, in 2017, it was reported that Brazilian authorities were investigating six Greek shipping companies as part of the Operation *Lava Jato* investigations.<sup>490</sup> According to Brazilian prosecutors, Greece's honorary consul in Rio de Janeiro paid bribes and provided insider information to help the shipping companies win more than US\$500 million worth of contracts from Petrobras from 2009 to 2013. The companies reportedly under investigation included **Olympic Agencies, Perosea Shipping, Tsakos Aegean Dynacom Tankers Management, Galbraiths** and **Dorian Hellas**. In 2019, Greek shipping companies **Aegean Group** and **Tsakos Group** were reportedly named in a court filing by the Parana State Federal Prosecutor's Office which alleged they paid middlemen to secure contracts with Petrobras.<sup>491</sup> Another shipping company named in Petrobras-related money laundering and ship chartering corruption allegations was **Athenian Sea Carriers**.<sup>492</sup>

### Recent developments

In November 2019, the Constitution was amended (art. 86 par. 3) to abolish the very narrow statute of limitations provided by the previous constitutional wording for crimes committed by ministers.

The most significant recent development in the Greek anti-corruption framework was the adoption in June 2019 of the new Penal Code and Code of Penal Procedure, which entered into force on 1 July 2019.<sup>493</sup> It amended important provisions in a way which raised questions about its compatibility with international standards.<sup>494</sup> The most important cause of concern was the downgrade of all forms of active bribery from felony to misdemeanour, with associated lower sanctions, while passive bribery remained, in aggravated circumstances, a felony punishable with incarceration of up to 10 years.<sup>495</sup> The new legislation also changed the status of

officials of state-owned enterprises from public to private, reduced the pecuniary penalties for bribery and added procedural hindrances to the prosecution of bribery of foreign public officials.

The adoption of the new Penal Code prompted the OECD WGB and the Group of States against Corruption (GRECO) to formally express their concern and to make an ad-hoc visit to Athens on 29 October 2019 to review the situation.<sup>496</sup> The new government, elected in July 2019, proceeded to draft amendments to the new code, which were presented during the ad hoc visit and adopted by the Greek Parliament in November 2019. The most noticeable amendment was that active bribery, under aggravating circumstances, is once again a felony, punishable by incarceration of 5-8 years.<sup>497</sup> Officials of state-owned enterprises were restored to their status as public officials. In December 2019, GRECO adopted its Ad Hoc Report on Greece and addressed four recommendations to Greece.<sup>498</sup>

In August 2019, a law entered into force providing for the establishment of the National Integrity Authority. The Authority is the successor to several institutions and its creation is a positive development taking into account the fragmentation of the competent authorities. It works in cooperation with other bodies with investigating competences, such as the Hellenic Financial Intelligence Unit and the Special Directorate for the Investigation of Economic Crime.

Law 4557/2018 transposed the 4th EU Anti-Money Laundering Directive into Greek Law. The Greek anti-money laundering regime was positively evaluated in the context of the 4th Round Financial Action Task Force Evaluation.<sup>499</sup>

## Transparency of enforcement information

There are no published foreign bribery enforcement statistics. Decisions by the Supreme Court of Greece for Civil and Criminal cases are published in full, but with anonymity protections.<sup>500</sup> The decisions of the lower courts (courts of first instance and appellate courts) are published sporadically in Greek legal publications available to subscribers in hard copy, online and in databases.

Prominent Greek legal databases are NOMOS<sup>501</sup> and the database of the Athens Bar Association, "Isokratis".<sup>502</sup>

## Beneficial ownership transparency

There is a central register of beneficial ownership that will be public, but is not operational. The new Anti-Money Laundering and Countering Financing of Terrorism Law<sup>503</sup> establishes a public beneficial ownership database, based on the new requirements of the EU's 4th Anti-Money Laundering Directive 2015/849.<sup>504</sup> This database information will be publicly available, accessible online in Greek and free of charge.<sup>505</sup> The new register, named on the government website as "Real Beneficiaries Register", was temporarily operational for the registration of companies between 3 and 30 March 2020, before being suspended due to the COVID-19 emergency.<sup>506</sup> Competent authorities have direct and unconditional access to the beneficial ownership register.

The General Electronic Commercial Registry (GEMI) database contains comprehensive basic information on most legal persons established in Greece. This information is publicly available, accessible online in Greek and free of charge.<sup>507</sup>

## Inadequacies in legal framework

The legislative process of 2019 described above, which alarmed international bodies, showed that the Greek legislature did not adequately take into account international anti-bribery standards. This led to further legislative amendments, but older cases had to be tried under the more lenient law following the principle of *lex mitior*, especially in the fields of sanctions and the statute of limitations.

Issues raised by the OECD WGB in its 2015 Phase 3bis Review of Greece remain current, including inadequacies in the definition of a foreign public official and the need to ensure that "the limitation period for foreign bribery offences qualified as misdemeanours is sufficient to allow adequate investigation and prosecution, at a minimum by allowing outstanding MLA [mutual legal assistance] requests to interrupt the limitation period".<sup>508</sup> GRECO's December 2019 report on Greece called for a review of article 236.1 of the Penal Code, with a view to introducing aggravating circumstances decisive for when such an offence can be considered a felony, and for increasing sanctions accordingly.

Criminal liability for corporations is still lacking, despite the positive reform of the liability of legal persons in the 2017 law. The sanctions for legal

persons are insufficient, as they do not reflect the profit from bribery offences.

Although the new Penal Procedure Code has provisions for victims' compensation as a means for enhanced plea bargaining for natural persons, bribery offences are excluded. In those cases, only general plea-bargaining rules may apply. Greek legislation does not provide for a regulated settlement procedure, especially for legal persons. Another problem discussed in literature on Greek penal law is that the new Penal Code does not cover as a crime the passive bribery of a foreign public official, as called for under the Council of Europe Criminal Law Convention on Corruption.<sup>509</sup>

### Inadequacies in enforcement system

In general, the biggest obstacle to the investigation and the prosecution of corruption offences is the very slow pace of criminal justice in Greece. Criminal proceedings are not initiated promptly, many delays occur during investigation before and after the formal initiation of criminal proceedings, and the final decisions in complex cases are reached at least 10 years after the act. Another important problem is that even if an investigation is successful in identifying culpability, the judicial process is not based on stable legislative ground. The training and the awareness of law enforcement authorities has been enhanced,<sup>510</sup> but the resulting efficiency needs to be demonstrated.

GRECO's December 2019 report called for strict limits on the type of corruption offences that can be subject to abstention from prosecution under Article 48 of the Criminal Procedure Code. These limits must ensure that this article can be applied only in exceptional, minor corruption cases. It also called for strict monitoring of the defence of effective regret, to ensure it is not abused.

Although the provisions on liability of legal persons have been enhanced since 2017, it can be argued that the sanctions against these entities should be imposed by courts. Administrative bodies have proved reluctant to act decisively in this respect.

Problems with whistleblower protection remain, especially since the EU Whistleblower Protection Directive has not yet been transposed into Greek law. The foreign-bribery detection and investigation regime would benefit greatly if the current National Anti-Corruption Plan were implemented,<sup>511</sup> with the necessary revisions and improvements.

### Recommendations

- Publish foreign bribery enforcement statistics
- Introduce criminal liability and higher sanctions for legal persons, reflecting the profit from bribery, and provide guidance to prosecutors and courts regarding sanctions
- Introduce a settlement mechanism for foreign bribery
- Proceed with the acceleration of court proceedings
- Implement and revise, where necessary, the Greek National Action Plan against Corruption, in order to tackle the systemic deficiencies and consolidate the progress observed in previous years
- Ensure compensation for victims in bribery cases
- Provide adequate resources to the justice system so that it can function effectively and in a timely manner.

## HUNGARY

### Little or no enforcement

0.5% of global exports

### Investigations and cases

In the period 2016-2019, Hungary opened no investigations, commenced no cases and concluded no cases with sanctions.

In June 2019, the OECD WGB adopted its Phase 4 Report on Hungary, which commented on the "absence of investigations and prosecutions of foreign bribery since Phase 3 [in 2012]" and added "To avoid Hungary becoming a safe harbour for multinationals with subsidiaries in Hungary that commit bribery abroad, the authorities must overcome their reluctance to enforce relevant criminal legal provisions and assign responsibility to detect and investigate such bribery".<sup>512</sup>

There have been media reports about police investigations in Slovenia and North Macedonia concerning possible illegal party financing and laundering of funds originating in Hungary.<sup>513</sup>

### Recent developments

The new Code of Criminal Procedure entered into force in July 2018 and is intended to enhance

Hungary's capacity to detect and investigate crimes, including foreign bribery. An important new feature is the introduction of a settlement process between the offender and the prosecution service, which requires a guilty plea on the offender's behalf and results in more lenient sanctions. Prosecutors may also dispose of charges in the framework of plea bargains, on condition that the offender provides vital information which results in the detection of further offences. Following the entry into force of the new code, these changes contributed to the successful prosecution of two high-level corruption cases and to the indictment of Members of Parliament supposedly associated with these incidents – an unprecedented development in Hungary. This provides the basis for the view that new procedural solutions may be useful in the prosecution of foreign bribery cases.

Hungary has restructured the prosecution service in order to enhance its detection and investigative roles. This has resulted in more centralisation and broader, nationwide jurisdiction of the Central Investigation Office of the Public Prosecution Service in charge of the investigation and prosecution of offences reassigned by the Prosecutor General from law enforcement agencies to the prosecution service. This includes serious crimes, such as foreign bribery and related money laundering.

In 2019, the Moscow-based International Investment Bank (IIB), 40 per cent owned by the Russian government, moved its headquarters to Hungary. The IIB has been granted similar legal standing to diplomatic missions and offices of international organisations, with immunities approved by Parliament.<sup>514</sup> It will be exempt from financial authority procedures and investigations and from financial reporting standards. This could affect detection and investigation of money laundering.

### **Transparency of enforcement data**

The Ministry of Interior records the number of offences reported and registered, investigations commenced, investigations terminated and indictments for the offences of trading in influence and bribery of public officials. While this information is not publicly available, it is available on request. There is a comprehensive public database covering the period 2013 to the end of June 2018. Hungary does not compile and publish statistics on requests for mutual legal assistance (MLA) made and received. Court decisions are published in anonymised form.

### **Beneficial ownership transparency**

There is no central register of beneficial ownership information. The new Anti-Money Laundering Act (Act LIII of 2017; AML Act) containing provisions for the central register of ultimate beneficial ownership information entered into force on 26 June 2017. However, legal regulations to set up the register are still pending.

### **Inadequacies in legal framework**

The definition of domestic public officials does not cover officials of publicly owned enterprises, a definition also applied to foreign public officials. Therefore officials of foreign public enterprises are not covered. However, the Criminal Code foresees equally stringent sanctions for bribery of officials of foreign public enterprises, defining it as bribery and acceptance of bribery related to a foreign enterprise. The same goes for trading in influence, where the definition of influence trading covers cases related to foreign public enterprises.

Hungary's standalone legislation to protect persons who report on or expose wrongdoing has not yet encouraged a real and functional whistleblowing culture. Willingness to report wrongdoing in Hungary is low, partially because the law does little more than simply declare that any punishment of whistleblowers is unlawful, but fails to provide effective protection to reporting persons.<sup>515</sup>

### **Inadequacies in enforcement system**

The prosecution service in general is well equipped – especially the Central Investigation Office of the Public Prosecution Service – and the law enables it to take all necessary measures to detect crime and investigate offences, including extensive use of covert tools and investigation. However, clearance rates still lag behind expectations in cases of high-level corruption and foreign bribery.<sup>516</sup> This is partly explained by the lack of internal checks and balances within the prosecution service, resulting in no professional autonomy of prosecutors and enabling wrongful interventions by the leadership of the prosecution service to prevent or divert investigation and prosecution of sensitive cases. In addition, the two-year limit for investigation of foreign bribery offences does not ensure adequate time for investigative measures, especially in highly complex multi-jurisdictional cases.

The Hungarian legal framework provides for sanctioning legal entities, such as corporations,

according to the 2001 Act on the Criminal Responsibility of Legal Entities. Possible sanctions are 1. pecuniary 2. suspension of activities 3. termination. However, legal entities are seldom prosecuted, even if the management has been acting in their interests. The OECD WGB Phase 4 Report on Hungary identified the non-use of liability of legal persons as the single most serious challenge facing the Hungarian authorities regarding implementation of the OECD Convention, and considered that there appears to be little will to implement this in practice.

There is little awareness of the offence of foreign bribery in the private sector, and weak internal controls or ethics and compliance programmes within Hungarian companies.

The first cycle review of Hungary's implementation of the UN Convention against Corruption identified several areas in which Hungary could improve its MLA.

## Recommendations

- Publish statistics on foreign bribery enforcement and MLA
- Introduce a central register of beneficial ownership information that is publicly accessible
- Improve the legal framework for whistleblower protection
- Improve the professional autonomy of prosecutors
- Extend the two-year investigation time-limit
- Raise awareness of the foreign bribery offence in the private sector
- Strengthen capacity to provide prompt and effective legal assistance to other Parties to the Convention investigating and prosecuting foreign bribery cases.

# IRELAND

## Little or no enforcement

**1.9% of global exports**

### Investigations and cases

In the period 2016-2019, Ireland opened one investigation, commenced no cases and concluded no cases.

## Recent developments

The Criminal Justice (Corruption Offences) Act 2018 (CJA 2018) came into operation on 30 July 2018<sup>517</sup> and was described by the OECD WGB in its Phase 1 Report on Ireland as “a significant milestone in Ireland’s fight against bribery and other forms of corruption”.<sup>518</sup> The CJA 2018 has extraterritorial effect for foreign corruption if it is proven that part of the relevant conduct took place in Ireland. Where all of the corruption took place outside Ireland, it can be prosecuted in Ireland if it was carried out by an Irish official, citizen or resident or an Irish company, and the corrupt act is also an offence in the place where it occurred.

The CJA 2018 also creates a corporate offence for the first time whereby a corporate body can be held liable for the corrupt acts of individuals, including directors, officers, employees, agents or subsidiaries, where the corruption is intended to obtain or retain business or an advantage for a company.<sup>519</sup> When corruption offences are prosecuted, section 14 of the CJA 2018 provides for a presumption of corruption in respect of payments given to certain domestic and foreign officials, where it is proven that the person who gave a gift, consideration or advantage to the official had an interest in the exercise of the official’s functions (including the award of tenders or contracts), or the official performed or omitted to perform a function to the benefit of the person who gave the gift, consideration or advantage. Individuals within a company (including directors, managers, secretaries and other officers) can be held liable in their personal capacities where it is proven that a corporate body has committed an offence with the consent or connivance of that individual, or one which was attributable to any wilful neglect by them. The CJA 2018 amends Irish money-laundering legislation, making foreign corruption a predicate offence for money-laundering where the offence occurs in a jurisdiction in which the corrupt act has not been criminalised. This means that it is now always an offence to launder the proceeds of foreign bribery in Ireland.<sup>520</sup>

Conviction for an offence under the CJA 2018 attracts a maximum penalty of 10 years’ imprisonment and an unlimited fine (save for the offence of trading in influence, which attracts a maximum penalty of up to five years’ imprisonment and an unlimited fine). Conviction for laundering the proceedings of such a corruption offence attracts maximum potential penalties of 14 years imprisonment or an unlimited fine (or both).<sup>521</sup>

Draft legislation to transpose the 5th EU Anti-Money Laundering Directive in time for the 10 January 2020 deadline was published in January 2019, but this has not been progressed due to the delay in forming a new government following the general election in February 2020. A government was formed on 27 June 2020 and is expected to progress this legislation. In May 2020, the European Commission sent a letter of formal notice to Ireland for having only partially transposed the 5th EU Directive.

## Transparency of enforcement data

The numbers of complaints, investigations, files referred for prosecution or cases in which no prosecution is carried out are not published. The Minister for Justice and Equality acts as the central authority for mutual legal assistance (MLA) requests.<sup>522</sup> While the Department for Justice and Equality does not publish statistics on MLA requests made and received, statistics are available on request.

The Courts Service of Ireland publishes on its website all judgments made available by the Supreme Court, the Court of Appeal and the High Court. Criminal judgments delivered by the District or Circuit Courts at first instance are not published.<sup>523</sup> Details of civil settlements and plea agreements with the Office of the Director of Public Prosecutions (DPP) are not published.

## Beneficial ownership transparency

In accordance with the 4th EU Anti-Money Laundering Directive, Ireland established in 2019 a Register of Beneficial Ownership for bodies corporate (maintained by the Companies Registration Office). It is publicly accessible, but users must pay for access. "Relevant entities", including companies, are required to establish and maintain an internal register of their beneficial owners, and to file information on their beneficial owners in the register.<sup>524</sup> If, after having exhausted all possible avenues, the relevant entity is unable to identify its beneficial owners, details of the entity's "senior managing officials" are entered in the internal beneficial ownership register and filed with the Register of Beneficial Ownership. A member of the public can access the name, month and year of birth, country of residence and nationality of each beneficial owner in the register, as well as a statement of the nature and extent of the interest held or control exercised by that beneficial owner in the relevant entity. Unrestricted access to the

information in the register is afforded to certain ranks and grades in the national police force, the Financial Intelligence Unit, the Revenue Commissioners, the Criminal Assets Bureau and members of other competent authorities. Investment funds incorporated as companies must submit details of their beneficial owners to the Register of Beneficial Ownership.

The Central Bank of Ireland is being appointed to establish and maintain a register of beneficial ownership for Irish collective asset-management vehicles, unit trusts and credit unions.<sup>525</sup> In-scope entities already in existence have a six-month period from the introduction of the regulations (25 June 2020) to submit the required information.<sup>526</sup>

No central register on beneficial ownership of trusts (other than unit trusts) has been established yet,<sup>527</sup> nor has the legislation been passed to establish one, despite the requirements of the 4th EU Anti-Money Laundering Directive (although such legislation was expected in Q2 of 2020). However, trustees of express trusts are currently required to collate information on the beneficial owners of the trust and establish an internal register containing that information.<sup>528</sup> The information will ultimately be submitted to the central register on the beneficial ownership of trusts when it is established. The Revenue Commissioner is expected to be appointed to establish and maintain this register.

There have been indications that the beneficial ownership framework could be extended beyond what is required by the 4th EU Anti-Money Laundering Directive in respect of bodies corporate and trusts, to encompass other Irish structures, such as investment limited partnerships and common contractual funds (which are neither bodies corporate nor trusts). However, no framework or legislation for this has been published to date.

## Inadequacies in legal framework

The OECD WGB's Phase 1bis Report in 2019 recommended clarification of the criminal responsibility of "bodies corporate" under the CJA 2018, as corporate entities are provided with a defence where they can prove that they "took all reasonable steps and exercised all due diligence to avoid commission of the offence".<sup>529</sup> This defence has not yet been interpreted by the courts and there is no written guidance in this regard.<sup>530</sup> The OECD's Phase 1 Report also refers to the fact that the "Identification Theory" doctrine for allocating

criminal responsibility in the case of legal persons still exists in Irish common law.<sup>531</sup> The Irish Law Reform Commission has recommended amending this doctrine to include a test that more accurately reflects the reality of modern corporate entities.<sup>532</sup>

It remains to be seen whether Ireland will be able to effectively apply its newly-harmonised regime under the CJA 2018 to foreign bribery cases, due to a requirement for proof of a corrupt intent, and the CJA 2018 not creating an autonomous offence of bribery of foreign public officials. Instead, the Act takes the approach that the offence criminalising bribery of “a person”, “on account of any person doing an act in relation to his or her office, employment, position or business”, is broad enough to encompass the bribery of foreign officials.

### Inadequacies in enforcement system

The OECD expressed “serious concerns” in its Phase 3 Report in 2013 that Ireland had not prosecuted a foreign bribery case.<sup>533</sup> This failure was further highlighted by the OECD WGB’s Phase 3 Follow-Up Report published in November 2018.<sup>534</sup> The OECD WGB has found that Ireland should improve its capacity and level of resources to detect, investigate and prosecute cases of foreign bribery, and this continues to be a significant inadequacy in the enforcement system. This concern was echoed in a February 2019 United Nations review of Ireland’s implementation of the UN Convention against Corruption, which noted that the police Anti-Corruption Unit “has only three staff and its corruption prevention mandate is not sufficiently clear”. The review also recommended the setting up of an anti-corruption inter-agency steering committee to better coordinate corruption prevention efforts.<sup>535</sup> However, there has been an increase in the investigation and prosecution of anti-money laundering offences, with the DPP directing money laundering charges against 129 individuals in 2019.

In an October 2018 report on Regulatory Powers and Corporate Offences, the Irish Law Reform Commission recommended the establishment of a statutory Corporate Crime Agency, as well as a dedicated prosecution unit for corporate offences in the DPP, in order to tackle corporate crime more effectively (which would include corruption offences).<sup>536</sup> Transparency International Ireland’s “Submission on reform of Anti-Fraud/Anti-Corruption Structures” has made recommendations for new structures, including a National Anti-Corruption Bureau.<sup>537</sup>

There is no formal non-trial resolution process for criminal prosecution in Ireland. Pleas can be agreed, but the process is informal and the only publicly available information is the set of charges to which a plea has been entered.

### Recommendations

- Publish separate statistics on all stages of foreign bribery enforcement, including the number of complaints investigated and sent to the DPP
- Make the central register of beneficial ownership information fully accessible to the public without a paywall
- Publish information from criminal courts of first instance, including about foreign bribery-related judgements and more generally, white-collar crime
- Amend or replace the “Identification Theory” doctrine for a test that more accurately reflects the reality of modern corporate entities
- Increase clarity with respect to the criminal responsibility of “bodies corporate” under the CJA 2018, in particular, with respect to the defence available to corporate entities that they “took all reasonable steps and exercised all due diligence to avoid commission of the offence”
- Enhance resources to ensure credible foreign bribery allegations are investigated and prosecuted, and structures reformed
- Consider establishing a National Anti-Corruption Bureau and a multi-agency taskforce on corruption.

## ISRAEL

### ● Active enforcement

**0.5% of global exports**

### Investigations and cases

In the period 2016-2019, Israel opened 10 investigations, opened one case and concluded three cases with sanctions.

The Israeli media reported in April 2020 that an Israeli court had approved a settlement under which the former board members and executives of **Teva Pharmaceuticals Industries Ltd** would pay the company an amount of US\$50 million, covered by an insurance company.<sup>538</sup> The company had paid a US\$22 million fine to settle foreign bribery charges with the Israeli Ministry of Justice in January 2018, admitting all charges in relation to illegal payments

to government officials to win business in Russia, Ukraine and Mexico. It had also paid a US\$519 million fine to settle a related case under the Foreign Corrupt Practices Act in the United States in 2016.

In September 2019, according to a notification made by **Shapir Engineering and Industry Ltd** to the Tel Aviv stock exchange, an Israeli court approved a civil forfeiture consent agreement reached with the company by the State Prosecutor's Office. Pursuant to this agreement, the company forfeited the amount of NIS4.3 million (US\$1.2 million), under section 22 of the Anti-Money Laundering Law, in connection with a case of alleged bribery to win a contract in Romania.<sup>539</sup> Earlier in the year, the police had closed without criminal charges an investigation commenced in 2015 of possible involvement of Shapir and its four controlling shareholders, in bribery to win a contract in Romania. The investigation had reportedly looked into suspicions that the manager of the company's subsidiary **Shapir Structures** paid bribes to win a contract to build a US\$10 million housing project in the town of Constanta.<sup>540</sup> Payments were allegedly transferred through another Shapir Engineering group company, **Larton Consultants** in Cyprus, to a company incorporated in Liechtenstein and controlled by an Israeli businessperson. One of the payments was transferred to an account in Israel in the **Israeli Discount Bank**.<sup>541</sup>

The Israeli police's national fraud investigation unit Lahav 443 was reported in June 2020 to have detained former executives of **Frutarom Industries Ltd**, a flavour and fragrance company, on suspicion of bribing public officials in Russia and Ukraine. The executives were being questioned as part of a joint investigation with the Israel Securities Authority.<sup>542</sup> In August 2019, NYSE-listed International Flavors & Fragrances Inc. had submitted to the US Department of Justice (DoJ) the results of its internal investigation regarding Frutarom, which it had acquired in 2018. Media reports claimed the DoJ had launched a criminal investigation into this matter.<sup>543</sup>

In March 2020, Israeli prosecution terminated without indictments an investigation into **Israel Shipyards**, a private company owned by the **Shlomo Group**. In March 2018, the Israeli police and the Tax Authority reportedly detained three senior officials of the company on suspicion of bribing African officials to facilitate defence export deals worth tens of millions of US dollars.<sup>544</sup>

The Israeli police and Israel Securities Authority reportedly announced in May 2019 that they had

enough evidence to proceed with a foreign bribery case against **Shikun & Binui Holdings Ltd**, Israel's largest construction group, its units and some of the company's former senior executives.<sup>545</sup> They planned to send the evidence to the State Prosecutor's office department for taxation and economics. No further action has been reported in the case. The Israeli authorities claimed they had evidence of bribes totalling tens of millions of shekels, to win projects in Africa worth hundreds of millions of shekels. Company units, including **SBI International AG**, a wholly owned Swiss subsidiary, were also allegedly involved in systematically making illegal payments to African public officials during the period 2008-2016.<sup>546</sup> Until 2018, **Arison Investments** had a controlling shareholding in Shikun & Binui and in February was reported to be under investigation in relation to alleged bribery of public officials in Africa, with billionaire owner Shari Arison called in by police for questioning.<sup>547</sup>

In December 2016, Israeli billionaire Beny Steinmetz was detained and questioned in Israel in connection with an extensive investigation by Israeli authorities of bribery allegations relating to activities of his mining company **BSG Resources (BSGR)** in Africa.<sup>548</sup> The company denied any wrongdoing and said the investigation had been initiated by the Government of Guinea, which had opened a review of mining contracts signed before 2011.<sup>549</sup> The Guinean government reportedly claimed that BSGR obtained an iron ore mining concession in Simandou by paying over US\$1.5 million in cash through a representative to the then-wife of the country's president. In February 2019, the Government of Guinea agreed to drop its claims in exchange for BSGR renouncing the Simandou concession.<sup>550</sup> In August 2019, Steinmetz and two of his partners were reportedly indicted in Switzerland in connection with the case.<sup>551</sup> In another case, Steinmetz was detained and questioned in Israel in 2017 based on allegations of complicity in money laundering in Romania related to real-estate deals. He had been indicted in March 2016 by the Romanian National Anti-Corruption Directorate on related allegations.<sup>552</sup>

In other jurisdictions, there were media reports in 2018 and 2019 about investigations underway in the Democratic Republic of Congo (DRC), Switzerland, the UK and the United States into allegations of corruption in the DRC by Israeli billionaire Dan Gertler.<sup>553</sup> In 2017 and 2018, the United States placed Gertler and his affiliated companies on its Global Magnitsky sanctions list, stating that Gertler had "amassed his fortune through hundreds of

millions of dollars' worth of opaque and corrupt mining and oil deals in the Democratic Republic of the Congo".<sup>554</sup>

The Israeli media reported in May 2020 that as part of the US authorities' settlement **with Bank Hapoalim**, Israel's largest bank and its Swiss subsidiary paid a total of US\$30 million of forfeiture and criminal fines for involvement in the FIFA soccer bribery affair.<sup>555</sup> The bank also paid US\$874 million to settle tax charges.

## Transparency of enforcement data

Israel does not publish statistics on the number of investigations opened, cases commenced or cases concluded. Nor does it publish statistics on requests for mutual legal assistance (MLA) made or received.<sup>556</sup>

The Supreme Court publishes decisions on its website.<sup>557</sup> Other courts' decisions can be found on the judicial website.<sup>558</sup> Several other websites publish court resolutions and decisions on a subscription basis.<sup>559</sup> Settlements are presented in court for approval and the court's approval is then published along with its explanation.<sup>560</sup> This includes details of the agreement brought before the court and the reasons for approving or rejecting it. In case of a non-prosecution agreement, the details must be published on the website of the relevant prosecution authority.<sup>561</sup> The details published will include the matter of closing a case in an arrangement, the nature of the offence and its circumstances, a description of the facts in which the suspect confessed and an indication of the provisions of the legislation specified in the arrangement, and the terms of the arrangement.

However, in case of a civil forfeiture consent agreement, such as in the Shapir case, no information is publicly available.

## Recent developments

In October 2019, the Israeli State Prosecutor's Office published new guidance regarding the indictment of corporations. According to the guidance, the State Prosecutor will consider, among other elements, the corporate culture, including whether the corporation has internal compliance procedures that could have prevented such offences.<sup>562</sup> The guidance details factors to consider in criminal sanctioning of corporations, referring to a company's compliance programme as a possible mitigating factor. It also gives elements for

assessment of an effective compliance programme.<sup>563</sup>

In the same month, the Israeli State Prosecutor's Office published revised guidance regarding the financial penalties for bribery offences, clarifying that the 2010 increase in the court's authority to determine higher economic penalties was intended, among other things, to enable it to set deterrent sanctions for corporations.<sup>564</sup>

Recently, the Israeli Parliament (*Knesset*) lowered the monetary threshold for acts prohibited by article 4 of the Prohibition on Money Laundering Law to approximately US\$42,000.<sup>565</sup> In addition, in March 2018, the Law for Reducing the Use of Cash(2018) was approved by the *Knesset*. The draft Criminal Procedure Bill (Forfeiture of Criminal Proceeds) published in 2018, is designed to establish a general framework for forfeiture of the proceeds of crime. Under the Bill, property that has the same value as the proceeds of a crime may be forfeited with regard to all offences, rather than only some offences, as is currently the case. The Bill would also enable a broader confiscation in respect of convicts whom the court determines are engaged in a "criminal lifestyle".

## Beneficial ownership transparency

There is no central register of beneficial ownership information. Basic information on the creation and types of legal persons is publicly available. The Israeli Corporations Authority maintains publicly accessible registers of companies, partnerships and public trusts.<sup>566</sup> The Israeli Tax Authority maintains a non-public register of Israeli resident trusts and holds information on the beneficial ownership of companies and trusts.

## Inadequacies in legal framework

The present common law regarding the liability of legal persons is not codified as part of Section 23 of the Penal Code 1977. A draft bill published in 2014 was intended to do this, but to date has not been approved.

There is no general arrangement regarding the forfeiture of crime proceeds. Only some of the laws on forfeiture of property allow forfeiture of the defendant's property of the same value, rather than the property related to the offence itself. As mentioned above, a draft bill was published in 2018 that will address this matter, if passed.

There are limitations on jurisdiction under Penal Code article 14(b)(2). If an offence was committed on a territory under the jurisdiction of another state, Israeli penal laws only apply if the person charged has not already been found innocent in another state or, if found guilty, has not already served the sentence imposed.<sup>567</sup>

Sanctions for foreign bribery are subject to a dual penalty requirement (Penal Code article 14(c)). Israeli law also says that if a person is tried in Israel for foreign bribery, the penalty cannot be more severe than it would have been in the other jurisdiction.<sup>568</sup>

The duty of public officials to report any acts of foreign bribery which they identify is not sufficiently specified within the scope of relevant codes of ethics.

### Inadequacies in enforcement system

Israel's Defence Export Controls Agency has not established formal guidelines on conducting due diligence on applicants, including the use of international debarment lists, nor has it provided sufficient training for officials on foreign bribery risks. The country has not adopted a policy permitting procurement authorities to exclude a person from bidding for public contracts on the basis of a foreign bribery conviction, or encouraging them to consider applicants' compliance programmes or international debarment lists.<sup>569</sup> However, procuring authorities may have discretion to exclude companies under police investigation or convicted of foreign bribery from publicly funded contracts, and Israel is developing an ordinance on the denial of tenders and on termination of contracts with suppliers, on the basis of foreign bribery investigations and convictions.

### Recommendations

- Publish statistics on foreign bribery enforcement, from investigations to concluded cases, as well as statistics on MLA requests made and received
- Establish a central public register of beneficial ownership information
- Amend the Penal Law to ensure that sanctions for foreign bribery are not subject to the dual penalty requirement (article 14(c)) and that the limitations to jurisdiction that exist under article 14(b)(2) do not apply to foreign bribery
- Ensure that the Ministry of Defence continues to develop quality standards and a mechanism to oversee the implementation of anti-corruption compliance programmes for defence-

related exports

- Consider completing the amendment of the Criminal Procedure Law 1982 and section 23 of the Penal Law 1977, as described above
- Specify, within the scope of relevant codes of ethics, the duty of public officers to report any act of foreign bribery they identify in their position.

## ITALY

### Moderate enforcement

2.6% of global exports

### Investigations and cases

In the period 2016-2019, Italy opened 23 investigations, commenced 9 cases and concluded four cases with sanctions.

In the long-running case concerning alleged bribery of Algerian officials by **Eni's** subsidiary **Saipem**, the Court of Appeal of Milan acquitted the company and its top executive in January 2020, both having been found guilty of international corruption by a lower court in 2018.<sup>570</sup> The lower court had acquitted state-owned Eni and its ex-CEO. In April 2020, Eni entered into an agreement with the US Securities and Exchange Commission, whereby it agreed to pay US\$24.5 million in disgorgement and prejudgment interest, for allegedly paying €198 million (US\$226 million) to Algerian government officials in order to obtain contracts with the Algerian state-owned oil company between 2007 and 2010.<sup>571</sup> Investigations in this case have been reopened in Algeria.<sup>572</sup> Saipem is also under investigation by the *Lava Jato* Taskforce and the Comptroller General in Brazil. One of the company's alleged intermediaries in Brazil pleaded guilty to paying bribes to Petrobras officials to help secure contracts to install submarine pipelines in 2011.<sup>573</sup>

In 2019, the trial moved forward in the Court of Milan of bribery allegations against Eni and Dutch oil giant **Shell**, and some of their top executives, in connection with a Nigerian oil deal in 2011. The trial opened in Milan in 2018 following an indictment in 2017.<sup>574</sup> The case centres on the alleged payment of US\$1.1 billion to the Nigerian government in exchange for the licence to operate in oil fields in the Gulf of Guinea. Global Witness has uncovered evidence which appears to indicate that the deal

was unprecedented in that it gave away Nigeria's rights to its share of the oil produced.<sup>575</sup>

Proceedings in this case are not limited to the Court of Milan. In March 2019, Shell issued a statement saying that Dutch prosecutors were preparing to prosecute Shell in the Netherlands in relation to the 2011 oil deal in Nigeria.<sup>576</sup>

In October 2019, the Milan Prosecution Office charged the Luxembourg-registered financial holding company **San Faustin** with foreign bribery, together with two board members, Gianfelice Rocca and Paulo Rocca, and the president of the company, Roberto Bonatti.<sup>577</sup> Through **Techint**, San Faustin controls pipe-manufacturer **Tenaris SA**, and through Tenaris, controls **Confab Industrial S.A.** (or **TenarisConfab**) a Brazilian company.<sup>578</sup> According to the charges, €6.6 million (US\$7.5 million) in bribes were paid to a director of Petrobras through San Faustin bank accounts in order to secure contracts for Confab. The bribes were allegedly agreed as a percentage (0.5 per cent) of the value of contracts awarded to Confab. During the investigation, requests for mutual legal assistance (MLA) were sent by Italian authorities to countries including Argentina, Brazil, the Netherlands, Panama, Switzerland and the United States. The Brazilian *Lava Jato* Taskforce is investigating **Techint Engenharia e Construção SA** and Confab on allegations of bribery, money laundering and cartel formation.<sup>579</sup> In Argentina, employees of Techint, which is partially Argentinian, were snared in the *cuadernos* (notebooks) probe. Two directors of the company confessed to paying bribes to speed up compensation payments for the nationalisation of **Sidor**, a Techint-controlled steel-making plant, by the Venezuelan government in 2008.<sup>580</sup> The CEO Paolo Rocca was charged in the case in 2018, but the charges were dismissed on appeal in 2019.<sup>581</sup>

In 2019, the Prosecution Office of Milan filed an indictment for bribery of foreign public officials against eight natural persons and two legal persons, **Microelettrica Scientifica S.p.A.** and **Mak Mart Italy S.r.l.**. The charges concerned alleged bribery of the Russian company JSC Metrovagogomash, controlled by the state-owned company JSC Russian Railways, to win supply contracts in the context of construction works for the Moscow underground. The bribes were allegedly paid through three intermediaries, a German citizen, a Finnish citizen and a Russian citizen resident in Panama.<sup>582</sup> A case against the company **Pilosio** was brought by the Prosecution Office of Udine in 2018 and concluded with sanctions in 2019 concerning alleged bribery in Algeria in connection with the award of a tender by

the company Inerga, controlled by the state-owned Sonelgaz.<sup>583</sup>

In addition, with regard to the "Russiagate case", Italian prosecutors said in July 2019 that they were investigating allegations of illegal Russian funding of the League political party.<sup>584</sup> The investigation was triggered by media reports about a meeting that allegedly took place between three Russians and three Italians, including one of the League party leader's close aides, where they allegedly discussed a secret oil deal.<sup>585</sup> According to a transcript of an audio recording of the meeting published later by BuzzFeed, a Russian oil company was to sell fuel to Italian energy company Eni at a discount through intermediaries.<sup>586</sup> The discount, worth around US\$65 million by BuzzFeed's calculation, would be secretly channelled to the League, while the unidentified Russians apparently stood to make millions of dollars for themselves, the website reports.

In other jurisdictions, Italian construction company **CMC di Ravenna** faces charges in a multi-million-dollar corruption scandal in Kenya.<sup>587</sup> In the United States, in 2020, the Securities and Exchange Commission settled a major corruption case with the Italian oil company **Eni**, based on allegations that it bribed Algerian politicians through a middleman who controlled a constellation of shell companies.<sup>588</sup>

## Recent developments

In January 2019, new anti-corruption legislation, the Law 3/2019, entered into force, changing several aspects of the country's legislative framework. Crucially, it concerns the statute of limitations for corruption offences, which the OECD WGB had criticised over a period of 10 years.<sup>589</sup> According to the new law, the limitation period remains suspended from the delivery of a judgment by the court of first instance until the date of its enforceability (i.e. when it becomes final after the three levels of judgement). Especially relevant for cases of foreign bribery is that the statute of limitations is also suspended in cases of letters rogatory sent abroad, from the date of the decision ordering a letter until the requesting judicial authority receives the documentation (or six months after the date of ordering the letter).

Law 3/2019 also increased the minimum and maximum prison terms for several corruption-related offences, including foreign bribery.<sup>590</sup> Other sanctions, such as prohibition from holding public

office and a ban on entering contracts with public institutions, were also toughened,<sup>591</sup> and the definition of "foreign public official" widened. The definition now includes individuals who perform functions and activities comparable to those performed by Italian public officials within a public international organisation, as well as to members of international parliamentary assemblies, members of international organisations, and officers and judges of international courts.<sup>592</sup>

## Transparency of enforcement information

No official criminal enforcement statistics are published, either by the Ministry of Justice or the courts or enforcement authorities. Statistics on MLA requests are also not available on the Ministry of Justice website.

The Supreme Court publishes on its website annual reports concerning the general approach to crimes against the public administration.<sup>593</sup> In October 2019, the Italian Anti-Corruption Authority, which also publishes annual reports, released a three-year report, "Corruption in Italy 2016-2019", assessing all the decisions issued by judicial authorities in corruption cases.<sup>594</sup>

Court decisions in Italy are generally published in private databases requiring a subscription, costing, on average, €1,000-1,500 (US\$1,100-1,700) per year. The most common databases are *Dejure*,<sup>595</sup> *Pluris*<sup>596</sup> and *Il Foro Italiano*.<sup>597</sup> In addition, the Supreme Court hosts a publicly available database<sup>598</sup> with the decisions of the last five years.

## Beneficial ownership transparency

Italy does not yet have a central register for beneficial ownership information, but is working to establish one, based on Legislative Decree n° 2019/125,<sup>599</sup> passed to comply with the 5th EU Anti-Money Laundering Directive.

A public consultation on the draft executive decree that would set up a beneficial ownership register closed on 28 February 2020.<sup>600</sup> According to the latest draft, the new register will be publicly accessible, but will require payment of a fee or subscription,<sup>601</sup> as does Italy's central company register.<sup>602</sup> The new Register of Beneficial Owners is being developed by the Ministry of Foreign Affairs, the Ministry for Economic Development and the Union of Chambers of Commerce, which already update and manage the company register. The

register is run at local level by the Italian Chambers of Commerce.<sup>603</sup>

## Inadequacies in legal framework

While changes have been implemented to the statute of limitations in Italy, these changes will only be applicable to crimes committed after 2020, in line with constitutionally protected rights. This means all prior offences will be subject to the regulation which led to so many cases being thrown out.

Whistleblower protection in the private sector is only provided by companies that voluntarily decide to implement anti-corruption plans, based on Legislative Decree 231/2001.

## Inadequacies in enforcement system

The lack of a centralised database with information about foreign bribery investigations and cases remains a major problem for law enforcement. Currently, the Ministry of Justice itself is not able to request and collect information from the courts. A database would allow more effective coordination between enforcement agencies, prevent intelligence gaps and enable accurate monitoring of Italy's progress in tackling foreign bribery and other corruption offences.

There is a general lack of resources in the justice system, both for prosecutors and judges. The number of criminal proceedings is greater than the capacity of the judicial system, especially in some districts, which leads to disfunctions in prosecutorial decision making. In theory, a prosecutor must record every notification of a crime in a specific register, then investigate that crime, ending the inquiry either with a formal decision to charge the accused or with a request for dismissal filed with the court. In practice, however, considering the overload of criminal cases, prosecutors often fail to register notifications of crimes and do not take any investigative steps for many registered crimes.<sup>604</sup>

Foreign bribery cases are often complex and there is insufficient training for investigators, prosecutors and judges.

## Recommendations

- Publish foreign bribery enforcement statistics
- Improve the management and accessibility of information about investigations and prosecutions of foreign bribery cases (including plea bargain agreements)
- Ensure that the central beneficial ownership registry is publicly available at no cost
-

Improve the definition of foreign bribery • Extend whistleblower protection throughout the private sector and consider setting up incentives for reporting on irregularities • Implement broader reform in the criminal justice system, including the appeal system, in order to alleviate the backlog of cases and speed up procedures • Develop a more efficient follow-up system of criminal cases through a data web register, to help alleviate the backlog of cases • Ensure appropriate resources and human resources in the court system • Provide additional resources and training for investigators and prosecutors.

## JAPAN

### Little or no enforcement

**3.8% of global exports**

#### Investigations and cases

In the period 2016-2019, Japan opened one investigation, commenced one case and concluded one case with sanctions.

In 2018, **Mitsubishi Hitachi Power Systems (MHPS)** agreed to a plea bargain – the first in Japan – under Japan’s new Prosecutorial Agreement System.<sup>605</sup> The plea bargain concluded with prosecutors concerned an alleged bribe that MHPS was forced to pay to a Thai Ministry of Transport official to unload cargo in a port. An in-house whistleblower informed the company of the matter in March 2015, which then reported the issue to the prosecutor’s office after an internal inquiry. The agreed plea bargain exempted MHPS from indictment in exchange for cooperation during the investigation and trial. Two former MPHS executives were subsequently charged with bribery and admitted to the charges. In March 2019 they were found guilty by a Tokyo district court and sentenced to prison terms of 18 months and 16 months respectively, suspended for three years.<sup>606</sup> A third person charged, a former MHPS senior executive, pleaded not guilty and was sentenced by a Tokyo court in September 2019 to 18 months, suspended for three years.<sup>607</sup> He has appealed his sentence.

Foreign bribery cases involving Japanese companies have been pursued in other countries. In the United States in 2016, **Olympus Corp. of the Americas**, a medical equipment subsidiary of a Japanese

company, admitted to foreign bribery offences and paid US\$646 million to resolve the charges.<sup>608</sup> In 2018, Japan-based **Panasonic Corp.** agreed to pay more than US\$143 million to resolve charges by the US Securities and Exchange Commission of accounting fraud and violations of the Foreign Corrupt Practices Act involving its global avionics business.<sup>609</sup> There have been no known investigations of these companies by Japanese enforcement authorities.

#### Recent developments

The new Prosecutorial Agreement System took effect on 1 June 2018, pursuant to which plea bargaining can be used for violations of the Unfair Competition Prevention Act, including foreign bribery. This has the potential to enable Japanese authorities to investigate and conclude foreign bribery cases more effectively by encouraging those with first-hand knowledge to provide evidence or cooperate with authorities.<sup>610</sup>

In 2019, the president of the Japanese Olympic Committee (JOC) was indicted on corruption charges by French authorities in relation to Tokyo’s successful bid for the 2020 summer Olympics.<sup>611</sup> He allegedly authorised the payment of bribes to Singapore company **Black Tidings** (reportedly linked to Papa Massata Diack, son of Lamine Diack, then an International Olympic Committee member). A JOC internal investigation found no illegality in any payments made by the Japanese bid committee. This highlights the complexities of alleged bribery investigations when they concern international bodies such as sports organisations.

#### Transparency of enforcement information

There is no publicly available data on foreign bribery enforcement in Japan. Statistics on mutual legal assistance (MLA) requests are available on the Ministry of Justice’s website, including requests sent and received. However, there are no separate statistics available for MLA related to foreign bribery cases.

Information on court decisions is available through a centralised court website<sup>612</sup> and other law reporting services. For each case, sentencing decisions are summarised and the accused are anonymised. The full text of judgements and commentaries are available online.

## Beneficial ownership transparency

There is no central register of beneficial ownership of companies or trusts, nor is there any proposal to introduce one.

## Inadequacies in legal framework

The foreign bribery offence is in the Unfair Competition Prevention Act, which falls under the authority of the Ministry of Economy, Trade and Industry (METI). As the METI is also responsible for promoting Japan's economic growth, this raises concerns that decisions to pursue foreign bribery cases may be unduly influenced. It would be preferable for the foreign bribery offence to come under a separate act, with responsibility for implementation and for that of other anti-bribery laws falling within the remit of the Ministry of Justice.<sup>613</sup>

Japan's statute of limitations is only five years for foreign bribery. In its Phase 3 Report on Japan in 2011 and its Phase 4 Report in 2019, the OECD WGB recommended that this be extended, but this recommendation has yet to be implemented.<sup>614</sup> The OECD WGB has also noted that the framework in Japan for establishing nationality of jurisdiction over legal persons is too narrow.<sup>615</sup>

The sanctions imposed on the MHPS officers who pleaded guilty were insufficient given the nature of the offence. The OECD WGB has expressed concern that Japan's sanctions for foreign bribery do not sufficiently meet the standard for natural or legal persons and has called for the level to be increased.<sup>616</sup>

Japan's Whistleblower Protection Act prohibits the dismissal or other disadvantageous treatment of whistleblowers who report allegations of foreign bribery in both the public and private sectors.<sup>617</sup> However, as the Act does not provide for independent investigations or prosecutions, it is up to qualified whistleblowers who suffer retaliation to bring a civil action for reinstatement or damages and establish that the retaliation was intentional. The OECD WGB said in its 2019 Phase 4 Report on Japan "Whistleblowing is becoming more prevalent, though Japan needs to further align its law with the 2009 Recommendation and do more to minimise the risk of retaliation."<sup>618</sup>

Under the National Public Service Act, the nomination of high-ranking officials within ministries, including national police and the prosecutors' office, needs cabinet approval. This

raises concerns of the possibility of political interference in enforcement and lack of independence in the police and the prosecution service.

## Inadequacies in enforcement system

In its Phase 4 Report on Japan in 2019, the OECD WGB remained concerned that despite 20 years of Japan's law prohibiting foreign bribery, the country still had not given it full effect.<sup>619</sup> The agencies that could detect foreign bribery are not proactive. Investigating and prosecuting authorities are also insufficiently proactive and coordinated in their foreign bribery investigations, to the extent that the police have little to no involvement in these cases. Japan seems to rely on voluntary measures and whistleblower reports, as opposed to adopting more coercive measures, such as search and seizure.<sup>620</sup>

The Ministry of Justice's role in transmitting and clarifying certain allegations may create unnecessary delays in opening investigations. Japanese overseas missions have failed to detect any allegations of foreign bribery on their own initiative, e.g. through the monitoring of foreign and local media reports.

## Recommendations

- Ensure that the METI or the Ministry of Justice collects and publishes enforcement statistics
- Ensure that the Financial Intelligence Unit establishes a publicly accessible beneficial ownership register for companies and trusts
- Adopt a separate act to regulate foreign bribery and move the responsibility for implementing the OECD Anti-Bribery Convention, the UN Convention against Corruption and other anti-bribery standards to the Ministry of Justice
- Introduce and implement improvements to whistleblower protection and create incentives for whistleblowers to come forward
- Expand the breadth of nationality of jurisdiction for foreign bribery offences
- Extend the statute of limitations as it applies to foreign bribery
- Increase sanctions to be applied to both natural and legal persons
- Improve enforcement through encouraging investigations by the police and increasing investigations by prosecutors
- Ensure that overseas missions actively monitor local media with a view to detecting foreign bribery by Japanese citizens
- Apply the Japanese Unfair Competition Prevention Act to officials of international organisations which run on public funds or are government funded, and to all profit-making

international transactions, even if they are not business transactions. Transparency International Japan also proposes that these aspects be covered by the OECD Anti-Bribery Convention and the 2009 Recommendation.

## KOREA (SOUTH)

### Little or no enforcement

2.9% of global exports

#### Investigations and cases

In the period 2016-2019, South Korea opened at least one investigation, commenced two cases and concluded five cases with sanctions.

In 2017, South Korean prosecutors in Seoul raided the offices of **SK Engineering and Construction**, an affiliate of South Korea's third largest conglomerate **SK Group**. They collected hard drives and documents with information on SK's construction contracts for the US military base Humphreys Camp, in connection with their investigation. SK had constructed multiple buildings on the base, along with road, water and power networks. In 2017, the US Department of Justice, charged Duane Nishiie, at the time a contracting officer for the US Army Corps of Engineers, and Seung-Ju Lee, a former Korean Ministry of Defence official, with multiple crimes related to directing over US\$400 million worth of contracts to SK, in exchange for US\$3 million in bribes.<sup>621</sup> Prosecutors accused the two of concealing the funds in bank accounts run by Lee. The company pleaded guilty to fraud charges in the US in June 2020. In another major corruption case involving the US Navy, in May 2020, the owner of Korean ship husbanding services provider, **DK Marine**, pleaded guilty in the United States to paying bribes to US officials in exchange for proprietary information and contracts.<sup>622</sup>

In another case in the United States, **Samsung Heavy Industries**, a Korean engineering company, entered into a deferred prosecution agreement (DPA) with the US Department of Justice in 2019 to settle violations of the Foreign Corrupt Practices Act in Brazil. It agreed to pay a fine of US\$75 million, to be shared between US and Brazilian authorities.<sup>623</sup> The company admitted to paying approximately

US\$20 million in commissions to a Brazilian intermediary, knowing that some of it would be paid to officials at Petrobras to obtain improper business advantages.

A media exposé in 2016 by Australian newspaper *The Age* made serious allegations about the conduct of several Korean companies in Algeria, based on leaked emails and documents.<sup>624</sup> Allegations were also made of Unaoil-orchestrated foreign bribery relating to a Korean-based company's dealings in Libya and Qatar.<sup>625</sup> In one case summarised by the *Korea Times*: "Samsung Engineering and a consortium led by **Hyundai Engineering & Construction** and **Hanwha** and **Daewoo** were implicated in a rigged tender process to get a major share of a [US]\$2 billion Algerian contract to restore two decaying oil refineries [...] Leaked Unaoil emails and confidential documents...show how the company started working with Samsung in 2008 when the Korean giant was trying to win contracts for both refineries... In a backroom deal, the competitors formed a consortium to carve up the work, and pay off a Spanish bidder, Tecnicas Reunidas, to 'run dead' in the tender process [...] Unaoil created a 'sharing formula' that generated funds to bribe senior officials from Algeria's state-owned oil company, Sonatrach."<sup>626</sup>

In a story related to the Panama Papers, in 2016, the news agency Newstapa alleged that two shell companies in the British Virgin Islands had connections with major Korean defence contractors. The agency also published information alleging that **KTR**, a Turkish arms dealer, was agent for **Samsung Techwin**, **Hyundai Rotem**, **Hanwha Corporation**, **Poongsan Corporation**, **LIG Next**, and **Daewoo International**.<sup>627</sup> After Newstapa's original story, the Korea Customs Service and the Prosecutors' Office reportedly opened an investigation and subsequently convicted a former Korean general and a former executive of a defence contractor on bribery charges.<sup>628</sup> According to the news report, the bribery was in return for meddling in a suspicious deal between a domestic defence contractor and KTR.<sup>629</sup>

#### Recent developments

There were two recent amendments to the Act on Combatting Bribery of Foreign Public Officials in International Business Transactions, which criminalised foreign bribery. A 2018 amendment expanded the scope of foreign bribery to include bribery through a third party.<sup>630</sup> A 2020 amendment, which takes effect in May 2020,

increases the maximum fines, expands the scope of the aggravated penalty and expands wire-tapping powers.<sup>631</sup>

In January 2020, the Korean National Assembly passed a bill redistributing the investigative authority between the prosecutors and the police, and limiting the prosecutors' direct investigative authority to specific corruption and white-collar crimes, including foreign bribery.<sup>632</sup>

## Transparency of enforcement information

There are no publicly available statistics on foreign bribery enforcement. The official website of the Supreme Prosecutor's Office of the Republic of Korea provides statistics on general crimes, but not on foreign bribery or general bribery.<sup>633</sup> Statistics on mutual legal assistance (MLA) are not published.

All court decisions are published in full on the Supreme Court of Korea's website, but the names of the defendants are not disclosed in the published decisions, including when the defendants are companies.<sup>634</sup> Other case resolutions, such as suspended prosecutions, are not publicly available.

## Beneficial ownership transparency

Korea does not have a central beneficial ownership register. Competent enforcement authorities may not be able to obtain beneficial ownership information in a timely manner through available mechanisms.<sup>635</sup> One of these mechanisms, applicable only to publicly listed companies, is the Corporate Filings Data Analysis, Retriever and Transfer System.<sup>636</sup> The Financial Action Task Force's 2020 Mutual Evaluation Report for South Korea warns that "obtaining BO [beneficial ownership] information is more difficult where the corporate structure is particularly complex or involves foreign ownership". As it relates to trusts, access to beneficial ownership information depends on the type of legal arrangement involved. Information on commercial trusts is generally available from the trustee within several days, while information on civil trusts (much rarer) and on foreign trusts is harder to obtain.<sup>637</sup>

## Inadequacies in legal framework

The sanctions available for natural and legal persons convicted of foreign bribery in South Korea are not adequate and should be increased. The OECD WGB

has also noted in its Phase 4 Report on Korea in 2018 that "the current investigation time limit and statute of limitations for legal persons have also impeded effective foreign bribery enforcement".<sup>638</sup> Korea's anti-money laundering framework could be enhanced "by extending reporting requirements to appropriate non-financial entities, including lawyers, accountants and auditors, to report suspected money laundering transactions related to foreign bribery".

## Inadequacies in enforcement system

In December 2018, the OECD WGB published its Phase 4 Report on Korea, announcing that "enforcement of foreign bribery has weakened since 2011 and the enforcement rate does not correspond to the significant level of exports and outward investment by Korean companies in countries and sectors at high risk for corruption".<sup>639</sup> One of the reasons for this is that the capacity of Korea's law enforcement agencies to proactively detect and investigate foreign bribery is limited and they show "a concerning lack of initiative" according to the OECD WGB in 2018.

The fragmented approach to foreign bribery enforcement, with both prosecutors and police playing a role in investigations and a lack of guidelines to clarify their roles, was also a concern raised by the OECD WGB,<sup>640</sup> as was the use of suspended prosecution.<sup>641</sup> Decisions to suspend prosecution are taken solely by prosecutors and are not subject to judicial review. However, involved parties can appeal these decisions to the Constitutional Court and prosecutors may reinstate proceedings if circumstances change. A further problem cited is that prosecutors must decide whether to prosecute within three months, which could explain their unwillingness to file MLA requests with other countries.<sup>642</sup> A Korean expert says the lack of enforcement "has to do with the South Korean judiciary being too tolerant in enforcing economic crimes".<sup>643</sup>

## Recommendations

- Improve public access to enforcement information
- Create a public centralised registry for beneficial ownership information
- Provide for adequate sanctions for natural and legal persons
- Ensure that the current investigation time limit and the timeframe for prosecuting companies for foreign bribery are sufficient to allow for effective foreign bribery enforcement
- Enhance detection capacities

by mobilising government agencies and private-sector professionals with potential for detecting foreign bribery<sup>644</sup> • Address the fragmented approach to investigating foreign bribery and clearly define the roles of the police and prosecutors • Extend the deadline for prosecutors to investigate foreign bribery cases • Clarify criteria and increase transparency of decisions to suspend prosecution in foreign bribery cases and consider reforms to ensure judicial review of all such cases to ensure consistency • Take a more proactive stance in the use of MLA requests • Increase resources dedicated to enforcement of foreign bribery regulations and demonstrate greater commitment to investigating and prosecuting the offence.

## LATVIA

### ● Limited enforcement

0.1% of global exports

#### Investigations and cases

In the period 2016-2019, Latvia opened six investigations, commenced no cases and concluded no cases with sanctions.

The Latvian Bureau for Preventing and Combatting Corruption (KNAB) initiated a formal investigation in 2016 of allegations that the CEO of Latvia's largest road and bridge construction company, **Latvijas Tilti**, paid bribes to secure a €10 million (US\$11.4 million) contract in Lithuania.<sup>645</sup> The investigation into the CEO was transferred to Lithuania, where he was convicted in 2018.<sup>646</sup> KNAB initiated an investigation of the Latvian company for foreign bribery in 2019 and in August 2020 referred that case to the Prosecutor General's Office, requesting a criminal prosecution of the company.<sup>647</sup> In 2019, KNAB also initiated an investigation of **Tieto Latvija**, a subsidiary of **Tieto**, a Finnish IT and engineering company, on the basis that the liability of its Latvian sales manager in Belarus had been already established in Belarus.<sup>648</sup> The sales manager was convicted in 2018 in Belarus on allegations of having paid more than €2 million (US\$2.3 million) in bribes to a then-high-ranking official of a Belarus public enterprise to ensure purchases of licences and related services.<sup>649</sup> The bribes were allegedly

transferred through the Latvian bank account of a Scottish shell company.<sup>650</sup>

The OECD WGB expressed concern in its Phase 3 Report in 2019 about the number of cases involving Latvian banks and shell companies which allegedly served to channel bribe payments.<sup>651</sup> This concern is reinforced by a series of scandals and allegations involving the country's banking system and related deficiencies in Latvia's anti-money laundering arrangements. There is a long list of examples. A Latvian bank was fined US\$191,000 for its role in laundering US\$230 million from an illegal tax refund scheme exposed by Sergei Magnitsky.<sup>652</sup> In 2018, **ABLV Bank** was shut down following a US Treasury report which demonstrated that the bank had helped Ukrainian business tycoon Serhiy Kurchenko use shell companies to funnel billions of dollars allegedly embezzled from Ukrainian government coffers.<sup>653</sup> The bank was accused of institutionalising money laundering.<sup>654</sup>

Latvian banks **Trasta Komerbanka**, **Privatbank** and **Baltikums Bank** were among the financial institutions which allegedly received the most money originating in the Russian Laundromat.<sup>655</sup> **Baltikums Bank**, later renamed **BlueOrange Bank**, was allegedly involved in the Azerbaijani Laundromat.<sup>656</sup> **Swedbank Latvia**, along with the other Baltic branches of the Swedish bank, was found to have actively pursued high-risk customers as a business strategy. The banks reportedly passed a combined amount of at least US\$40 billion in high-risk transactions between 2014 and 2019, ignoring anti-money laundering obligations.<sup>657</sup>

#### Recent developments

The Latvian regulatory and enforcement frameworks have undergone important reforms in recent years. The Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing<sup>658</sup> has been regularly amended, generally in line with recommendations from the EU and other regional and international bodies. The amendments include the addition in 2017 of a chapter on customer due diligence, and the 2019 obligation for registered companies to disclose their beneficial owners. Another legislative development was the adoption of the 2018 Whistleblowing Law, a comprehensive piece of legislation reflecting most internationally recognised best practices, which entered into force in May 2019.<sup>659</sup>

Amendments in 2017 of the Criminal Law<sup>660</sup> and Criminal Procedure Law, as well as a new Law on

Execution of Confiscation of Criminally Acquired Property,<sup>661</sup> increased the statutory maximum fines and prison sentences available for natural persons, and comprehensively reformed how the confiscation of criminally acquired property is carried out. This last reform was accompanied by training sessions and the publication of recommended guidelines for relevant practitioners.<sup>662</sup> An Action Plan on Anti-Money Laundering and Counter-Terrorism Financing Measures was approved in late 2018 to enhance inter-agency cooperation, associated with the creation of specialised units. A new Action Plan for 2020-2022 was adopted by the government on 23 December 2019.<sup>663</sup>

## Transparency of enforcement information

KNAB provides annual reports and statistics on enforcement, but these do not offer much detail.<sup>664</sup> Each annual report includes information on mutual legal assistance requests and their execution, and KNAB will provide more detailed information on request. The annual reports can be accessed on KNAB's web portal.<sup>665</sup>

Information regarding enforcement is partially available through several sources, notably press releases on the State Prosecution's website concerning any final decisions on foreign bribery and related offences.<sup>666</sup> However, press releases can only be filtered by year, not by topic, so information regarding foreign bribery is not readily available.

Certain court rulings in criminal proceedings are publicly available online.<sup>667</sup> Anonymised court rulings in other proceedings are published online in accordance with Regulation n° 123 on the Publication of Court Information on the Website and Processing of Court Decisions before their Issuance.<sup>668</sup> Rulings and decisions of the highest courts that could be relevant to the interpretation of the law are generally made public in anonymised form.<sup>669</sup> The pool of publicly available court decisions is much smaller than that of court rulings, and there are regular debates within the legal community about the availability of court decisions.

## Beneficial ownership transparency

Latvia has set up a public beneficial ownership registry, which is accessible free of charge.<sup>670</sup> Following the adoption of an amendment to the Law

on the Prevention of Money Laundering and Terrorism and Proliferation that came into force in December 2017, every legal person registered with the Latvian Register of Enterprises is required to disclose its beneficial owners.<sup>671</sup> This includes foreign persons, following the amendment of 2019 – the extension which entered into force on 1 July 2020. This information is legally required to be published online on the Enterprise Register portal.<sup>672</sup>

## Inadequacies in legal framework

Latvian authorities have not taken the results of the National Risk Assessment sufficiently into consideration when reassessing their anti-corruption efforts, and “the private sector showed little if any interest in using the results of the risk assessment for revisiting their relevant policies, procedures and controls” to take into account all the major money-laundering, bribery and corruption threats.<sup>673</sup>

## Inadequacies in enforcement system

The 2019 OECD WGB Phase 3 Report on Latvia states in its commentary that “Latvia still encounters high levels of grand corruption and evidence of ‘state capture’”. The report also mentions the domestic context, where evidence of “state capture” is reported in relation to a parliamentary inquiry on a high-profile corruption case, raising questions on whether law enforcement agencies are able to do their jobs independently and without interference”.<sup>674</sup> The report also expressed concern that “the government's open and unrestrained commentary about the Prosecutor General risks creating the perception of political interference in what should be an independent body” and recommended that the government refrain from this. The OECD WGB further noted that “Publicly available information seems to indicate that businesses are faced with a high risk of corruption when dealing with the judiciary, and about two out of five companies perceive the independence of Latvia's courts as fairly bad. In a survey, judges in Latvia expressed significantly more concern than their European peers about bribery in the judiciary and threats of disciplinary action based on the way they adjudicate cases. These issues were discussed during the on-site visit where the judges defended their strong independence under the law and in practice”.<sup>675</sup> The 2019 OECD Economic Survey of Latvia calls for strengthening the judiciary and law enforcement agencies in their independence, to help improve

trust in institutions and address corruption and money laundering issues.

Latvia's framework against bribery is weakest at the enforcement stage, especially considering the country's position as a platform for financial transactions.<sup>676</sup> Several multi-jurisdictional bribery cases have shown that proceeds of foreign bribery were laundered through Latvian banks and other corporate entities.<sup>677</sup> There has been a tendency not to pursue claims against legal persons if the natural person who had committed the offence was in a foreign country and was not prosecuted.<sup>678</sup> Lax punishments for financial institutions caught up in money laundering schemes has also long been an issue in Latvia.<sup>679</sup>

Latvian financial institutions and their personnel have never been held liable. For example, at the end of 2019, the Prosecution Office began prosecuting employees of the **Baltic International Bank**<sup>680</sup> and **Swedbank**<sup>681</sup> for money laundering, but not the institutions. This is in part due to the inadequacies of and limited coordination between the relevant domestic agencies (such as KNAB, the State Police, the Financial Intelligence Unit, the Financial and Capital Market Commission, the State Revenue Services and the Prosecutor's Office), especially in large-scale foreign bribery cases. Some efforts have been undertaken in 2020 to address this situation.

A consequence of the lack of coordination is that investigations against the same individual or for the same facts will be distributed to different agencies according to the offence envisioned.<sup>682</sup>

This situation is made worse by the lack of resources and specialised training for enforcement authorities.<sup>683</sup> The absence of a court specialised in economic affairs also hinders enforcement.<sup>684</sup> The creation of such a court is supported by the current Latvian government and there are plans for it to become operational in January 2021.<sup>685</sup>

## Recommendations

- Improve the definition of aggravated foreign bribery
- Ensure independence for investigators and prosecutors against political interference
- Reinforce inter-agency cooperation and implement a strategic approach to ensure that fact patterns are fully investigated, rather than focusing on specific offences
- Ensure that sanctions are dissuasive, in line with international standards, and that enforcement action may be taken against all relevant companies, including Latvian financial

- institutions
- Provide sufficient resources and expertise to authorities to effectively investigate and prosecute foreign bribery and related money laundering cases
- Increase efforts to ensure compliance of Latvian banks with international anti-money laundering rules and best practices
- Ensure the efficient operation of the Financial and Capital Markets Commission – the banking supervisory body – for the prevention and detection of foreign bribery and related money laundering
- Improve current whistleblowing protection by providing incentives to companies to conduct independent internal investigations when they receive reports of irregularities
- Step up enforcement actions against companies, especially against Latvian financial institutions and other corporate entities involved in foreign bribery schemes.

# LITHUANIA

## ● Limited enforcement

0.2% of global exports

### Investigations and cases

In the period 2016-2019, Lithuania opened three investigations, commenced no cases and concluded no cases with sanctions.

The Special Investigation Service (STT) reportedly initiated an investigation in 2016 into allegations that a member of the National Parliament acting in the interest of Lithuanian frozen food company **Judex** bribed Russian officials at the State Food and Veterinary Service to avoid being fined for violations.<sup>686</sup> A media report in 2019 said prosecutors suspected that a member of the Lithuanian National Parliament had requested lifting that MP's immunity.<sup>687</sup> Parliament subsequently refused to do so, which prevented the investigation from moving forward.<sup>688</sup> The STT was also reported to be investigating whether a shareholder and a director of the company **Solis Tribus** had engaged in corrupt and anti-competitive practices in Latvia (and Lithuania), in order to restrict or monopolise blood plasma collection, in favour of the company.<sup>689</sup> The STT terminated for lack of evidence an investigation commenced in 2016 regarding alleged bribery of a US army officer to

obtain a helicopter maintenance contract for a Lithuanian company.<sup>690</sup>

In other jurisdictions, the Organized Crime and Corruption Reporting Initiative (OCCRP) reported in 2019 on investigations in Kyrgyzstan concerning alleged irregularities in a multi-million dollar procurement of biometric passports won by a Lithuanian company, which, according to OCCRP, has a Belgian company behind it.<sup>691</sup>

The media has claimed that Lithuanian banks have been used for large-scale money laundering. One report in 2019 alleges that the Lithuanian branch of **Swedbank** was used by former Ukrainian President Viktor Yanukovich to launder millions of euros from bribes received and resources diverted from the national treasury.<sup>692</sup> This was also disclosed in the report of an investigation on Swedbank released in March 2020.<sup>693</sup> A 2019 report by the OCCRP alleged that the Lithuanian bank **Ukio Bankas** was one of the banks used in the Troika Laundromat, involving laundering of more than US\$4 billion between 2006 and 2013.<sup>694</sup> Much of this amount allegedly originated in tax evasion schemes, organised crime and corruption.<sup>695</sup> The bank was seized in 2013 by the Lithuanian National Bank for engaging in risky deals.

## Recent developments

The Law on Whistleblower Protection entered into force in January 2019, requiring public institutions and private legal entities with more than 50 employees to introduce internal channels to receive reports, as well as the appointment of a person to handle these reports. Effective whistleblowing channels must be established in order to guarantee the confidentiality and safety of individuals reporting wrongdoing.<sup>696</sup>

Lithuania has transposed both the 4th and 5th EU Anti-Money Laundering Directives into its national legislation, although not completely, as noted by the European Commission in January 2019.<sup>697</sup> The legislation extends the application of the risk-based approach and makes several changes to beneficial ownership-related obligations – extending, for example, the concept of beneficiary to senior manager in specific cases. It also facilitates cooperation and information sharing between financial supervisors.<sup>698</sup>

The Prosecution Service has undertaken numerous efforts since 2017 to train both prosecutors and judges to investigate and prosecute corruption-related criminal offences. Diplomats and public

officials have also been trained by STT experts on corruption-related matters, with a focus on the foreign bribery offence.<sup>699</sup> In 2018, the government increased the resources allocated to the STT by 47 per cent and salaries were increased.

## Transparency of enforcement information

Statistical information is available for bribery cases, broken down by enforcement stages (such as pre-trial investigations, investigations, solved cases and convictions) and by the type of crime.<sup>700</sup> Lithuania also collects detailed statistics on mutual legal assistance (MLA) and extradition in order to assess the effectiveness and promptness of its cooperation in foreign bribery cases. A module on international cooperation in criminal matters within the data management system of the Prosecution Service (“Integrated Information System of Criminal Process”) is being developed to facilitate faster and more efficient data generation.<sup>701</sup> The statistics on MLA requests issued and received can also be found in the annual reports of the General Prosecutor’s Office.<sup>702</sup>

Information about foreign bribery proceedings is announced on the official website of the investigating institution, although there is no searchable listing for specific cases.<sup>703</sup> A database of all depersonalised cases is available online, making it possible to search for cases by case number and type, court, date and other factors.<sup>704</sup> Since November 2017, the Penal Code prescribes an obligation to announce in full the sentencing verdict of a legal person for crimes of bribery, trading influence and graft.<sup>705</sup>

## Beneficial ownership transparency

Lithuania has no central register of beneficial ownership to date, as no budget has been allocated for it.<sup>706</sup> Following the partial transposition of the 4th and 5th EU Anti-Money Laundering Directives, a central register of beneficial ownership is now being created as a subsystem of the Information System on Members of Legal Entities.<sup>707</sup> Beginning in March 2021, it is expected to be integrated into the European Central Platform.

## Inadequacies in legal framework

There are no significant inadequacies in the legal framework.

## Inadequacies in enforcement system

Despite recent efforts to step up Lithuania's anti-money laundering supervision, including the establishment of new departments for money-laundering prevention and electronic money supervision at the Central Bank,<sup>708</sup> there are still questions as to whether anti-money laundering supervision in Lithuania is adequate.<sup>709</sup>

Increased STT resources and reforms to its structure have not resulted in increased enforcement efforts against foreign bribery, which may denote that this is not a priority for the institution. The OECD WGB Phase 2 Follow-Up Report on Lithuania in 2019 found that further efforts were needed to ensure effective enforcement of anti-bribery laws with regard to corporate liability and imposing sanctions for foreign bribery, including confiscation.<sup>710</sup> There is also a lack of awareness and understanding about the risks of foreign bribery in both the private and public sectors.

## Recommendations

- Systematise collection and publication of information on enforcement against foreign bribery, including MLA data
- Expedite the creation of the central beneficial ownership register and publish it in open-data format
- Strengthen whistleblower protection and ensure effective implementation of related legislation
- Strengthen existing bilateral relationships with foreign prosecuting authorities in order to improve MLA efficiency
- Ensure direct access by procurement authorities and the Public Procurement Office to information about convictions of natural and legal persons for corruption, to facilitate their exclusion from bidding proceedings
- Improve anti-money laundering supervision of financial institutions by regulatory institutions, such as the Financial Crime Investigation Service and the Bank of Lithuania, paying particular attention to the newly-established fintech sector
- Continue raising awareness about foreign bribery, both in the public and private sectors, providing information and training.

# LUXEMBOURG

 Little or no enforcement

## 0.6% of global exports

In the period 2016-2019, Luxembourg opened an unknown number of investigations, commenced no known cases and concluded one case with sanctions.

## Investigations and cases

In February 2020, Italian authorities brought foreign bribery charges against **San Faustin**, a financial holding company that, through **Techint**, controls pipe-manufacturer **Tenaris**.<sup>711</sup> All three companies are officially headquartered in Luxembourg. In 2017 it was reported that Argentinian authorities had opened a foreign bribery investigation relating to Tenaris,<sup>712</sup> while Brazilian authorities from the *Lava Jato* Taskforce are reportedly investigating Techint for bribery, money laundering and cartel formation.<sup>713</sup> There are no reports of an investigation of these companies in Luxembourg.

Luxembourg has played a role in investigating other kinds of international corruption, in particular in relation to money laundering through offshore or Luxembourg companies with Luxembourg bank accounts, such as in relation to funds embezzled to the detriment of the Malaysian sovereign wealth fund **1Malaysia Development Berhad (1MDB)**,<sup>714</sup> as well as various "laundromat" dossiers.<sup>715</sup> The 1MDB embezzlement was allegedly carried out through offshore companies with bank accounts in Singapore, Switzerland and Luxembourg, with hundreds of millions of US dollars paid in exchange for the issuance of bonds in May and October 2012. In June 2017, Luxembourg's financial regulator fined the **Banque Privée Edmond de Rothschild (Europe)**, the Luxembourg branch of the Swiss private bank, €9 million (US\$10.3 million) for failing to put in place a robust internal governance system for compliance with professional anti-money laundering and counter-financing of terrorism obligations.<sup>716</sup> The fine related to its handling of funds from 1MDB. No allegations of foreign bribery were made in relation to these transactions.

In 2016, the Criminal Court of the district of Luxembourg City convicted a European civil servant and another individual of trading in influence in relation to a call for bids carried out by the European Parliament. A leased car was provided in exchange for the civil servant's influence over the evaluation process for the bids.<sup>717</sup>

## Recent developments

The 5th EU Anti-Money Laundering Directive was implemented into Luxembourg law by the Law of 25 March 2020. In May 2020, the European Commission sent a letter of formal notice to Luxembourg for having only partially transposed the Directive.

In response to the 4th EU Anti-Money Laundering Directive of 2015,<sup>718</sup> the Luxembourg Law of 23 December 2016 extended the money laundering offence to aggravated tax evasion and tax fraud from 1 January 2017. The Luxembourg Law of 13 February 2018 (Amending Law), which entered into force on 18 February 2018, introduces further amendments to Luxembourg's anti-money laundering legislation, including an amended definition of "beneficial owner" of corporate entities and trusts, setting different thresholds for customer due diligence measures and enhanced requirements for professionals to carry out risk assessments.<sup>719</sup> The Act also increases criminal sanctions and sanctions for supervisory authorities.<sup>720</sup>

A March 2017 European Parliament report found Luxembourg (along with the Baltic States and Cyprus) among the EU countries disproportionately threatened by money laundering in relation to their Gross Domestic Product. It noted that in the Panama Papers, Luxembourg was linked to 10,877 offshore entities, the second highest number after the UK.<sup>721</sup>

## Transparency of enforcement information

The financial intelligence unit of the Luxembourg Prosecutor publishes annual statistics on corruption matters, including the number of files opened, persons prosecuted, judicial information files opened, judgments issued and people convicted. However, the figures do not allow identification of activities specifically related to foreign bribery.<sup>722</sup> Some statistics regarding cooperation on corruption matters between Luxembourg and the other Europol members are published, including the number of messages sent and received.<sup>723</sup>

Court decisions and other case resolutions are not published in full.

## Beneficial ownership transparency

The law establishing a Register of Beneficial Owners for Luxembourg-registered entities came into force as of 1 March 2019.<sup>724</sup> National authorities will have full access and other persons will have limited access, namely to all information except the private and professional addresses and the national or foreign identification numbers of the ultimate beneficial owners.

## Inadequacies in legal framework

Luxembourg's current whistleblower protection legislation only protects whistleblowers against dismissal, not against prosecution. In April 2015, the Minister of Justice indicated that the government would consider extending the scope of protection to whistleblowers reporting additional forms of wrongdoing relating to security or working conditions, and would improve and simplify the existing reporting channel.<sup>725</sup> This has yet to happen.

## Inadequacies in enforcement system

According to an interview with the deputy prosecutor at the Economic and Financial Prosecutor's Office and the director of the Financial Intelligence Unit in January 2020, five years after the LuxLeaks revelations, the fight against white-collar crime has not taken off.<sup>726</sup> This is due to a lack of qualified staff and the increasing complexity of financial transactions.

## Recommendations

- Improve access to enforcement statistics and case law
- Develop and implement the extension of whistleblower protection legislation, strengthen reporting channels and put in place provisions for an independent body to handle corruption allegations
- Improve training for judges, prosecutors, members of the administrative courts and other court personnel
- Complete implementation of the 4th and 5th EU Anti-Money Laundering Directives.

# MEXICO

 Little or no enforcement

## 2.0% of global exports

### Investigations and cases

In the period 2016-2019, Mexico opened three investigations, commenced no cases and concluded no cases.

There is little information publicly available about the investigations, other than that they concerned events that took place in Spain and Guatemala. One of the investigations is still ongoing.

In other jurisdictions, the construction company **CEMEX** has been under investigation by the US Department of Justice since 2016, for alleged irregularities reportedly committed by its employees in connection with the construction of a cement plant in Colombia.<sup>727</sup> Internal investigations uncovered payments of more than US\$20 million to a non-governmental third party in the process of acquiring lands, mining rights and the benefits of a tax-free zone.<sup>728</sup> There is no public information about whether an investigation has been initiated in Mexico in connection with CEMEX. In 2015, Spanish authorities initiated an investigation regarding alleged corruption and foreign bribery relating to **Grupo Mexico**, a mining company, but five years later, no known steps have been taken in Mexico.<sup>729</sup>

### Recent developments

Constitutional autonomy was granted to the Office of the Prosecutor General in December 2018,<sup>730</sup> meaning that its holder is entitled to a nine-year term and a dedicated budget. However, the nomination process for the last Prosecutor General was highly questioned. In October 2018, an Anti-Bribery Protocol for combatting foreign bribery was adopted by the Ministry of Public Administration and the Prosecutor General's Office to establish principles, performance standards and recommendations to guide the authorities responsible for combatting foreign bribery.<sup>731</sup> However, since the change of government in December 2018, there is no further public information about the implementation of the protocol.

A Special Anti-Corruption Prosecutor was appointed in March 2019, and during the year the office started 773 investigations into corruption. However, only five investigations were presented to a judge and the Prosecutor's Annual Report does not mention any investigation of foreign bribery.<sup>732</sup> Enforcement of anti-money laundering laws by the

country's Financial Intelligence Unit has become more vigorous since 2019.

The new United States-Mexico-Canada Trade Agreement (USMCA), ratified in March 2020, includes – unlike its predecessor, the North American Free Trade Agreement – a chapter on preventing corruption, and holds some positive prospects for anti-corruption efforts.<sup>733</sup> The USMCA excludes facilitation payments under the criminal felonies included in the agreement, but recognises the negative effects of such practices. Facilitation payments can be punished if committed in Mexico or Canada, as the legal frameworks of these two countries consider the practice a crime. The United States must comply with the prescription included in the USMCA to encourage enterprises to prohibit or discourage the use of such payments.

### Transparency of enforcement information

Information about foreign bribery enforcement efforts up to 2018 is available on the government Open Data Portal,<sup>734</sup> and more recent information can be found on the website of the Prosecutor General's Office.<sup>735</sup> However, this information is neither complete nor updated. It includes only the date, the file number, the origin of the file, the country in which the alleged offence took place, the file status and comments on the file. The most recent update was made in August 2019. The annual report presented by the Special Anti-Corruption Prosecutor in March 2020 did not provide a breakdown of investigations, including foreign bribery.<sup>736</sup> Neither the Ministry of Foreign Relations' website nor the government's open data portal contains any statistics on incoming and outgoing mutual legal assistance (MLA) requests. This is explained as being due to the fact that the requests for international legal assistance and their content are confidential. However, on request, the authorities can provide data and statistics on general aspects of international cooperation, such as the number of requests, countries from or to which they were sent, and the year.

The judiciary is required by law to publish resolutions and court decisions, and those decisions are available online.<sup>737</sup>

### Beneficial ownership transparency

There is no central register for beneficial ownership information. However, different registers are

already in place and all relevant authorities have access to such registers on request.

As part of its Open Government Partnership National Action Plan, the Mexican government committed to move forward the Beneficial Ownership Register for the extractive industry in order to have a general register by 2023. Also, the Ministry of Public Affairs reported that in collaboration with the Financial Intelligence Unit of the Ministry of Finance and Public Credit, it led Mexico's adherence to the Beneficial Ownership Transparency Disclosure Principles originating from the United Kingdom.

The Financial Action Task Force has noted the difficulty for authorities to access beneficial ownership information: "A serious concern across all sectors is that beneficial owners are being identified only to a limited extent, systematically weighing on entities' effectiveness in assessing and managing money laundering and terrorist financing risks. Owing largely to shortcomings in the legal framework, FI's [Financial Institutions] seek to identify beneficial owners in only limited circumstances".<sup>738</sup>

### Inadequacies in legal framework

After the 2015 constitutional and secondary law reforms that created the National Anti-Corruption System and updated the criminal and administrative responsibilities for public and private stakeholders, the authorities in charge of the prosecution and sanctioning of corruption crimes, including foreign bribery, have not shown concrete results. They have argued that additional reforms are needed to create a more efficient legal framework.<sup>739</sup> However, the current legal framework is sufficient to initiate investigations and prosecute cases that could lead to sanctions. The Special Anti-Corruption Prosecutor has pointed out the need to reform several laws, stating an intent to obtain jurisdiction over a host of money laundering cases, to increase sanctions for companies involved in grand corruption cases, to develop the use of technology and enhanced surveillance in investigations, and to better define the standard for compliance required from companies.

### Inadequacies in enforcement system

Lack of resources, training and capacity-building efforts for prosecutors and judges hinders investigation and prosecution of foreign bribery and money laundering cases, which usually involve

complex corporate structures and intricate financial flows. A deeper reform is also necessary of the appointment process for judges, in order to ensure they are chosen according to objective criteria in the interest of impartiality and professionalism. A proposal on this subject has been presented by the President of the Supreme Court.<sup>740</sup>

Mexico has signed multiple MLA treaties<sup>741</sup> and the General Law on Administrative Responsibilities determines that law enforcement authorities must cooperate with their foreign counterparts. According to the Prosecutor General's Office, from 1 January 2016 to 31 December 2019, 12 requests for legal assistance were submitted to Brazil regarding the Odebrecht case. However, there is no public information about this.<sup>742</sup> MLA treaties should show their relevance in concrete investigations, cases and sanctions in Mexico.

### Recommendations

- Publish and update statistics and other information on corruption and foreign bribery cases and investigations – including international cooperation – on the government's open-data portal and on the websites of the Prosecutor General's Office and the Ministry of Foreign Affairs
- Create a publicly accessible central register for beneficial ownership information
- Ensure the independence of the Prosecutor General's Office to prevent its selective or political use
- Develop a criminal prosecution policy regarding corruption control and the investigation and sanction of international bribery, with broad public discussion
- Increase efforts to recover stolen assets and promote reparation and a guarantee of non-repetition to the victims of corruption and international bribery
- Provide adequate resources and training for the investigation and prosecution of corruption and foreign bribery cases
- Reform the appointment process for judges in order to ensure their independence and impartiality
- Increase efforts to cooperate with other jurisdictions on investigations and cases of foreign bribery.

## THE NETHERLANDS

 Limited enforcement

**3.1% of global exports**

## Investigations and cases

In the period 2016-2019, the Netherlands opened 16 investigations, commenced two cases and concluded three cases with sanctions.

Foreign bribery investigations are conducted by the Fiscal Intelligence and Investigations Service (FIOD) and the Netherlands Public Prosecution Service (NPPS). These investigations take a long time to conclude, due to their international and complicated nature.<sup>743</sup>

In March 2019, a **Shell** statement on its website said that the NPPS was preparing charges against the company over an allegedly corrupt deal in Nigeria relating to an exploration licence for an oil block.<sup>744</sup> According to news reports, although the funds were paid to the Nigerian government, the money went to a company linked to a former oil minister.<sup>745</sup> Prosecutors in a parallel case in Italy reportedly claim that Shell and Eni knew that most of the US\$1.3 billion purchase price for the acquisition of the licence would be used to pay bribes to politicians and middlemen.<sup>746</sup> In 2016, Shell's headquarters in The Hague were reportedly raided by a joint investigative team of Italian and Dutch financial police.<sup>747</sup> Recently there have been reports in the Dutch press that the Netherlands' ambassador in Nigeria shared confidential information with Shell about an investigation on location in Nigeria by Dutch financial police.<sup>748</sup> The whistleblower who exposed the information, a local staff member of the Netherlands embassy, was subsequently dismissed.<sup>749</sup>

Following the **VimpelCom** case, covered in the *Exporting Corruption* Report 2018, there were three related cases in the Netherlands, two involving banks and one involving an accounting and consulting firm (VimpelCom is now called **VEON**). In September 2018, the NPPS settled its investigation into **ING Bank NV**, with ING agreeing to pay €675 million (US\$771 million) as a penalty and €100 million (US\$114 million) as disgorgement to the NPPS.<sup>750</sup> The FIOD had been investigating ING since 2016 for suspected facilitation of international corruption and culpable money laundering.<sup>751</sup> The bank admitted "serious shortcomings" in executing policies to prevent financial crime. In July 2020, a group of victims won a court case requiring former ING CEO Ralph Hamers to testify about the bank's role in relation to fraud by a third party, an issue covered by the 2018 settlement. The victims seek to force a prosecution of the bank or bank officials. If they succeed, then according to the terms of the

settlement, the Netherlands will have to repay the penalty and disgorgement to ING.<sup>752</sup>

In 2017, Dutch authorities raided **the Amsterdam Trade Bank (ATB)**, the Dutch subsidiary of the Russian **Alfa Bank**.<sup>753</sup> According to the US Department of Justice, accounts at ATB, among others, were used to pay the bribes by VimpelCom.<sup>754</sup> A 2019 report on the Troika Laundromat by the Organized Crime and Corruption Reporting Project alleges that ATB was one of the banks used to channel almost €1 billion of the billions transferred out of Russia into the Netherlands.<sup>755</sup>

Also in 2017, the NPPS offered a settlement to accounting firm **EY** for failure to report unusual transactions of VimpelCom. EY rejected this offer and was summoned to appear in criminal pretrial proceedings before the District Court of Amsterdam in 2018.<sup>756</sup> There is no public information about the disposition of the EY case.

Dutch financial prosecutors reportedly raided locations in the Netherlands in February 2019 as part of an investigation into the alleged use of shell companies to distribute bribes on behalf of Brazilian conglomerate **Odebrecht SA**.<sup>757</sup> According to Reuters, the prosecutors said at least US\$100 million was channelled through financial structures set up by trusts and tax advisors, that are believed to have used fake contracts and invoices to conceal the payments.

In other jurisdictions, in 2018, the Ukrainian anti-corruption agency NABU investigated and filed charges alleging bribery and money laundering in relation to a public tender award to Czech company **Skoda JS a.s.** The company is a subsidiary of the Netherlands-registered **OMZ B.V.**, which is part of the Russian Uralmash-Izhora Group or OMZ Group, in turn owned or controlled by Russia's state-owned Gazprombank.<sup>758</sup> In Estonia in 2018, **E.R.S. Ltd**, the Estonian subsidiary of joint venture Vopak-EOS, co-owned by Dutch terminal operator **Vopak** at the time, was named in a bribery case against a board member of state-owned Estonian Railways.<sup>759</sup>

## Recent developments

An Anti-Corruption Centre (ACC) was established within the FIOD in September 2016,<sup>760</sup> and a dedicated anti-corruption team targeting foreign and commercial bribery was created within the NPPS in 2017.

On 21 April 2020, the Netherlands Senate adopted the Act implementing the 5th EU Anti-Money Laundering Directive, which entered into force on 21 May 2020. The Act implements the directive primarily by amending the Act on the Prevention of Money Laundering and Financing of Terrorism.<sup>761</sup> Also in April 2020, the Dutch Finance Minister wrote in a letter to Parliament that the government proposes to impose a total ban on “funnel companies” at trust offices, noting that the trust sector is still too lax in complying with integrity rules.<sup>762</sup> An important requirement of the EU directive, the establishment of a central register of beneficial owners of legal entities, was included in a separate legislative proposal adopted in June 2020.<sup>763</sup> In July 2020, five Dutch banks (ABN AMRO, ING, Rabobank, Triodos Bank and Volksbank) created Transaction Monitoring Netherlands, which will focus on the identification of unusual financial transaction patterns that cannot be observed at the level of an individual bank.<sup>764</sup>

Research published by the National Statistics Office in 2018 reportedly found that a vast proportion of foreign investment in the Netherlands leaves the country again through shell firms. It found that four in five of the 14,000 shell firms located in the Netherlands carry out no economic activities and are used mainly to avoid tax.<sup>765</sup> As a result of a government crackdown, from 2019 companies applying for an advance tax ruling will have to have “substantial economic activities” in the Netherlands.

## Transparency of enforcement information

General enforcement data is published annually by the NPPS.<sup>766</sup> Enforcement data on foreign bribery cases is given to the OECD WGB, but not published as part of Dutch statistics.

Not all investigations are made public, though some are announced by the NPPS and data in aggregate is provided to Parliament. In some cases, investigations are first made public by companies, via their annual reports. Statistics on mutual legal assistance are not published.

Court decisions are published in full, although anonymised.<sup>767</sup> The system of settlements lacks transparency. Settlement agreements are not published in full, but where they amount to €50,000 (US\$57,000) or more, the NPPS has a policy of issuing a press release and, since 2016, a public statement of facts.<sup>768</sup>

## Beneficial ownership transparency

There is currently no central register of beneficial ownership of companies in the Netherlands, despite the deadlines for implementing the 4th and 5th EU Anti-Money Laundering Directives. A legislative proposal by the government to introduce such a register was approved after much debate by the Second Chamber (the Lower House of Parliament) on 10 December 2019. The First Chamber (the Senate) discussed and adopted the Bill in June 2020. The beneficial ownership register was expected to be operational in September 2020.<sup>769</sup> A pending draft law also covers trusts.<sup>770</sup> When implemented, only basic data, such as name, month and year of birth, state of residence and nationality, and the interest that the beneficial owner has (expressed in bandwidths), will be visible to everyone against payment for each information request.<sup>771</sup> Users must register before they can request the data from the Chamber of Commerce, which will host the register. This is to verify the identity of the requestor. Users cannot randomly search for the name of the beneficial owner: the data will only be retrievable per company. This makes searching for people and recognising patterns through data analysis impossible. The proposed central beneficial ownership register will therefore be useless for a journalist or an organisation investigating criminal networks, shell companies or tax avoidance.<sup>772</sup>

Concerns remain that corrupt individuals are using the Dutch trust industry to funnel illicitly gained funds. According to the Executive Director of Supervision at the Dutch Central Bank, “the country’s trust offices, which help establish and manage Netherlands-based businesses for mostly foreign companies, still aren’t vetting their clients properly despite increased government scrutiny”.<sup>773</sup>

## Inadequacies in legal framework

Except for one case,<sup>774</sup> the NPPS has yet to prosecute individuals for their responsibility in foreign bribery. The key reason given is jurisdictional limitations concerning the prosecution of foreign individuals employed by Dutch companies who committed their crimes outside the Netherlands.

The system for settlements is undermined by lack of transparency, the absence of any oversight role for an independent court and the fact that Dutch settlements cannot currently include important aspects, such as a monitor or obligatory future reporting to the NPPS. There is a large difference in

settlement amounts in cases of foreign corruption compared to national corruption (either as a settlement or imposed by local courts), with much higher settlements in foreign corruption cases. Clear guidelines are lacking for companies on what to expect when they report or enter into settlement negotiations. In addition, there are no clear rules to ensure that forfeited amounts of proceeds of crime are returned to the countries where the profits were originally earned.

There is a proposal before Parliament to provide for judicial oversight of non-trial resolution of criminal proceedings. However, this has yet to be considered. In the meantime, there is a proposal to adopt an interim approach by establishing an independent Assessment Committee to oversee settlements, instead of the Minister of Justice and Security. This was anticipated to enter into force from 1 September 2020.<sup>775</sup>

As noted in the *Exporting Corruption Report 2018*, the Act on Whistleblowing does not establish adequate standards for arrangements to protect whistleblowers from retaliation. The Act also requires whistleblowers to prove that the retaliation they experience is related to their report. This burden of proof should be reversed, in line with the EU Whistleblower Protection Directive. Other concerns include the potential for conflicts of interest to arise, as, under the Act, the Whistleblowing Authority is responsible for both advising whistleblowers and conducting investigations. An independent review of the authority in November 2019 recommended separating its advisory and investigative responsibilities, and outsourcing the advisory responsibility. This may occur only in part, as the Whistleblower Authority expressed different views in its recent "Vision for the Future".<sup>776</sup> An evaluation of the Act on Whistleblowing was conducted in spring 2020, but still needs to be concluded and discussed in Parliament. At the same time, the Ministry of Internal Affairs is working on a Bill to implement the EU Whistleblower Protection Directive. Unfortunately, the Minister of Internal Affairs has decided to deal with the evaluation of the Act separately from the implementation of the EU Directive.

### Inadequacies in enforcement system

The Whistleblowing Authority was established more than four years ago, but by the end of 2019 had concluded only three investigations relating to retaliation, and no other investigations.

Even though resources for enforcement have increased markedly, it remains to be seen whether the justice system is capable of effectively conducting full trials against larger Dutch companies and their management. Up to 2017, the only foreign bribery case ever brought to court, against Takilant Ltd, was a trial in absentia.

There is a lack of focus on awareness-raising of corruption as a separate issue. Corruption is generally addressed in the context of corporate social responsibility, and mainly through a sectoral approach. There is lack of a broad, overarching understanding of the risks and implications of corruption and its negative impact on human rights and the environment.<sup>777</sup>

### Recommendations

- Fully implement the 4th and 5th EU Anti-Money Laundering Directives, including establishing a public register of ultimate beneficial owners
- Evaluate and improve protection for whistleblowers
- Expand the jurisdiction over foreigners employed by Dutch companies for foreign bribery under certain conditions
- Consider the introduction of an "adequate procedures" clause in Dutch legislation, such as section 7 of the UK Bribery Act, to target indirect corruption or corruption by a business partner
- Increase the number of cases concerning foreign bribery prosecuted in court and conduct a full trial against one or more persons or companies responsible for active foreign bribery
- Develop a better policy on settlements, including consideration of the role of victims and asset recovery, and a sentencing guideline
- Raise awareness among small and medium-sized enterprises of their possible role in foreign bribery and the consequences.

## NEW ZEALAND

### Limited enforcement

0.2% of global exports

### Investigations and cases

In the period 2016-2019, New Zealand opened seven investigations, commenced no cases and concluded no cases with sanctions.

The countries involved in the investigations were Fiji (two), Indonesia, Israel, the Solomon Islands and Tonga. No information was provided about the country involved in the seventh ongoing investigation.<sup>778</sup>

## Recent developments

No notable new measures have been introduced since the last *Exporting Corruption* report in 2018. In February 2020, the cabinet approved proposals to strengthen whistleblowing legislation, but has not presented them to Parliament.<sup>779</sup> In June 2018, the New Zealand Ministry of Business, Innovation and Employment released a discussion paper on the extent to which New Zealand companies and limited partnerships should be required to hold and disclose information about their beneficial owners.<sup>780</sup> The paper excluded all trusts from the proposed provisions, on the grounds of privacy and confidentiality.

## Transparency of enforcement information

No comprehensive public information exists in relation to foreign bribery enforcement. The Serious Fraud Office (SFO) provides some limited statistics and brief accounts relating to investigations in its annual reports, but does not always single out foreign bribery cases.<sup>781</sup> Limited statistics are provided on requests for mutual legal assistance (MLA) by Crown Law (the Central Authority), through its annual reports.<sup>782</sup>

Some information is also provided by the SFO on its website and in annual reports. The SFO may make a public statement about an investigation if information about it is already in the public domain or disclosing it is in the public interest.<sup>783</sup> Requests made under the Official Information Act can provide limited additional information.

Most decisions of higher-level courts (where any foreign bribery cases would be heard) are published by the courts.<sup>784</sup>

## Beneficial ownership transparency

New Zealand has no central register of beneficial ownership for companies or trusts. While it operates a publicly accessible Companies Register within the New Zealand Companies Office, this does not include beneficial ownership information. Foreign trusts have had to register with the Inland Revenue

since 2017. This register includes information relating to beneficial ownership, but it is not publicly accessible.<sup>785</sup>

The Register of Companies can compel companies to provide information on beneficial owners for law enforcement purposes.<sup>786</sup> The SFO can require that information on beneficial owners be provided once an investigation is underway.<sup>787</sup> The Inland Revenue Department can compel companies and trusts (and others) to provide information, including aspects relevant to beneficial ownership.<sup>788</sup>

## Inadequacies in legal framework

Some elements of the legal regime are inadequate, including the lack of specific statutory obligation for auditors to report foreign bribery to relevant authorities, the lack of a positive requirement for the private sector to prevent bribery, the requirement that the Attorney General must approve prosecutions relating to foreign bribery and the continued legality of facilitation payments. The OECD WGB noted in its Phase 3 Follow-Up Report in 2016 that while amendments to the Crimes Act in 2015 clarified the nature of such payments, they failed to address the continued uncertainty around their use.<sup>789</sup>

Whistleblowers are not well protected in New Zealand and the Protected Disclosures Act 2000 is widely seen as unfit for purpose. There is no formal obligation for financial professionals to report evidence of foreign bribery. The Anti-Money Laundering and Countering Financing of Terrorism Act 2015 expanded the legally recognised right of auditors to inform relevant authorities in cases of suspected money laundering and other offences, but this explicit right to inform does not mention foreign bribery.

The trust sector in New Zealand remains only lightly regulated, which has long been a source of concern for anti-corruption campaigners.<sup>790</sup> This has been recognised by the New Zealand Police Financial Intelligence Unit and others as a point of weakness in the legal framework in relation to money laundering, which remains an issue in New Zealand.<sup>791</sup> Other weaknesses recognised by the New Zealand Financial Intelligence Unit and relevant to foreign bribery include the use of shell companies and alternative banking platforms.<sup>792</sup>

## Inadequacies in enforcement system

The enforcement of foreign bribery allegations in New Zealand remains limited. Although the legislative framework provides an adequate, if imperfect, criminal system for the prosecution of foreign bribery cases, they do not take place. The SFO is a small agency and has limited resources which, according to its reporting statements, are mostly focused on domestic fraud.<sup>793</sup> There is no specialist anti-corruption agency. The Attorney-General's consent is required before foreign bribery prosecutions can proceed.

## Recommendations

- Improve availability of statistics and information on investigations, MLA requests and cases in relation to foreign bribery
- Develop central registers (new or existing) to ensure public accessibility of beneficial ownership information for all New Zealand companies and trusts
- Remove the "routine government action" (facilitation payment) exemption from Section 105C of the Crimes Act
- Introduce clear and specific legislative protection for auditors (and others) who report suspicions of bribery to the relevant authorities
- Improve protection for whistleblowers by strengthening the provisions in the Protected Disclosures Act, and other legislative amendments (e.g. extension of auditor protection under the Anti-Money Laundering and Countering Financing of Terrorism Act 2015 to include foreign bribery)
- Introduce a positive requirement for commercial organisations to prevent foreign bribery by introduction of an offence of failure to prevent bribery (see The UK Bribery Act 2010, s7)
- Give greater priority and resources to the proactive investigation of foreign bribery to assess its extent in New Zealand
- Consider creating an independent anti-corruption agency, whose remit includes managing foreign bribery investigations
- Remove the requirement that the Attorney-General consent to foreign bribery prosecutions.

# NORWAY

 Moderate enforcement

0.6% of global exports

## Investigations and cases

In the period 2016-2019, Norway opened two investigations, commenced no cases and concluded two cases with sanctions.

In 2017, **Yara International ASA's** former chief legal officer was sentenced on appeal to seven years in prison in connection with bribery in India and Libya. Three other Yara executives were acquitted.<sup>794</sup> The company had reached a landmark settlement with the National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) in 2014.<sup>795</sup>

In an appeal by a former sales manager for **Kongsberg Defence Communications**, the Court of Appeals confirmed in 2019 his conviction for misappropriation of funds, money laundering and tax evasion. The court increased his jail term to four years and eight months, (with two years conditional) and confirmed confiscation of around NOK15 million (US\$1.6 million).<sup>796</sup> In February 2014, Økokrim had charged **Kongsberg Gruppen ASA** and **Kongsberg Defence & Aerospace AS** with corruption related to deliveries of communications equipment to Romania in the period 2000-2008, but dropped those charges in 2016, instead charging the former sales manager.<sup>797</sup> Økokrim alleged that the accused had paid out about US\$22 million to consultants or agents without their performing any real work, and used secret bank accounts in Switzerland.<sup>798</sup> The case reportedly involved a Romanian general and Romania's intelligence agency.

In the **VimpelCom** case, in 2017 Økokrim dropped its two-year investigation of the former CEO.<sup>799</sup> In a global foreign bribery resolution with the US Department of Justice and the Netherlands Public Prosecution Service, the company and its wholly owned Uzbek subsidiary admitted to paying more than US\$114 million to Uzbek officials to enable them to enter and remain in the Uzbek telecommunications market.<sup>800</sup> VimpelCom was part-owned by **Telenor**, a company in which the Norwegian government is a majority stakeholder.

In 2018, Økokrim dismissed charges brought in 2015<sup>801</sup> and closed its investigation into suspicions that employees of **Sevan Drilling**, a subsidiary of **Sevan Marine**, had paid bribes to secure billion-dollar contracts with Petrobras.<sup>802</sup> Sevan Marine had self-reported in 2015 after internal investigations indicated potential misconduct by employees and potential payments of more than US\$140 million to offshore accounts in Monaco, Panama, Switzerland and the British Virgin Islands.<sup>803</sup>

Norwegian authorities were reported in 2019 to be investigating whether **DNB**, the country's largest bank, broke any laws in its handling of payments from an Icelandic fisheries company to Namibian officials between 2011 and 2018.<sup>804</sup> The investigation appears to have been triggered by Wikileaks' publication of "the Fishrot Files" and investigations by Icelandic media.<sup>805</sup>

Other Norwegian companies have also been caught up in the Operation *Lava Jato* investigations in Brazil, but there is no information about investigations by Norwegian authorities. **Viken Hull**, a Brazilian subsidiary of **Viken Shipping**, was charged in Brazil with paying US\$400,000 to officials of Transpetro, a Petrobras-owned shipping company, in exchange for contracts. **Noroil** was charged in Brazil with paying nearly US\$3 million in bribes in exchange for contracts with Transpetro. In both cases, bribes were allegedly shared between officials and politicians.<sup>806</sup>

## Recent developments

Amendments to the Norwegian whistleblower protection legislation entered into force in January 2020, clarifying the circumstances where whistleblowing protections are applicable and giving employers more responsibility to act when reports of irregularities are presented. A new Anti-Money Laundering Act entered into force in October 2018, transposing the 4th EU Anti-Money Laundering Directive.

## Transparency of enforcement information

Publication of data on foreign bribery enforcement is limited. The UN Convention against Corruption first cycle review of Norway in 2013 concluded that "Norway is encouraged to adapt its information system to allow it to collect data and provide more nuanced and detailed statistics on corruption offences".<sup>807</sup> There are no statistics on mutual legal assistance (MLA) requests made or received.

Court decisions are available on request to the relevant court, and online access to Supreme Court decisions is available to everyone free of charge via Lovdata.no. The full text of all court decisions on corruption can be accessed by subscribers.<sup>808</sup> Final and accepted penalty notices are not public documents but may be published based on specific considerations in each case. Transparency International Norway also publishes a collection of

all corruption cases, which it updates on an annual basis.<sup>809</sup>

## Beneficial ownership transparency

There is currently no central register of beneficial owners of companies in Norway. In February 2019, the Norwegian Parliament passed legislation to establish beneficial ownership registration in Norway, but the Act has not entered into force and further regulation is pending. Once completely set up, the register is expected to be a fully open, continuously updated register of beneficial owners of all forms of companies that are incorporated or have activity in the country.<sup>810</sup>

## Inadequacies in legal framework

The OECD WGB, in its 2018 Phase 4 Review of Norway, raised concerns about the new Penal Code's provisions on jurisdiction, especially nationality jurisdiction over foreign bribery, which may be limited to acts that are "also punishable under the law of the country in which they are committed".<sup>811</sup> An amendment to the Penal Code proposed by the Ministry of Justice and Public Security to address this problem was passed by Parliament and entered into force on 1 July 2020.<sup>812</sup>

Meeting the burden of proof set forth in the Penal Code, as amended by the 2003 anti-corruption legislation, has been especially difficult, owing to the frequent use of third parties (agents), offshore jurisdiction payments and complex legal person structures. As noted by the OECD WGB in 2018, there is also a lack of clarity about the extent to which companies may be held liable for the acts of intermediaries, including for offences committed on behalf of foreign subsidiaries.<sup>813</sup> Likewise, there is lack of clarity about the scope of corporate liability for offences committed through the operations of related entities, such as subsidiaries and joint ventures.

The Ministry of Justice and Public Security has commissioned a study to assess and revise regulations on corruption and develop new proposals to address issues concerning corporate liability.<sup>814</sup> However, the government initiative to introduce the necessary framework has been delayed. Such a framework would also address the OECD WGB's observation in 2018 that "high priority should be attached to clarifying the application of penalty notices and the use of mitigating factors".

## Inadequacies in enforcement system

As the amounts of fines and confiscation penalties imposed for foreign bribery are not calculated in a fully transparent manner, they risk not being sufficiently dissuasive. More information should be provided on the application of penalty notices and the use of mitigating factors. Despite guidance issued to prosecutors, there is also not enough information to allow companies to fully understand their obligations under the law, and the procedures for self-reporting in the context of foreign bribery.<sup>815</sup> There is insufficient coordination among law enforcement authorities, including the Financial Intelligence Unit.

## Recommendations

- Improve data collection and publish statistics on foreign bribery enforcement
- Fully establish the central register of beneficial ownership information
- Approve legislation further cementing the liability of companies for the offences committed by intermediaries
- Improve the system for non-trial resolution of bribery cases
- Improve coordination among law enforcement authorities, including the Financial Intelligence Unit, to fully engage and use all available resources, including intelligence, against foreign bribery
- Provide better information on how penalties (fines) are calculated.

# PERU

## Little or no enforcement

**0.2% of global exports**

## Investigations and cases

In the period 2016-2019, Peru opened no investigations and there were no cases commenced or concluded.

## Recent developments

In July 2018, Peru adhered to the OECD Anti-Bribery Convention and to the 2009 Recommendation<sup>816</sup> In March 2019, the OECD WGB published its Phase 1 Report evaluating Peru's implementation of the convention.<sup>817</sup> Since then, there have been no new

significant developments in Peru regarding foreign bribery enforcement.

## Transparency of enforcement information

There are no publicly available statistics on foreign bribery enforcement. No data is published by Peruvian authorities on mutual legal assistance requests sent or received. The judiciary and the General Prosecutor's Office regularly publish reports with statistics on their anti-corruption efforts, but they use the general category "crimes against the public administration" to refer to all corruption crimes.<sup>818</sup> There is no disaggregated information for each crime. Statistics published by the Special Attorney for Anti-Corruption Crimes (part of the Ministry of Justice) are broken down by the different types of corruption-related offences, but when the number of cases for one particular offence is not significant, it may be included in the "Other" category. As such, it is currently not possible to ascertain the number of specific investigations or cases of foreign bribery.<sup>819</sup> Court decisions are not available to the public, nor are non-trial resolutions.

## Beneficial ownership transparency

There is a central register of beneficial ownership information accessible to some oversight and law enforcement agencies. In August 2018, rules were adopted requiring the identification of beneficial owners of legal persons. These entered into force in January 2019, and were further detailed by the National Superintendency of Customs and Tax Administration (SUNAT), which is responsible for collecting information on beneficial owners.<sup>820</sup> Some authorities, including the Superintendency of Banks, Insurance and Pension Fund Administrators and the Superintendency of the Securities Market, will have direct access to this information, while others, such as prosecutors or the Financial Intelligence Unit, may have access when necessary as part of their investigations.<sup>821</sup> There is no indication that access to this information will be available to the public.

Implementation of the SUNAT registry is still in its early stages, but it will be an essential tool to improve on a deficiency identified in 2018 by the Financial Action Task Force of Latin America (GAFILAT), namely that law enforcement officials do not have "timely access to BO [beneficial ownership] information of legal persons".<sup>822</sup>

## Inadequacies in legal framework

In its first evaluation of Peru, the OECD WGB indicated some deficiencies in the country's legal framework. Regarding the foreign bribery offence, two issues were highlighted: the lack of a legal definition of "foreign official" and the absence of criminalisation of the offer or promise made but not received by the official.<sup>823</sup>

Regarding corporate liability, the OECD WGB recommended "that Peru amend the Law to (a) ensure that a legal person is liable for foreign bribery that benefits both the legal person and the natural person who perpetrated the crime (b) ensure that a legal person is liable for foreign bribery that is intended to benefit it, even if the benefit later does not materialise, and (c) ensure that legal persons cannot avoid liability for foreign bribery by using an intermediary to make bribe payments".<sup>824</sup>

There is insufficient information on what constitutes an effective prevention model for companies. The fulfilment of a company's duties of supervision or surveillance, which protects it from liability for foreign bribery committed by lower-level staff, is regulated by the legal entity itself. That leaves wide discretion for the company to dictate its own standards of behaviour. This defence is currently available even when the senior management of a company commits, authorises or directs a crime of foreign bribery.<sup>825</sup>

Foreign bribery enforcement against legal persons depends heavily on the Superintendency of the Securities Market (SMV), a technical institution within the Ministry of Economy and Finance. The SMV must produce a technical report with an analysis of the company's prevention model, which binds the prosecutor's investigation and limits its scope. If it indicates that the prevention model implemented by a company before the commission of the crime of transnational bribery was an adequate one for prevention and mitigation of corruption risks, the prosecutor must close the investigation. In this case, prosecutors will not be able to question the report, so the determination of the company's responsibility is no longer subject only to the prosecutors and judges, but rather to the SMV, which has no experience in the investigation and sanctioning of these cases.

Protection for whistleblowers is not mandatory in the private sector.

## Inadequacies in enforcement system

The *Lava Jato*-related investigations in Peru have exposed the limitations of the justice system to combat and punish crimes of corruption, money laundering and highly complex organised crime. International companies operate with convoluted structures, which increase the need for specific training and sufficient resources to investigate and combat foreign bribery. In addition, longer deadlines are needed for the conclusion of preliminary proceedings and preparatory investigations.<sup>826</sup>

The lack of independence within the judiciary, the Prosecutor's Office and the National Council of Magistrates has led to the politicisation of investigations and cases, which has jeopardised enforcement.

## Recommendations

- Publish regularly updated information on foreign bribery enforcement, including data on international cooperation
- Provide transparency to non-trial resolutions and court decisions
- Ensure that the registry of beneficial ownership information is available to the public in an open-data format
- Improve foreign bribery legislation according to the OECD WGB's recommendation, including defining "foreign official" and criminalising the offer or promise of a bribe
- Require companies to institute mechanisms to protect whistleblowers
- Reconsider the role of the SMV in assessing corporate liability in corruption cases and assess the risks of limiting prosecutorial discretion in evaluating companies' prevention models
- Provide adequate resources and training on foreign bribery enforcement to prosecutors and judges.

# POLAND

 Little or no enforcement

1.3% of global exports

## Investigations and cases

In the period 2016-2019, Poland opened at least three investigations, commenced no known cases and concluded no known cases with sanctions.<sup>827</sup>

The Polish Central Anti-Corruption Bureau (CBA) and the Latvian Bureau for Preventing and Combatting Corruption cooperated in 2018 in investigations of allegations of bribery of an official at the Riga transport authority, to secure a contract for nearly 200 buses and trolleybuses from Polish bus manufacturer **Solaris Bus & Coach**.<sup>828</sup> The CBA detained a company board member and commercial director in connection with an alleged payment of €800,000 (US\$914,000) to obtain the contract.<sup>829</sup> The CBA stated that the money was to be laundered “in tranches under the guise of a payment for fictitious consulting services through a chain of subsidiaries based in Latvia, Cyprus, Hong Kong and China before [it] went to Riga”. There were plans to charge the two Solaris managers in Poland with acting to the detriment of the company and with money laundering, not bribery of foreign public officials.<sup>830</sup> Allegations had surfaced in 2013 about bribery in Riga involving the same bus manufacturer, previously named **Neoplan Polska**.<sup>831</sup>

According to a statement by the company **Ursus S.A.** in 2017, it was cooperating with the CBA in connection with the detention of two foreigners and a Polish entrepreneur. The company gave assurances that the investigation would not affect its operations on the African continent.<sup>832</sup> In a subsequent statement in 2017, the company said it had won its biggest African contract, worth US\$100 million, for the delivery to Zambia of 2,694 tractors and 2,509 agricultural machines, together with equipment and spare parts, and setting up an assembly plant and 10 service centres in the country.<sup>833</sup> In parallel, in an undated online statement, the CBA announced that it was investigating men claiming to have influence in government circles of an African country in connection with a Polish company's bid on a \$US100 million contract for the supply of agricultural machinery.<sup>834</sup> The CBA said it had detained foreigners who wanted to ensure success for the Polish company's tender in exchange for US\$25 million. A large part of that amount was to be spent on bribes for African officials. The entire contract was financed by the Polish State Treasury within the framework of international agreements and aid programmes for Africa.

In 2015, Polish authorities questioned two managers of **Remontowa Shipbuilding**, at the request of Estonian authorities, concerning bribery suspicions filed by the Prosecutor General's Office in Estonia.<sup>835</sup> In early 2019, in a pre-trial hearing, a Tallinn court was asked to consider leaving to Poland the trial of a

former Polish Remontowa board member who had been charged in the case by the Estonian Prosecutor General's Office.<sup>836</sup> The allegations reportedly relate to bribery of officials at the Estonian state-owned Port of Tallinn in relation to a 2014 shipbuilding contract to supply two ferries.<sup>837</sup> The criminal trial in Estonia is ongoing, and an investigation regarding the case has been initiated in Poland.<sup>838</sup> Remontowa Shipbuilding stated in 2015 that it did not agree with the accusations of the Estonian authorities and had hired an Ernst & Young (EY) team of auditors specialising in fraud and corruption cases, which it said in 2015 had “found no materials that would corroborate the suspicion”.<sup>839</sup>

## Recent developments

In the last five years, substantial reforms made to the judicial and law enforcement system in Poland have compromised the independence of the judicial system and caused serious problems applying the law.<sup>840</sup> These reforms have raised concerns within the European Union.<sup>841</sup> The Minister of Justice, who is also the Prosecutor General, can dismiss presidents and heads of departments in the common courts. There are no clear rules for assigning cases to individual judges. In addition, the position of prosecutors has been strengthened – for example, by giving them more powers within criminal proceedings, including to block some court decisions. As such, there is likely to be a reduction in trust towards the Polish justice system and judicial decisions, and a questioning of their impartiality.

In June 2019, the Polish Parliament passed an amendment to the criminal code which provides for higher penalties for different types of offences, including bribery.<sup>842</sup> The Polish President presented the amendment to the Constitutional Tribunal to assess its compliance with the Polish constitution. As at May 2020, the outcome was pending.<sup>843</sup> Regulations on “extended confiscation” were introduced in 2017 to increase the efficiency of asset confiscation, especially in cases of fraud, tax evasion or money laundering. However, the Polish Supreme Audit Office recently reported that even though there is progress in the amount of confiscated assets, there is no coherent or comprehensive system in place and the recovery process has not been monitored and coordinated.<sup>844</sup>

In May 2020, the European Commission sent a letter of formal notice to Poland for having only partially transposed the 5th EU Anti-Money Laundering Directive.

## Transparency of enforcement information

There are no published statistics on foreign bribery enforcement. Individual law enforcement authorities publish their own data, which is general. For example, in 2018 the CBA reported that it initiated 74 investigations and the police initiated 1,537 investigations related to corruption, but it is not known whether any of these relate to the corruption of foreign public officials.<sup>845</sup> The Ministry of Justice annually publishes complex statistics on final convictions with information about the legal classification of charges and penalties imposed.<sup>846</sup> Some cases may relate to foreign bribery, but the law used means they will not be separately indicated in the statistics. No information is provided on mutual legal assistance requests.

Almost all Supreme Court judgements are published on the Supreme Court's website<sup>847</sup> Judgements of the common courts – regional, district and appeal courts – are partially published on the Ministry of Justice website.<sup>848</sup> There are no clear criteria to determine which decisions are published and which are not.<sup>849</sup>

## Beneficial ownership transparency

There is a central public register of beneficial ownership information. The law that introduced the Central Register of Beneficial Owners came into force in October 2019.<sup>850</sup> Companies which were entered into the National Court Register before 13 October 2019 were obliged to report to the Minister of Finance information on beneficial owners by 13 July 2020. The register is publicly available online.<sup>851</sup> There is no comparable register for trusts.

## Inadequacies in legal framework

Companies do not face criminal liability for foreign bribery. A legal entity can be held liable only after a prior, binding conviction of a natural person, and any resulting sanctions imposed are not effective, proportionate or dissuasive. In a March 2018 statement, the OECD WGB said that Poland “still needs to take urgent steps to ensure companies can be held responsible for foreign bribery, even if the persons who perpetrated the offence are not convicted”.<sup>852</sup> In 2019, the government submitted to Parliament draft legislation on criminal corporate liability. However, the draft legislation lapsed with the completion of the parliamentary term, and the government has not re-submitted it.

The OECD WGB has called for removal of the Polish Penal Code's “impunity” provision (akin to an “effective regret” provision), which allows perpetrators of bribery to escape punishment by notifying law enforcement authorities of the offence before the authorities learn about it.<sup>853</sup> Polish companies are also not subject to appropriate penalties for false accounting. A proposed Act on Transparency of Public Life, which would have required companies to introduce internal anti-corruption procedures and provide legal protection for whistleblowers, was discontinued. However, Poland has until December 2021 to implement whistleblower protection laws pursuant to the EU Whistleblower Protection Directive.

## Inadequacies in enforcement system

Law enforcement agencies are not well informed about the activities of Polish businesses abroad. Lack of proper cooperation between Polish law enforcement authorities and other countries is one of the biggest enforcement inadequacies. There are insufficient safeguards in place to protect the CBA from politicisation, given the fact that its head is directly subordinate to the Prime Minister.

## Recommendations

- Introduce criminal liability for legal persons and remove the requirement that companies can only be held liable after a prior binding conviction of a natural person
- Impose an obligation on corporate entities to put in place compliance programmes covering anti-corruption and whistleblowing
- Separate the roles of General Prosecutor and Minister of Justice to ensure independence of prosecutors
- Strengthen safeguards against potential politicisation of the CBA
- Ensure independence of the judiciary
- Provide more resources for law enforcement authorities handling bribery and corruption matters
- Raise companies' awareness of the importance of internal controls and compliance measures.

# PORTUGAL

 Moderate enforcement

0.4% of global exports

## Investigations and cases

In the period 2016-2019, Portugal opened four investigations, commenced one case and concluded no cases with sanctions.

In 2017, the Public Prosecution Service filed charges against seven individuals, including charges of bribery of foreign officials, in a case that linked representatives of **TAP**, the Portuguese airline, with the Angolan oil company Sonangol and two of its subsidiaries, **Sonair** and **Worldair**. According to the Public Prosecutor, the defendants created a sham contract between TAP and Sonair in order to launder money through Portugal.<sup>854</sup> The Portuguese police claimed the scheme was built on the pretence that TAP was providing services to Sonair, enabling Sonair to pay TAP more than €25 million (US\$28.6 million) without any services. This money was then allegedly laundered through Worldair, with Worldair taking extraordinarily high commissions (about two-thirds of the total) and sending the remaining money out of Portugal through offshore companies, before it once again came back to bank accounts in Portugal and was used to buy real estate.<sup>855</sup> In 2018, a judge from the pre-trial chamber dismissed the case, on the grounds that the Public Prosecutor had violated the law and failed to act in an impartial manner.<sup>856</sup> In 2020, a judge reinstated the indictment, but apparently without the foreign bribery charges.<sup>857</sup>

In other jurisdictions, in 2019 the US Department of Justice (DoJ) and Securities and Exchange Commission (SEC) both concluded settlements with **Fresenius Medical Care AG, (FMC)** in which FMC agreed to pay a total of US\$231 million in penalties, including US\$147 million in disgorgement of profits in relation to a multi-country corruption scheme. The non-prosecution agreement with the DoJ names a subsidiary, **Fresenius Medical Care Portugal**, as having made some of the improper payments in Angola in the scheme run by FMC.<sup>858</sup> Fresenius Portugal handled a network of doctors and public officials in Angola, where bribes were paid between 2010 and 2014, generating more than US\$12 million for its parent company.<sup>859</sup> These bribes were generally paid through “shares in a joint venture, storage contracts and consultancy agreements”. They included “improper payments to government doctors through sham consulting contracts for which no services were ever performed”. The SEC found that FMC and Fresenius Portugal failed to take the necessary measures to prevent corruption.<sup>860</sup>

Deficiencies in Portugal’s anti-money laundering framework were made evident by revelations from the Luanda Leaks, which reported that members of the Angolan elite were reportedly able to use Portuguese banks **Banco de Negócios Internacional** and **Banco Privado Atlântico**, among others, to transfer hundreds of millions of dollars and escape the scrutiny of regulators.<sup>861</sup> Also, in order to evade anti-money laundering restrictions, Isabel dos Santos (daughter of a former Angolan president) allegedly assumed ownership stakes in Portuguese banks **Banco BPI** and **BIC Portugal**, later renamed **EuroBIC**,<sup>862</sup> both of which have come under scrutiny by Portuguese authorities since the revelations.<sup>863</sup>

## Recent developments

On 10 January 2020, the European Commission announced that Portugal had yet to notify Brussels of any implementing measures regarding the 5th EU Anti-Money Laundering Directive, which should have been fully transposed by that date.<sup>864</sup> In May 2020, a draft bill to transpose the directive (Bill 16/XIV) was approved in an initial vote by Parliament. Final approval depends on discussions in the Budget and Finance Committee and a further vote by the Portuguese Parliament.<sup>865</sup>

## Transparency of enforcement information

Official enforcement statistics published by the Council for the Prevention of Corruption<sup>866</sup> and the Directorate-General for Justice Policy do not incorporate specific information on foreign bribery. Statistics on requests for mutual legal assistance are not published.

Case decisions at the appeal level (Court of Appeal, Supreme Court of Justice) are available online in the Legal and Documentary Database of the Ministry of Justice,<sup>867</sup> but as foreign bribery cases are not classified separately, it is very difficult to trace them. Trial court sentences are accessible after they are issued.<sup>868</sup> The Public Prosecutor may, on occasion, issue press releases about an investigation.<sup>869</sup>

## Beneficial ownership transparency

The Beneficial Owner Central Register<sup>870</sup> was created in August 2017 by Law n° 89, which transposed the 4th EU Anti-Money Laundering Directive. The law establishes the obligation, for a very broad range of legal entities (including

companies, funds, trusts, associations, foundations and representations of non-resident entities developing an activity in Portugal) to file a new form annually, with the purpose of disclosing the identity of their beneficial owners, and other relevant information. While the information in the register is accessible to the public, this requires registration and any search conducted can be traced to its author. It is also not possible to execute searches by a company or an individual's name, but only through their taxpayer's registration number.<sup>871</sup>

## Inadequacies in legal framework

Provisions in relevant legislation are not clear, which produces legal uncertainty. There is wide room for interpretation of the legal definition of foreign bribery and the available defences. Many of the concerns over the foreign bribery offence were identified by the OECD WGB in its Phase 3 Report on Portugal in 2013.

The OECD WGB also suggested that the "effective regret defence" be removed from the active foreign bribery offence.<sup>872</sup> In addition, the upper limit on sanctions for corruption-related crimes committed by legal persons is too low for the large-scale corruption cases addressed in foreign bribery enforcement. The legislation on the liability of legal persons also has deficiencies. The OECD WGB noted that the current legislation does not expressly state that state-owned enterprises can be held criminally liable for foreign bribery. It also found that the defence that an employee acted against express orders or instructions is vaguely defined and could lead to attempts to limit liability by issuing a blanket prohibition on foreign bribery, or even issuing specific prohibitions directed at individual transactions, regardless of the actual level of the company's supervision, oversight and control over employee or intermediary behaviour.<sup>873</sup> Lack of whistleblower protection remains a serious problem, especially in the private sector.

There is a lack of a clear legal framework for taking jurisdiction over the "demand side" of foreign bribery and related money laundering cases where there is a nexus with Portugal. This prevents law enforcement authorities from effectively investigating and prosecuting all parties involved in foreign bribery cases.

## Inadequacies in enforcement system

There are serious concerns about Portugal's enforcement of the foreign bribery offence. The

OECD WGB stated that it was "gravely concerned that Portuguese authorities repeatedly fail to investigate foreign bribery allegations thoroughly and proactively".<sup>874</sup>

While the main inadequacies in the enforcement system do not relate specifically to foreign bribery, they do impact it severely. There is a lack of human and financial resources for investigations and in the court system, as well as a lack of expertise and training on the enforcement of economic crimes. The sluggishness and complexity of the judicial system is also an obstacle to the effective prosecution of corruption.<sup>875</sup>

The lack of resources impacts prevention and enforcement efforts against money laundering. The Financial Action Task Force observed in 2017 that "Portugal should allocate appropriate means and resources to the Financial Intelligence Unit so that it can adequately manage and investigate the increasing volume of suspicious transaction reports, and conduct strategic analysis to identify ML/TF [money laundering/terrorist financing] trends and patterns".<sup>876</sup>

## Recommendations

- Systematically collect and publish statistical data on enforcement of foreign bribery and money laundering
- Improve the Beneficial Ownership Central Register by implementing beneficial ownership data standards, in order to ensure the register's accessibility and utility as an anti-money laundering and anti-corruption tool
- Implement the OECD WGB's recommendations on the definition of the foreign bribery offence and related provisions, and on corporate criminal liability
- Establish a legal framework for jurisdiction over the "demand side" of foreign bribery and related money laundering cases where there is a nexus with Portugal
- Transpose the EU Whistleblower Protection Directive into the Portuguese legal framework and comprehensively regulate the protection of whistleblowers in both the public and private sectors
- Implement and update the Central Department of Criminal Investigation and Prosecution 2014 Action Plan, which aims to strengthen the resources and training of investigators and prosecutors in the fight against corruption
- Increase human and financial resources for the court system
- Increase the use of special investigative measures and exchange information with foreign government agencies about vulnerable sectors
- Engage more actively in awareness-raising activities in high-risk sectors and highly relevant professions (e.g. auditors and

accountants) • Implement the anti-corruption recommendations of the Council of Europe's Group of States against Corruption, especially those addressed to members of parliament, judges and prosecutors.<sup>877</sup>

## RUSSIA

### Little or no enforcement

1.9% of global exports

#### Investigations and cases

In the period 2016-2019, Russia opened one investigation into foreign bribery, commenced no cases and concluded no cases.

The single investigation was reported by the Ministry of Justice to the OECD WGB, but no details were provided and the Investigative Committee has declined to provide further details to Transparency International Russia.<sup>878</sup> When asked to comment on a draft of this country report, Russian authorities declined.

According to a 2017 report by the Organized Crime and Corruption Reporting Project (OCCRP), Russian authorities investigated the Russian Laundromat after it was first exposed in 2014. However, OCCRP claims that efforts to bring those responsible to justice and recover the money were hampered in part by the reluctance of Russian officials to cooperate.<sup>879</sup> In its exposé of the Laundromat, OCCRP claimed that around US\$20 billion was moved from Russia into and through 112 bank accounts in eastern Europe (including Danske Bank's Estonian branch) and then into banks around the world.<sup>880</sup> The OCCRP also issued a report in 2019 claiming that **Troika Dialog**, once Russia's largest private investment bank, channelled billions of dollars out of Russia from 2004 onwards via a network of 70 offshore companies with accounts in Lithuania.<sup>881</sup> The two Lithuanian banks involved were closed down in 2011 and 2013.

In other jurisdictions, two Russia-connected telecommunications companies reached settlements to resolve charges of bribery to win business in Uzbekistan. In the United States in 2019, Russian mobile phone operator **Mobile Telesystems PJSC (MTS)** and its Uzbek subsidiary

entered into resolutions based on the Foreign Corrupt Practices Act with the US Department of Justice (DoJ) and the Securities and Exchange Commission, agreeing to pay a total penalty of US\$850 million, including fines and forfeiture, and to retain an independent compliance monitor.<sup>882</sup>

In a second case, the Dutch company **VimpelCom Ltd** and its Uzbek subsidiary admitted in 2016 to a conspiracy to pay over US\$114 million in bribes during the period 2006-2012 to win business in Uzbekistan, and agreed to pay US\$835 million to settle US and Dutch charges.<sup>883</sup> VimpelCom Ltd, now called **VEON**, was established in the Netherlands in 2009, but has Russian origins and a continuing Russian connection, with Israeli-Russian billionaire Mikhail Fridman's investment vehicle **LetterOne** owning about 48 per cent of VEON's shares.<sup>884</sup> In a related case in the Netherlands, the Dutch financial crimes prosecutor was quoted in 2017 as saying that **Amsterdam Trade Bank (ATB)**, the Dutch subsidiary of Russia's **Alfa Bank**, owned by billionaire Mikhail Fridman, was searched as part of an investigation into possible money laundering.<sup>885</sup> According to the US DoJ, bank accounts at ATB, among others, were used to pay Vimpelcom bribes.<sup>886</sup>

In Italy, the Milan Public Prosecutor was reported in 2019 to have opened an investigation into international corruption based on allegations in the media that Russian representatives engaged in negotiations with the League Party in 2018 aimed at financing the party. This was allegedly to be carried out through the sale of oil by a major Russian oil company to Italy's Eni at a discount of around US\$65 million, which was to be funnelled to the political party.<sup>887</sup> (In 2015, Eni and Gazprom initiated a joint-venture collaboration for the Blue Stream pipeline leading to the Central Europe Energy Italian Gas Holding scandal in Italy.<sup>888</sup>) In Greece, in 2018, two Russian diplomats were expelled, reportedly based on the accusation that they were seeking to obtain and distribute sensitive information and to bribe Greek public officials.<sup>889</sup>

There are no known investigations of these cases by the Russian authorities.

#### Recent developments

In August 2018, new legislation was enacted allowing relief from liability for a legal person for bribery, if it facilitated an investigation or reported to the authorities prior to detection. However, this relief does not apply to foreign bribery in

international business transactions, due to a special reservation in the law. Art. 19.28 of the Administrative Liability Code, in force as amended since January 2019, provides for punishing not only a legal entity which offered a bribe, but also its affiliates.

The OECD WGB organised a High-Level Mission to Moscow in April 2019 to convey its serious concerns about non-implementation of some recommendations, especially about the scope of the foreign bribery offence, and to discuss the status of Russia's progress.<sup>890</sup> A finding in the OECD WGB's 2013 report on Russia that "[t]he overall system of inter-agency cooperation would benefit from the introduction of clearer processes"<sup>891</sup> resulted in the creation of a multi-agency task force led by the Ministry of Justice to strengthen enforcement of the OECD Anti-Bribery Convention. However, there is little public information about the work of this task force.<sup>892</sup> The Financial Action Task Force (FATF) Mutual Evaluation Report on Russia in 2019 stated that the Russian Federation "should enhance its approach to supervision and prioritise the investigation and prosecution of complex money laundering cases, especially concerning money being laundered abroad".<sup>893</sup>

### Transparency of enforcement data

The Russian Federation publishes criminal enforcement statistics, but there are no published statistics on foreign bribery enforcement. There are no specific statistics on mutual legal assistance (MLA) requests concerning foreign bribery.

All court decisions are published online, except for those that contain national and commercial secrets, involve sexual crimes and crimes against minors, or are decisions in divorce cases.<sup>894</sup> Personal details are usually omitted.<sup>895</sup>

### Beneficial ownership transparency

There is no central register of beneficial ownership information. Previous plans submitted by the federal government to develop a centralised register accessible only to law enforcement officials appear to have been dropped.<sup>896</sup> Instead, Russian authorities have chosen a decentralised model, in which all legal entities are obliged to keep records about their beneficial owners and provide them to law enforcement authorities on request.<sup>897</sup> Art. 6.1, of Federal Law N 115-FZ on Countering Money Laundering states that a legal entity, with some exceptions, is obliged to provide information about

its beneficial ownership on request from financial intelligence authorities (*Rosfinmonitoring*) or tax authorities, notably the Federal Tax Service.<sup>898</sup> Other investigative authorities may request this information via these bodies according to regular investigative procedures.<sup>899</sup>

### Inadequacies in legal framework

In its Phase 2 Follow-Up Report on Russia in 2018, the OECD WGB found fault with two aspects of Russia's legal framework, namely the scope of the foreign bribery offence, which does not include "promising" and "offering" of a bribe as offences,<sup>900</sup> and the defences in foreign bribery cases of effective regret<sup>901</sup> and economic extortion.<sup>902</sup> Another deficiency is that bribery using non-tangible bribes is not criminalised. A bill addressing this issue was presented and later withdrawn.<sup>903</sup>

There is no special requirement for legal entities to take measures to prevent foreign bribery. There is also no specific liability for failure to implement compliance and due diligence measures, as required by the Combatting Corruption Act.<sup>904</sup> Nor are there any incentives for instituting preventive measures, meaning companies do not receive any benefits for having implemented compliance measures in case of enforcement proceedings related to irregularities. Another important issue is the lack of whistleblower protection in Russia. The Whistleblower Protection Act was introduced by the government in October 2017, but in June 2019 it was dismissed by the State Duma, at the same government's request, without justification.<sup>905</sup>

Tax deduction of bribes is still not explicitly forbidden by law. In 2012 and 2019, the Ministry of Finance issued different justifications as to why it is forbidden, despite there being no changes in domestic legislation.<sup>906</sup>

### Inadequacies in enforcement system

Russian law enforcement agencies are generally perceived to be dependent on the executive branch and politically biased.<sup>907</sup> The European Court of Human Rights has found several times that Russia violated Convention Article 18 on political use of restrictions due to political persecution. This perception undermines the willingness of foreign bribery victims and whistleblowers to report irregularities.

There is no special legal unit for foreign bribery investigations. The Investigative Committee's anti-

corruption units may investigate these cases, but there is concern about their ability to perform this task, due to a lack of training. For example, it is not mandatory for their employees to know any foreign language, including English.

Also of concern are the substantial risks of political interference in international cooperation proceedings. The General Prosecutor's Office has been designated as the only authority with powers to send and receive MLA requests in certain types of corruption-related investigations. This means that all prosecutors and internal control officers must submit requests to this office, which will make the final determination.<sup>908</sup> The appointment of the General Prosecutor is controlled by the president.

## Recommendations

- Create a centralised public register of beneficial ownership information
- Criminalise non-tangible bribery, as well as the promising and offering of a bribe, irrespective of the gravity of the offence
- Propose to the State Duma new whistleblower protection legislation covering both the public and private sectors
- Provide incentives for companies to introduce anti-corruption compliance measures and impose sanctions for non-compliance
- Exclude effective regret relief regarding foreign bribery offences, as has already been done regarding the administrative liability of legal entities
- Provide information on the work done by the Ministry of Justice task force on foreign bribery enforcement
- Create a special task force within the Investigative Committee for the purpose of handling foreign bribery cases
- Improve training and carry out capacity-building exercises for investigators on prosecuting cases of foreign bribery
- Improve anti-money laundering supervision of banks and other relevant entities
- Prioritise the investigation and prosecution of complex money laundering cases.

# SLOVAKIA

 Little or no enforcement

0.4% of global exports

## Investigations and cases

In the period 2016-2019, Slovakia opened an unknown number of investigations, commenced no cases and concluded no cases.

## Recent developments

A new Whistleblowing Act was adopted in 2019, with effect as of 1 March 2019, replacing previous legislation.<sup>909</sup> One major change is the establishment of the Whistleblower Protection Office, which will take over the responsibilities of labour inspectorates in the field of whistleblower protection and oversee compliance with obligations under the Act.<sup>910</sup> The office is expected to commence operations in 2020. The Act also increased the scope of notifiable offences, to include criminal offences of legal persons, and administrative offences, punishable by a fine of up to €30,000 (US\$35,000).<sup>911</sup> The responsible person in charge of reviewing the merits of whistleblower notifications must meet "professional requirements". These are not defined, although the office will provide specific training to responsible persons in order to ensure due fulfilment of their obligations. The Act also extends the protection of whistleblowers, including by extending their rights within criminal proceedings and those for administrative offences.

In June 2020, the European Commission announced that it had initiated infringement proceedings against Slovakia due to incompleteness of its transposition measures for implementation of the 4th and 5th EU Anti-Money Laundering Directives.<sup>912</sup>

## Transparency of enforcement information

The National Crime Agency (NCA) publishes in its annual reports statistics from its Anti-Corruption Unit on the number of criminal investigations and prosecutions, and the number of individuals charged with corruption offences.<sup>913</sup> In addition, the Ministry of the Interior publishes online monthly crime statistics<sup>914</sup> and the General Prosecutor's Office publishes some statistics online.<sup>915</sup> As there has been no foreign bribery enforcement, there is no published data on foreign bribery investigations. Official public sources provide general statistics regarding requests for mutual legal assistance (MLA) and for such requests within the European Judicial Network. Slovakia does not systematically collect data on incoming and outgoing MLA requests for foreign bribery.

All court decisions are published in anonymised form online.<sup>916</sup>

## Beneficial ownership transparency

Slovakia has a central register of beneficial ownership information, but it is not accessible to the public, only to enforcement authorities and persons with a legitimate interest.

Legal entities are required to include information about their beneficial owners in their registration.<sup>917</sup> Such entities include companies registered in the commercial register, non-investment funds, non-profit organisations and foundations. The information is collected in the Register of Legal Entities, Entrepreneurs and Governmental Bodies, maintained by the Statistical Office.

There is also a Register of Public Sector Partners (PSP Register) administered by the Statistical Office.<sup>918</sup> Individuals and entities that do business with the state or enterprises it owns or controls, or who benefit from public funds or property, are obliged to register and provide information about their ownership and corporate structure, if certain criteria (such as financial thresholds) are met. The PSP Register aims to address the participation of “letterbox” firms in public tenders and in all business activities with state bodies, and includes enhanced disclosure of beneficial owners.

Trusts are not recognised under Slovak law, and cannot therefore be established. The closest equivalent is “property association”, for which there is no need to register the beneficial owners in any central register. Foreign trusts are legally recognised, but are not required to register their beneficial owners.

Information about beneficial owners is not publicly available.<sup>919</sup> The Statistical Office is obliged to disclose information on beneficial owners to certain public authorities, such as the courts, authorities involved in criminal investigations, tax administrators and the Financial Police. It must also disclose the information to specified banks, financial institutions, auditors, advocates, accountants and other relevant entities that require this information for fulfilment of their duties under anti-money laundering legislation.

## Inadequacies in legal framework

The Slovak Parliament has not yet implemented the 5th EU Anti-Money Laundering Directive, prompting the European Commission to issue to Slovakia a

letter of formal notice in early 2020 – the first step in an infringement procedure.<sup>920</sup>

The Law on the Criminal Liability of Legal Persons, which entered into force in 2016, provides for a maximum financial penalty of €1.6 million (US\$1.9 million), which is insufficient for foreign bribery, especially when committed by large multinational corporations.<sup>921</sup> The law exempts state bodies, municipalities and certain legal persons unless they hold shares in other legal persons.

Confiscation (in the form of “forfeiture of a thing”) of a bribe and its proceeds is mandatory for non-aggravated foreign bribery. However, imposition of a pecuniary penalty is not mandatory for non-aggravated foreign bribery.

## Inadequacies in enforcement system

Progress in fighting corruption remains limited. There are reports of improved efforts to sanction legal persons for corruption offences, although none are related to foreign bribery.

The European Commission’s Country Report Slovakia 2020 noted serious concerns about the independence of the Slovak judiciary, particularly due to increasing evidence of close links between white-collar criminals and the political class, individual judges and prosecutors, including a former General Prosecutor.<sup>922</sup> According to the report, Slovakia remains the lowest-ranked EU member regarding the perceived independence of the judiciary.

Concerns remain about prosecutorial independence. Currently, the General Prosecutor is elected by Parliament and appointed by the president. The range of persons entitled to nominate candidates for the position is limited and candidates are not obliged to undergo public hearings. There is no need to achieve a qualified (three-fifths) majority of votes of all parliamentarians to elect the General Prosecutor.

The 2018 report about the activities of the Special Prosecutor’s Office noted that police forces are poorly equipped to investigate corruption cases, including foreign bribery. The major problem reported concerns poor recording equipment for making audio and visual records.<sup>923</sup> In Slovakia, corruption cases frequently cannot be concluded because of poor-quality video or audio recordings, which cannot serve as evidence in court proceedings – for example, due to low image resolution.

## Recommendations

- Implement the 5th EU Anti-Money Laundering Directive
- Ensure public accessibility of information about beneficial owners of Slovak legal entities
- Amend the Law on the Criminal Liability of Legal Persons, to remove the exemption for state-owned enterprises from criminal liability and increase the upper limit for financial penalties
- Increase the independence and transparency of the judiciary, in particular with regard to the selection procedure and security screening of judges, judicial review and the Judicial Council
- Increase the independence of the General Prosecutor and the transparency of the selection procedure
- Enhance law enforcement capabilities to allow more efficient detection of bribery, and provide law enforcement agencies with better tools to investigate and prosecute bribery cases
- Employ more enforcement staff and provide training for auditors, accountants and tax examiners, to raise awareness of foreign bribery and improve their ability to detect the offence.

# SLOVENIA

## ● Limited enforcement

0.2% of global exports

### Investigations and cases

In the period 2016-2019, Slovenia opened two investigations and neither commenced nor concluded any cases.<sup>924</sup>

### Recent developments

In 2019, the OECD WGB expressed concern about potential political interference by Slovenia's National Assembly with prosecutorial and judicial independence. This was in the context of the corruption prosecution of a member of the National Council.<sup>925</sup>

The 2017-2019 Programme to Enhance Integrity and Transparency and intermediary reports on its implementation make no mention of foreign bribery or the OECD Convention.<sup>926</sup> It is unclear whether this shift in reporting means that foreign bribery measures set out in the 2015-2016 programme are no longer considered relevant.

The Moneyval 2nd Follow-Up Report on Slovenia in 2019 states that the country remains in "enhanced follow-up".<sup>927</sup> The report analyses Slovenia's progress in addressing the technical compliance deficiencies identified in the June 2017 assessment of its measures to combat money laundering and terrorist financing.<sup>928</sup>

### Transparency of enforcement data

Annual statistics on the work of the police and prosecution services are published on their websites, including statistics on corruption cases as defined in the Criminal Code.<sup>929</sup> No distinction is made for foreign bribery cases. It is possible to access statistics on foreign bribery enforcement on demand.<sup>930</sup> The Ministry of Justice's system of records allows for the processing of statistical data on incoming and outgoing requests for mutual legal assistance.<sup>931</sup> Information and basic general statistics on international cooperation are published in the State Prosecutor's annual reports.<sup>932</sup> There are no published statistics specific to foreign bribery.

Court jurisprudence is available online, but the databases do not include substantial details of cases or first-instance court judgements.<sup>933</sup> The Supreme Court was tasked in 2016 with organising online publication of court jurisprudence and data from registries within six months.<sup>934</sup> This has been delayed to ensure personal data contained in judgements can be managed appropriately.<sup>935</sup>

### Beneficial ownership transparency

There is a public register of beneficial owners available on the website of the Slovenian Agency for Public Legal Records and Related Services.<sup>936</sup> This was established in 2017 and started operation in 2018.<sup>937</sup> Trusts are not a recognised form of legal entity in the Slovenian legal framework. If foreign trusts earn a taxable income in Slovenia, they are required to register in the beneficial ownership register as a recognised entity.<sup>938</sup> Access to the site is free to the public when they register, but only some of the information is accessible and there are limitations to the register. There is no verification of data, the search engine is poor (the public can only search by company name), the register is not indexed by search engines, and the database is not available in a machine-readable form. All data is available to oversight bodies.<sup>939</sup> Unlike public users, relevant authorities can search by a beneficial owner's name in the register.<sup>940</sup>

## Inadequacies in legal framework

While there are no major shortcomings in the legal framework specifically linked to foreign bribery,<sup>941</sup> Slovenia continues to have an inadequate legal framework on anti-corruption,<sup>942</sup> and questionable political commitment to implementing and improving it. Awareness of relevant stakeholders of the legal framework in place remains inadequate. Whistleblower protection is fragmented and primarily covered in the Integrity and Prevention of Corruption Act, with some elements also covered in other acts, such as the Criminal Procedure Act, the Witness Protection Act, the Mass Media Act and the Public Employees Act.<sup>943</sup> In January 2020, the Ministry of Justice stated that a draft law would be prepared by the end of the year to comply with the requirements of the EU Directive on Whistleblower Protection.<sup>944</sup> Political commitment to transposition of the directive remains after the change of government in March 2020.<sup>945</sup> However, no draft law had yet been presented as of mid-August 2020.

Proposed amendments to the Integrity and Prevention of Corruption Act (IPCA) have yet to be adopted, despite the evident need for them.<sup>946</sup> These include, but are not limited to, the regulation of lobbying, revolving doors and asset declaration, and resolving shortcomings of the *sui generis* procedure before the Commission for the Prevention of Corruption (CPC), enabling more effective operation of the commission. Calls for these amendments have been made by international institutions, such as the OECD WGB and the Group of States against Corruption (GRECO).<sup>947</sup> The CPC and Transparency International Slovenia attribute the lack of progress to absence of political will to prevent corruption.<sup>948</sup>

The 2004 Resolution on the Prevention of Corruption in the Republic of Slovenia – a cornerstone document that gives direction to subsequent policies on anti-corruption – is outdated.

## Inadequacies in enforcement system

There is an ongoing failure by Slovenia to enforce the laws prohibiting foreign bribery. This is partly due to inadequate resourcing and low awareness of foreign bribery among public institutions and the public. Detection of foreign bribery cases is poor and could be improved by providing training to and enhancing the roles of staff in diplomatic missions and consular posts, including police attachés. Training in the implementation of laws prohibiting

foreign bribery has dropped significantly in recent years.<sup>949</sup> The Office of the State Prosecutor General does not have a permanent system of training on foreign bribery in place, resulting in lack of training for new employees.

Considering the lack of detection and prosecution of foreign bribery cases, there are also concerns about the lack of will to pursue such cases. The inadequacies are highlighted by concerns the OECD WGB has expressed about potential direct pressure on and interference with the work and functioning of the judiciary by Slovenia's National Assembly.<sup>950</sup>

Despite the independence of the prosecution service, there is a concern that the lack of political will to improve anti-corruption efforts could translate into a lack of will to pursue foreign bribery cases. Additionally, the politically unfriendly environment – highlighted by the OECD WGB's expression of concern about political pressure on the judiciary by the National Assembly<sup>951</sup> – could also hinder the capacity to pursue foreign bribery cases.

## Recommendations

- Keep and publish improved and separate statistics on all stages of foreign bribery enforcement, unified across institutions, with the CPC publishing disaggregated statistics
- Improve the quality of the public information in the beneficial ownership register
- Strengthen whistleblower protections in line with the EU Directive on Whistleblower Protection, to ensure that persons reporting suspicions of foreign bribery are adequately protected from retaliation
- Improve training of public officials and enforcement personnel by introducing permanent and regular training programmes
- Provide training to and enhance the roles of staff in diplomatic missions and consular posts, including police attachés, in the detection of foreign bribery cases
- Increase awareness about foreign bribery offences, both in the private and public sectors
- Update the 2004 Resolution on the Prevention of Corruption in the Republic of Slovenia with a revised assessment, strategy and action plan to meet current needs
- Amend the Integrity and Prevention of Corruption Act
- Ensure the Integrity and Transparency programme addresses foreign bribery, including a more detailed plan to tackle it, with clearly determined responsibilities for implementation and details on evaluation of implementation.

# SOUTH AFRICA

## ● Limited enforcement

0.4% of global exports

### Investigations and cases

In the period 2016-2019, South Africa opened 14 investigations, commenced one case and concluded no cases with sanctions.

Since 2012, the South African Directorate for Priority Crime Investigation (DPCI or the Hawks) has been investigating the South African telecommunications company **MTN** concerning alleged bribery to secure a US\$31.6 billion mobile operating licence in Iran.<sup>952</sup> The Hawks raided MTN offices in 2018 in connection with the investigation.<sup>953</sup> In 2019, a former South African ambassador to Iran alleged to be involved in facilitating the deal was arrested and charged with foreign bribery, but he died before his trial commenced. Investigations into MTN are ongoing. Turkish telecoms firm Turkcell filed a US\$4.2 billion lawsuit against MTN in South Africa in 2013 (withdrawing a 2012 lawsuit in the United States), claiming it would have been awarded the licence if not for the bribery.<sup>954</sup> As of 2019, the lawsuit was still pending.<sup>955</sup>

### Recent developments

President Ramaphosa, in office since 2018, has sought to strengthen law enforcement agencies, and the dramatic change in political climate since 2018 has had a positive impact on agencies' capacity and willingness to investigate foreign bribery.<sup>956</sup>

Additional funds of up to R2.4 billion (US\$138 million) have been allocated for the National Prosecuting Authority (NPA), the Hawks and the Special Investigating Unit.<sup>957</sup> This budget will cover the appointment of approximately 800 investigators and 277 prosecutors, who will assist with, among other things, the clearing of case backlogs, such as those of the commissions looking into state capture and corruption, as well as foreign bribery investigations.

In addition, a Multi-Agency Task Team was formed, which meets monthly to discuss the status of ongoing foreign bribery investigations and possible new investigations, and to identify challenges. The

agencies represented on this team are the Hawks, the NPA, the Department of Public Service and Administration, the Department of Justice and Constitutional Development, the Department of the Treasury, the South African Revenue Service, the South African Police Service and Interpol, the Financial Intelligence Centre (FIC) and the Master of the High Court.

Regulations for the Protected Disclosures Act were published in September 2018. They expand the list of entities to which protected disclosures can be made, and include the FIC for disclosures related to "any alleged irregular or improper conduct or impropriety with regard to money laundering activities or the financing of terrorist and related activities". Disclosures about foreign bribery activities are likely to fall under this category, and can therefore now be made as a protected disclosure to the FIC.<sup>958</sup>

### Transparency of enforcement information

There are no published statistics relating to foreign bribery enforcement in South Africa. Statistics on requests for mutual legal assistance (MLA) are kept by the Department of Justice and available via freedom of information requests, but they are not published.

Court decisions are published in the *Saflii* database, which is free and open to the public.<sup>959</sup> However, it is not complete. There are other subscription-based services which provide court decisions.<sup>960</sup>

### Beneficial ownership transparency

There is no central register for beneficial ownership information in South Africa.<sup>961</sup>

According to the 2017 Amendments to the Financial Intelligence Centre Act, "accountable institutions" are obliged to establish and verify the identities of corporate vehicles. They should apply additional due diligence measures to establish the ownership and control structure of the client, and the beneficial ownership of clients, and to take reasonable steps to verify the identity of the beneficial owners.

The FIC assists law enforcement agents during their investigations by requesting beneficial ownership information from accountable institutions and providing agents with the name of the financial institutions, designated non-financial businesses and professions or virtual asset service providers,

where the legal person or trust is a client. Law enforcement agents can then apply for a subpoena to obtain any beneficial ownership information held by the specific institution. The FIC is legally authorised to share information, on request or spontaneously, with relevant national authorities involved in the fight against corruption. The range of those entities is set forth in Section 40 of the FIC Act and includes, among others, law enforcement agents, supervisory bodies, courts and prosecution services, as well as any other person entitled to receive information from the FIC under other national legislation. South Africa has undertaken a national risk assessment of beneficial ownership transparency of trusts and is considering moving toward creating a beneficial ownership register.

### Inadequacies in legal framework

The lack of provision for deferred prosecution agreements is a major issue, hindering law enforcement authorities' ability to detect foreign bribery and severely limiting the scope of voluntary disclosure by companies.

The OECD WGB's Phase 3 Follow-Up Report noted that "sanctions for legal persons remain low, particularly where foreign bribery cases fall under the jurisdiction of the Regional Courts".<sup>962</sup>

### Inadequacies in enforcement system

Inadequate resources were a major issue until recently, as investigators and prosecutors were overburdened with cases. A number of vacancies within the NPA have been filled in the past year, but this remains a source of concern.

### Recommendations

- Systematically publish enforcement data on foreign bribery, as well as on MLA requests made and received by South African authorities
- Create a publicly accessible register for beneficial ownership information
- Approve legislation providing for deferred prosecution agreements, as an important tool in foreign bribery enforcement
- Increase institutional capacity to detect, investigate and prosecute foreign bribery
- Increase available sanctions for legal persons convicted of foreign bribery
- Strengthen whistleblower protection
- Dedicate adequate resources to anti-corruption enforcement agencies.

## SPAIN

### Moderate enforcement

#### 2.0% of global exports

#### Investigations and cases

In the period 2016-2019, Spain opened 11 investigations, commenced eight cases and concluded one case with sanctions.

Following money laundering investigations into the **Banco de Madrid**, the Anti-Corruption Prosecutor's Office charged energy company **Duro Felguera** in 2018, along with some of its top executives, with crimes of international corruption and money laundering. The charges concern allegations that the company paid over US\$105 million in bribes to a senior Venezuelan official in exchange for contracts to build the Termocentro energy plant, worth US\$1.5 billion.<sup>963</sup>

In October 2019, Spain's High Court charged construction company **Fomento de Construcciones y Contratas (FCC)** and related subsidiaries with foreign bribery and money laundering in relation to a corruption scheme in Panama orchestrated by the Brazilian company Odebrecht. Around €82 million (US\$96 million), stemming from inflated construction costs, were allegedly paid in bribes to Panamanian public officials in exchange for contracts to build underground rail lines and a hospital – including allegedly to a proxy of former President Ricardo Martinelli.<sup>964</sup> According to the charges, FCC had no internal compliance mechanism designed to prevent bribe payments.<sup>965</sup> Andorra's investigators have noted that other infrastructure projects in Costa Rica, El Salvador, Nicaragua and Panama, worth €434 million (US\$509 million), may also have been part of this corruption scheme.<sup>966</sup>

#### Spain gets serious: Defex on trial

Deals in Angola, Cameroon and Saudi Arabia involving **Defex**, the majority state-owned arms manufacturer were the target of prosecutions initiated in 2019 and 2020. These resulted from an investigation that started in 2014 triggered, according to *El País*, by a warning in 2012 from

Luxembourg authorities to Spanish prosecutors regarding a suspicious money transfer, revealing suspect operations in Egypt and several South American, Asian and Gulf countries.<sup>967</sup>

As of 2019, 27 people were indicted and on trial relating to Defex deals in Angola.<sup>968</sup> A US\$153 million contract for the sale of police equipment to Angola reportedly involved heavily padded invoices, with the extra money allegedly shared out among Angolan government workers and Defex executives.<sup>969</sup> Two-thirds of the contract amount was reportedly used for bribes.<sup>970</sup> In September 2019, the Spanish Anti-Corruption Prosecutor indicted three individuals for alleged corruption in obtaining security and defence contracts in Cameroon worth US\$100 million.<sup>971</sup>

According to media reports, the Saudi Arabia investigation began in 2015 and related to allegations that the company secured contracts between 1991 and 2016 by paying more than US\$100 million in bribes to Saudi officials. These were reportedly paid through fictitious contracts, shell companies and bank accounts in the Bahamas, the Cayman Islands, the Isle of Man, Liechtenstein, Panama, Switzerland, the British Virgin Islands, the United States (Delaware) and Saudi Arabia itself.<sup>972</sup> In January 2020, it was reported that a prosecutor had brought charges against eight individuals and four companies in connection with the case.<sup>973</sup>

Defex's dealings in Brazil and Egypt are also reportedly still under investigation by Spanish authorities.<sup>974</sup> In September 2017, the Spanish Cabinet approved Defex's voluntary dissolution, as the company could no longer operate in view of the proceedings underway.<sup>975</sup>

Following the long-running *Operation Lezo* investigations, the former president of the region of Madrid, Ignacio González, was charged, in November 2019, for his role in irregularities in the acquisition of Brazilian company **Emissão** by state-owned **Canal de Isabel II**. He is alleged to have received US\$1.8 million from the deal, worth US\$31 million. The arrangement included a substantial surcharge for the Brazilian company and led to losses of more than US\$6 million to Madrid's coffers. A Uruguayan company called **Soluciones Andinas del Agua** was allegedly used as an intermediary for the deal, and four other individuals charged were found to have received US\$900,000 each. Employees of the Brazilian company were also said to be involved in the fraudulent deal.<sup>976</sup>

Since 2018, Spanish prosecutors have reportedly been investigating possible international corruption in connection with a Saudi Arabian contract to construct the high-speed AVE train link from Medina to Mecca, won by a consortium of Spanish companies led by multinational **OHL**.<sup>977</sup> According to media reports, the prosecutors have looked into intermediaries affiliated with former King Juan Carlos and into companies that benefitted from the contracts.<sup>978</sup> In June 2020, Spain's High Court initiated an investigation into the former king's involvement,<sup>979</sup> but the Spanish Congress has rejected a congressional inquiry into his role in the deal.<sup>980</sup> Questions have also been raised about preferential diplomatic treatment given to Saudi Arabia during the period of the former king's rule.<sup>981</sup> In Switzerland, the Attorney-General of Geneva is reportedly investigating allegations of possible money laundering relating to a reported US\$100 million payment made by the Saudi government into a Swiss bank account of former King Juan Carlos, via a Panamanian foundation's Swiss bank account. The investigation is reportedly looking into whether a subsequent payment from that account was related to the AVE train contract.<sup>982</sup>

The Spanish company **Grup Maritim TCB**, a Barcelona port operations company, is under investigation by Spanish and Guatemalan authorities concerning allegations of bribes paid to the former president and vice president of Guatemala and other senior government officials to secure a 25-year contract worth US\$255 million for the construction and operation of a new terminal in the Port of Quetzal.<sup>983</sup> Allegedly, out of an agreed bribe of US\$30 million, approximately US\$12 million had been paid before the scheme was uncovered in 2016 by the International Commission against Impunity in Guatemala.<sup>984</sup>

Spanish prosecutors are also investigating alleged bribes amounting to US\$3.5 million, paid by **Endesa**, the largest electric utility company in Spain, to Chilean politicians in exchange for permission to construct and operate a hydroelectric energy plant.<sup>985</sup> Endesa is majority-owned by the Italian utility company **Enel**.<sup>986</sup>

In other jurisdictions, **Banco Santander** was fined €1 million (US\$1.1 million) in 2019 by the Norwegian Financial Supervisory Authority for violation of anti-money laundering laws. According to media reports, *Lava Jato* Taskforce investigators in Brazil suspect that **Santander Brasil** was one of the banks through which bribe payments were made.<sup>987</sup>

## Recent developments

In 2019, the Spanish Criminal Code was revised to transpose several EU Directives on economic crimes into the domestic legal framework.<sup>988</sup> Among other things, the code extends corporate criminal liability to the crime of embezzlement of public resources, and therefore to legal entities that manage or are responsible for public resources.<sup>989</sup> Corporate criminal liability was introduced in 2010<sup>990</sup> and has already been recognised by the Supreme Court in a number of cases.<sup>991</sup> Amendments to the Criminal Code have also widened the legal definition of public official with respect to bribery, influence peddling and embezzlement.

The European Commission sent a letter of formal notice to Spain in February 2020 due to the country's delay in notification of implementing measures for the 5th EU Anti-Money Laundering Directive.<sup>992</sup>

In June 2020, a working group of the General Codification Commission for the Transposition of Directive (EU) 2019/1937 (the EU Whistleblower Protection Directive) was established to prepare a transposition project proposal before 2 December 2020 and the Spanish Parliament began discussing the subject of a law.

## Transparency of enforcement information

Statistics on enforcement are published every three months. Data covers investigations carried out by judicial bodies, indictments and final judgments for crimes related to corruption (categorised by the court that issued the decision, including both acquittal and conviction decisions).<sup>993</sup> The Spanish General Council of the Judiciary publishes yearly statistics on mutual legal assistance (MLA) requests sent and received. Although the data covers all MLA requests, there is a separate category for requests sent by the Special Prosecutor for Corruption.<sup>994</sup>

There is also information on other requests, such as extraditions, filed through the Ministry of Justice,<sup>995</sup> and on international judicial assistance, filed directly through the Spanish courts.<sup>996</sup> The Office for Asset Recovery and Management publishes statistical information, most recently in its 2018 Annual Report.<sup>997</sup>

In 2019, the Prosecutor's Office on Corruption and Organised Crime started publishing annual reports with summaries of the investigations and cases under its jurisdiction.<sup>998</sup> Court decisions are also

published in full and available to the public directly<sup>999</sup> or through private databases.

## Beneficial ownership transparency

There is a central register of beneficial ownership information, accessible to competent authorities, certain other entities and persons with a legitimate interest or purpose, but it is not yet accessible to the public. The Spanish Registrars Bar Association established a Register of Beneficial Ownership<sup>1000</sup> in 2018 under the Ministerial Order 319/2018 of 21 March. All companies are required to provide information on their beneficial owners, including indirect beneficial owners, to the Companies Register and keep that information updated.<sup>1001</sup> This register is accessible to competent authorities, including the Financial Intelligent Unit (SEPBLAC) and entities identified in the Directive EU 2015/840, such as financial institutions and non-financial professions. Interested parties who can demonstrate a legitimate interest can also access the register, until implementation of the 5th EU Anti-Money Laundering Directive opens it to the public.<sup>1002</sup> That implementation has been delayed because of changes in government and the coronavirus pandemic. Other registers – the Single Notarial Computerised Index, the Beneficial Ownership Database and the Financial Ownership File – are available only to the authorities, who can easily access beneficial ownership information to investigate money laundering cases.<sup>1003</sup>

## Inadequacies in legal framework

There is a general lack of whistleblower protection in both the public and private sectors for people who report on corruption and other irregularities. Spain has not yet transposed the EU Whistleblower Protection Directive into its domestic legislation, with a transposition deadline of December 2021, but as mentioned above, work has started on this.

## Inadequacies in enforcement system

As noted in the *Exporting Corruption Report 2018*, inadequate resources are a key obstacle to effective Spanish enforcement against foreign bribery. This was highlighted in the 2019 report of the Prosecutor's Office on Corruption and Organised Crime, which also noted that its staffing is inadequate, with a lack of permanent positions.<sup>1004</sup> By virtue of Royal Decree 255/2019 of 12 April,

certain new permanent positions have been created to address these concerns.<sup>1005</sup>

According to the 2019 EU Justice Scoreboard, Spain is among the four EU countries with the worst public perception of judicial independence.<sup>1006</sup> Despite this, all the corruption cases that have come to light have been investigated or are being prosecuted, and significant judgements have been rendered. However, there is a popular perception that justice is politicised, given that the election of the vocal members of the General Council of the Judiciary reflects the political composition of parliament. The General Council is a constitutional, collegiate, autonomous body, made up of judges and other jurists, which exercises governance functions with respect to the judiciary in order to guarantee the independence of judges. Improvements in the appointment process are necessary, as well as in the field of ethics – for example, a code of conduct for prosecutors should be adopted and the Commission on Judicial Ethics established in May 2018 should carry out more effective work.<sup>1007</sup>

The Group of States against Corruption (GRECO) noted in a 2019 review of Spain that law enforcement authorities – especially the police and the Civil Guard – must increase their coordination and collectively develop an anti-corruption strategy designed to enhance their organisational reputation and reinforce internal compliance mechanisms.<sup>1008</sup>

## Recommendations

- Improve access to statistics and information on foreign bribery cases, investigations and settlements
- Fully implement the 5th EU Anti-Money Laundering Directive and ensure the central register for beneficial ownership information is publicly available
- Improve the legal framework for whistleblower protection in the public and private sectors
- Improve the appointment process for judges
- Allocate more resources to combat foreign bribery
- Improve coordination between enforcement authorities and ensure investigations are not prematurely closed
- Improve awareness of the offence of foreign bribery.

# SWEDEN

## Moderate enforcement

### 1.1% of global exports

## Investigations and cases

In the period 2016-2019, Sweden opened 11 investigations, commenced two cases and concluded one case with sanctions.

Criminal charges were filed in 2017 against **Telia Company's** former CEO Lars Nyberg and two other former company executives concerning alleged bribery of a local partner in Uzbekistan between 2007 and 2010 in connection with Telia's entry into the Uzbek telecom market.<sup>1009</sup> The trial began in September 2018 and resulted in acquittals.<sup>1010</sup> The prosecution reportedly failed to prove that the daughter of the President of Uzbekistan, who allegedly received the bribes, could be held liable for taking bribes.<sup>1011</sup>

### Bombardier case acquittal – World Bank steps in

In 2017, Swedish officials charged an employee of **Bombardier Transportation Sweden AB**, the rail division of Canadian **Bombardier Inc**, with bribing a public servant in Azerbaijan to win a procurement in 2013 for a new rail signalling system, with a contract value of around US\$350 million.<sup>1012</sup> The case ended with an acquittal in 2017, which was reportedly appealed by the Swedish prosecutor.<sup>1013</sup> According to Reuters, "Two contracts, obtained by Swedish Television's investigative program *Uppdrag Granskning* and News Agency TT and shared with the Organized Crime and Corruption Reporting Project (OCCRP) and the Canadian Broadcasting Corporation, show Bombardier Sweden selling equipment to **Multiserv Overseas**, which then sells the identical equipment back to Bombardier's Azerbaijan affiliate for an inflated price. As an intermediary, Multiserv made a profit of [US]\$85.8 million in the deal. The money was then channeled offshore." In 2019, Bombardier disclosed that it had received a show-cause letter from the World Bank's investigative unit in connection with the financial institution's audit of the Azerbaijan contract. The project, which was awarded to a consortium led by Bombardier, was heavily financed by the World Bank.<sup>1014</sup>

The single case concluded with sanctions in September 2016 was brought against two managers of a small Swedish company providing translation services. Based on information provided by Swiss enforcement authorities, the two were charged with

bribing a World Intellectual Property Organisation procurement official with payments with a total value of €850 (US\$993) for a spa treatment, champagne and other “leisure costs” in connection with a weekend event.<sup>1015</sup> It ended with conviction and a fine for one manager and acquittal of the other, with the acquittal upheld on appeal in 2017.

In December 2019, Sweden’s Prosecution Authority initiated a preliminary investigation into possible bribery by employees of telecoms group **Ericsson**. Earlier that month, Ericsson agreed to pay more than US\$1 billion to resolve investigations by the US Department of Justice (DoJ). It admitted to conspiring with others to violate the US Foreign Corrupt Practices Act between 2000 and 2016 by engaging in a scheme to pay bribes and to falsify its books. A subsidiary, **Ericsson Egypt Ltd**, pleaded guilty for its role in the scheme. The DoJ said in a press release that “Ericsson’s corrupt conduct involved high-level executives and spanned 17 years and at least five countries... [T]hrough slush funds, bribes, gifts and graft, Ericsson conducted telecom business with the guiding principle that ‘money talks’”.<sup>1016</sup>

Sweden’s Economic Crime Authority (ECA) announced in April 2019 that it would not initiate a preliminary investigation after a notification by Hermitage Capital Management in relation to alleged money laundering through Swedbank accounts of funds originating in Russia.<sup>1017</sup> However, in March 2020, the Swedish Financial Supervisory Authority issued **Swedbank** with a warning and fined it SEK4 billion (US\$410 million) due to serious deficiencies in its management of the money laundering risk in its Baltic operations.<sup>1018</sup>

## Recent developments

In November 2019, the Swedish Parliament approved a legislative reform package on corporate liability that increased the amount that companies can be fined, including in relation to foreign bribery, from SEK10 million (US\$1 million) to SEK500 million (US\$50 million).<sup>1019</sup> The reform allows prosecutors to levy fines of up to SEK3 million (US\$318,000) without initiating legal proceedings, if they can prove that an individual acting for the company has committed a criminal offence. The law also removes a prerequisite that prosecutors must secure the conviction of a company employee who took part in a scheme before pursuing the company. It further states that fines against companies will not constitute a criminal conviction.<sup>1020</sup> Adoption of the legislative reforms was pending when the OECD

WGB sent a High-Level Mission to Sweden in June 2019 to urge legal reform, because Sweden’s legal provisions to hold companies accountable for foreign bribery did not meet the requirements of the OECD Anti-Bribery Convention.<sup>1021</sup>

As reported in the *Exporting Corruption* Report 2018, Sweden passed the Act on Special Protection against Victimisation of Workers who Sound the Alarm about Serious Wrongdoings (Whistleblowing Act) in 2016.<sup>1022</sup> In June 2019, the government announced that a Commission of Inquiry would propose how the EU Whistleblower Protection Directive should be implemented into Swedish law.<sup>1023</sup> The Commission presented a comprehensive report on 29 June 2020, which calls for a new whistleblower protection law in Sweden.<sup>1024</sup>

The Anti-Money Laundering Act came into force in 2017 to implement the 4th EU Anti-Money Laundering Directive.<sup>1025</sup>

## Transparency of enforcement information

There are no official statistics on foreign bribery enforcement. The Police Anti-Corruption Unit provides information on investigations on request, including a breakdown by year. The statistics department of the Swedish Prosecution Authority was only able to provide its own general “statistics on suspicions of crime” relating to active bribery, domestic and foreign.<sup>1026</sup> Updated statistics regarding mutual legal assistance requests are generally not published. Statistics are sometimes reported by individual agencies, such as in the ECA 2018 annual report.

Court decisions in Sweden are not published, but are available on request from the courts, and some court decisions are available from subscription-based databases. Prior to providing a court decision, the court makes a secrecy assessment and may conclude that certain information should not be disclosed, e.g. to protect an individual or public interests. Other forms of case resolutions are not published. However, since 2017, the Swedish Anti-Corruption Institute (*Institutet Mot Mutor*), an independent organisation, has published reports about bribery cases in Sweden.<sup>1027</sup>

## Beneficial ownership transparency

There is a central register of beneficial ownership information, accessible to the public. A new Law on Beneficial Ownership was passed in 2017 and has

since been amended, most recently in 2019.<sup>1028</sup> The majority of Swedish companies, associations and legal entities must register beneficial ownership information with the Swedish Companies Registration Office.<sup>1029</sup> Newly registered companies and associations must register beneficial ownership information within four weeks of their registration date.<sup>1030</sup> Trusts must be registered if they are managed from Sweden, and are therefore included in the register.<sup>1031</sup> The register is publicly available.<sup>1032</sup>

## Inadequacies in legal framework

The whistleblower protection regime has improved, but remains flawed. The 2016 Whistleblowing Act only regulates whistleblowers' right to damages in the event of retaliation by an employer. The original 2014 proposal for the law offered a more complex legal framework by also protecting the whistleblower's identity and requiring employers to facilitate the reporting of misconduct.<sup>1033</sup>

The 2017 Anti-Money Laundering Act did not implement all aspects of the 4th and 5th EU Anti-Money Laundering Directives, especially issues regarding supervision and sanctions for law firms and members of the Swedish Bar Association.<sup>1034</sup>

Sweden has yet to update its law on dual criminality, which means that to be prosecuted, an offence has to be a crime under the law of the country in which it was allegedly committed, as well as under Swedish law.<sup>1035</sup> This means Swedish prosecutors could fail, on jurisdiction grounds, to act against Swedish companies that bribe abroad in countries where bribery is not a crime.

There continues to be no legal basis for settlements or plea bargaining.<sup>1036</sup>

## Inadequacies in enforcement system

The enforcement system is generally sound, and the main concern of whistleblower protection has been addressed. Nevertheless, there continue to be concerns about the low number of foreign bribery investigations and cases, suggesting that foreign bribery enforcement is not proactively pursued by the Swedish authorities.

## Recommendations

- Establish a comprehensive database of statistics on foreign bribery investigations and other information on foreign bribery cases, in order to

enhance information accessibility • Introduce a legal framework for settlements and plea bargaining, as a channel to hold companies to account for wrongdoing and resolve foreign bribery cases without resorting to a full trial or administrative proceeding • Strengthen the Whistleblowing Act to include protection of the whistleblower's identity and requiring employers to facilitate the reporting of misconduct • Review the provisions on dual criminality • Develop provisions requiring companies to take preventive measures, with a view to achieving modern and effective bribery legislation, including enacting a new law on liability for legal persons.

# SWITZERLAND

## Active enforcement

2.0% of global exports

## Investigations and cases

In the period 2016-2019, Switzerland opened at least 39 investigations, commenced at least three cases and concluded at least 12 cases with sanctions.

It was not possible to obtain data from the Office of the Federal Attorney-General (OAG) on opened and commenced investigations or on concluded cases, beyond the figures published in OAG Annual Reports.<sup>1037</sup> According to these, there were 73 investigations on international bribery at the beginning of 2016, increasing to 82 at the end of 2016, before falling in each following year to 45 at the end of 2019. The OAG stated in 2019 that it had more than 60 criminal proceedings pending in connection with the Petrobras-Odebrecht affair.

In 2016, the OAG issued a summary penalty order against the Brazilian company **Odebrecht SA** and one of its subsidiaries, **Construtora Norberto Odebrecht SA (CNO)**, in connection with international corruption involving **Petrobras**. The two companies were held jointly and severally liable to pay CHF117 million (US\$127 million) including a fine of CHF4.5 million (US\$4.9 million).<sup>1038</sup> At the same time, the OAG issued an Abandonment of Proceedings Order against **Braskem SA**, in which Odebrecht has a controlling share and which also

allegedly paid bribes via the same channels as Odebrecht SA and CNO, as Braskem was being held accountable for the same offences in the United States. However, the Swiss abandonment decision involved Braskem SA paying “compensation” (*Ersatzforderung*) to the Swiss state of CHF94.5 million (US\$103 million).<sup>1039</sup> In relation to the Odebrecht case, in October 2019, the OAG filed its first indictment in the Federal Criminal Court under accelerated proceedings<sup>1040</sup> against an individual on the charge of complicity in the bribery of foreign public officials and of money laundering.<sup>1041</sup>

### Fines for bribery in African commodity markets

In 2019, the OAG stated in a summary penalty order that it had convicted the commodities trading company **Gunvor** for having “failed to take all the organisational measures that were reasonable and necessary to prevent its employees and agents from bribing public officials in order to gain access to the petroleum markets in the Republic of Congo and Ivory Coast”.<sup>1042</sup> It ordered Gunvor to pay close to CHF94 million (US\$ 96.7 million), including a fine of CHF4 million (US\$4.3 million) and almost CHF90 million (US\$98 million) in “compensation” (*Ersatzforderung*) to the Swiss state, corresponding to Gunvor’s profit in Republic of Congo (Brazzaville) and Ivory Coast.<sup>1043</sup> According to Reuters, Gunvor had secured a three-year oil supply contract from the Congo state oil firm SNPC in June 2010 and signed two deals for oil cargoes with SNPC worth a total of US\$625 million in July 2011.<sup>1044</sup> The firm also received Ivory Coast oil cargoes between 2009 and 2010. In 2018, a Gunvor employee charged with foreign bribery admitted guilt under accelerated proceedings and received an 18-month suspended prison term.<sup>1045</sup> A former company employee and financial intermediaries are reportedly under investigation for foreign bribery and money laundering.<sup>1046</sup>

The Swiss Financial Market Supervisory Authority (FINMA) took action against **PKB Privatbank SA** and **Gazprombank (Schweiz) AG** in 2018 for breaches of anti-money laundering requirements.<sup>1047</sup> It found failures in PKB’s background checks in transactions related to Petrobras and Odebrecht, and ordered the bank to pay back CHF1.3 million (US\$1.4 million) in unlawfully generated profits. FINMA also found shortcomings in the Gazprombank subsidiary’s dealings with increased-risk clients during the period 2006-2016. It banned an expansion of its activities with private clients and called for strict monitoring of existing ones.

In August 2019, the Attorney General of Geneva indicted for foreign bribery and forgery three individuals related to **Beny Steinmetz Group Resources (BSGR)**, including its founder, Israeli billionaire Beny Steinmetz.<sup>1048</sup> This followed an investigation started in 2013, reportedly into allegations that BSGR paid a US\$10 million bribe to one of the wives of the President of Guinea in order to obtain mining rights over the Simandou deposits.<sup>1049</sup> Some of the funds were allegedly transmitted via Swiss bank accounts.

According to media reports in March 2018, the Attorney General of Geneva opened a criminal investigation into alleged bribery of foreign public officials and money laundering against two Venezuelan executives connected to the Geneva branch of the Panamanian company **Helsing**.<sup>1050</sup> This followed a request to Switzerland for cooperation from Venezuelan authorities and a civil complaint filed in a US federal court in Miami in March 2018 by the PDVSA US Litigation Trust, linked to Venezuela’s state-owned oil company PDVSA. The civil complaint alleged billions of dollars in damages resulting from a corrupt scheme involving bribery, trading in inside information and bid-rigging, which, *inter alia*, enabled named companies to buy petroleum products below market value.<sup>1051</sup> The complaint listed more than 40 defendants, including trading companies Helsing Ltd Saint-Helier, **Glencore International AG**, **Trafigura AG** and **Vitol SA**, as well as **Lukoil Petroleum Ltd** and **Colonial Oil Industries Inc.**<sup>1052</sup> It also named two banks, **BAC Florida Bank** and **Blue Bank International NV** in Curacao.<sup>1053</sup>

The mining and commodity trading company Glencore announced in June 2020 that the OAG had opened a criminal investigation into Glencore International AG for failure to have in place the organisational measures to prevent alleged corruption in the Democratic Republic of Congo (DRC).<sup>1054</sup> The investigation was preceded by a criminal complaint made by the NGO Public Eye in 2017 with regard to Glencore activities in the DRC.<sup>1055</sup> Glencore is also reportedly under investigation in the United States for alleged money laundering and corruption in Nigeria, Venezuela and the DRC. It is also under investigation in the UK as well as in Brazil by Operation *Lava Jato* prosecutors and police, on suspicion of bribes paid to Petrobras.<sup>1056</sup> Trafigura and Vitol are under investigation in Brazil and the United States.<sup>1057</sup>

According to news reports, the OAG opened a criminal investigation in 2020 into allegations of money laundering against **Credit Suisse**, following a

criminal complaint filed by the NGO Public Eye.<sup>1058</sup> In a related matter, in the United States in 2019, three former Credit Suisse London-based bankers pleaded guilty to charges of conspiracy to commit money laundering in connection with the Mozambique “tuna bond” scandal.<sup>1059</sup> In that deal, Credit Suisse together with the Russian bank **VTB** arranged for issuance of bonds to lend the country over US\$2 billion to boost coastal security and develop its tuna fishing industry.<sup>1060</sup> One of the bankers admitted to pocketing US\$45 million in kickbacks.<sup>1061</sup> Mozambique authorities have filed a case in the High Court in London against Credit Suisse and its three former employees.<sup>1062</sup> According to news reports, US prosecutors believe Credit Suisse is culpable in the scandal and have entered into talks with the bank.<sup>1063</sup> A US Department of Justice indictment of the three Credit Suisse investment bankers in 2019 referred to “a brazen international criminal scheme in which corrupt Mozambique government officials, corporate executives and investment bankers stole approximately US\$200 million in loan proceeds that were meant to benefit the people of Mozambique”.<sup>1064</sup> The indictment also charged senior officials in Mozambique and employees of a UAE shipbuilding company.<sup>1065</sup>

In another case in the United States, Credit Suisse Group AG and its Hong Kong subsidiary agreed to pay US\$77 million to US authorities to settle charges that it hired and promoted more than 100 individuals connected to influential Chinese officials, to win business for the bank in China.<sup>1066</sup> The bank is also reportedly under investigation for its role in the money laundering scheme set up by a Bulgarian mafia boss, imprisoned for importing drugs from South America.<sup>1067</sup>

In response to the first voluntary disclosure by a company, **KBA Notasys** was sentenced by the OAG to pay a fine of CHF 1, and to pay a total of CHF35 million (US\$38 million) consisting of CHF 30 million (US\$32.7 million) compensation to the Swiss state and CHF5 million (US\$5.4 million) to set up an Integrity Fund to be spent on promoting ethics, integrity and compliance in the banknote printing industry.<sup>1068</sup> In 2018, the KBA-NotaSys Integrity Fund began distributing grants, but without any reference to the penalty order on the Fund’s web page and without oversight arrangements.<sup>1069</sup> The voluntary disclosure by the company leading to the penalty order referred to wrongdoings in Brazil, Kazakhstan, Morocco and Nigeria.<sup>1070</sup> In 2019, Brazilian authorities opened investigations into alleged bribery and money laundering in connection

with the company’s efforts to secure a US\$60 million contract with the Brazilian money printing authority *Casa da Moeda*.<sup>1071</sup>

## Recent developments

Parliament has adopted an amendment of Art. 53 of the Swiss Criminal Code that limits the application of Abandonment of Proceedings Orders to cases where the maximum applicable penalty does not exceed a suspended custodial sentence of one year or a suspended penalty or a fine. This excludes the use of such orders for cases of foreign bribery brought against individuals, as the maximum penalty for such cases is a custodial sentence of five years. However, it does not exclude it for cases involving corporations, as the penalty is a fine and there is no limit to the amount of the fine that may allow the abandonment of the proceedings. However, in its recent practice, the OAG has not used Abandonment of Proceedings Orders in cases involving corporations.

## Transparency of enforcement information

The Office of the Federal Attorney-General (OAG) publishes some statistics on foreign bribery at the end of each year, but they are limited to ongoing criminal investigations.<sup>1072</sup> There is no statistical information on criminal investigations conducted by cantonal (local) authorities. There are also no published statistics on mutual legal assistance (MLA) in cases of international corruption, although the Federal Office of Justice publishes, in its annual report, statistics on the total number of MLA requests.<sup>1073</sup> This lack of adequate statistics makes it hard to get a clear picture of the enforcement system.

The decisions of the Swiss Federal Criminal Court are published in full and made available online.<sup>1074</sup> There is no systematic official publication of cantonal decisions. Decisions issued by the OAG – including summary penalty orders and abandonment orders with sanctions – are available on request, in person, in a summarised format and anonymised. Access to these decisions may be denied if the authorities find that the interest of preserving secrecy outweighs the right to information.<sup>1075</sup> The OAG may also issue statements on the results of big cases.<sup>1076</sup>

## Beneficial ownership transparency

There is no central register of beneficial owners of companies or trusts. Authorities (such as law enforcement authorities) generally have access to this information, which must be kept by some legal persons (AG and GmbH corporate entities).<sup>1077</sup> This should be seen against the background of the OECD WGB's finding in its 2018 Phase 4 Report on Switzerland that the country is home to a large number of "letterbox" or "domiciliary" companies.<sup>1078</sup> Consequently, the OECD WGB said it would follow up on efforts by Swiss authorities to encourage greater transparency in relation to legal persons and complex legal structures, including domiciliary companies in Switzerland.

### Inadequacies in legal framework

There is insufficient legal protection for whistleblowers in the private sector.<sup>1079</sup> A new revised draft law was submitted to Parliament in September 2018,<sup>1080</sup> but was rejected after passing back and forth between both chambers in March 2020.<sup>1081</sup>

Regarding corporate liability, the OECD WGB in its 2018 Phase 4 Report recommended that Switzerland clarify the concept of "defective organisation", which is a requisite for corporate liability.<sup>1082</sup> Across multiple cases, the OAG has not indicated the standards for the necessary and "reasonable organisational measures" – such as internal control systems and codes of conduct – which a company must adopt to prevent it from having a "defective organisation" and therefore being liable.<sup>1083</sup> Guidelines would help companies adopt adequate compliance programmes. Although the merits of self-reporting have been recognised in the case of KBA-Notasys SA,<sup>1084</sup> there is no known clear and transparent framework for self-reporting by companies.

The maximum fine for legal persons charged with foreign bribery remains too low, at CHF5 million (US\$5.4 million).<sup>1085</sup> This has been criticised by the OECD WGB, which suggested that "sanctions imposed are not effective, proportionate or dissuasive as provided for in the Convention, particularly in relation to legal persons".<sup>1086</sup> No legal framework or guidelines have been established for compensation of victims in foreign bribery cases.

According to the Financial Action Task Force (FATF), the current Anti-Money Laundering Act has too narrow a scope and does not extend to certain non-financial activities, especially those conducted in connection with the creation, management or

administration of companies or trusts.<sup>1087</sup> This would be addressed if a draft law submitted to Parliament in June 2019 is approved.<sup>1088</sup> This draft law also seeks to rectify the gaps identified by FATF relating to the general obligations to verify the identity of persons designated as beneficial owners and to update client data.

### Inadequacies in enforcement system

The decentralised nature of foreign bribery enforcement in Switzerland creates cooperation challenges. It is still divided between the federal and the cantonal authorities, and there is no clear overview of activity at both levels and how they can be integrated to prevent loopholes.

The summary penalty order is a poor substitute for the model of deferred prosecution agreements found in other countries, lacking transparency and predictability. Additionally, there is no framework providing incentives for self-reporting by companies and no guidance for adequate corporate preventive measures.

### Recommendations

- Systematically publicise and make available online information on all foreign bribery cases, including those concluded through summary penalty orders
- Improve the collection and publication of statistics on corruption, especially data from the cantons
- Create a publicly accessible central register of beneficial owners of companies and trusts
- Develop corporate compliance standards and a clearly defined framework of voluntary disclosure for companies
- Adopt the amendment to the Anti-Money Laundering Act, addressing deficiencies identified by FATF, especially enlarging the scope of the Act
- Enact protection of whistleblowers in the private sector, based on the highest international standards
- Make provision for compensation of victims in foreign bribery cases
- Ensure judicial authorities do not adopt a restrictive interpretation of foreign bribery-related offences
- Increase enforcement and impose tougher sanctions
- Improve awareness-raising among small and medium-sized enterprises, encouraging them to take internal measures to prevent and detect foreign bribery
- Improve the process of summary penalty orders to make it more transparent and predictable.

# TURKEY

## Little or no enforcement

0.9% of global exports

### Investigations and cases

In the period 2016-2019, Turkey opened one investigation, commenced no cases and concluded no cases with sanctions.

In other jurisdictions, the US Securities and Exchange Commission filed charges in April 2020 against a former Goldman Sachs executive for his role in “orchestrating a bribery scheme to help a client win a government contract to build and operate an electrical power plant in Ghana”.<sup>1089</sup> According to media reports, the client in question is Turkish power producer **Aksa Enerji**, which allegedly paid at least US\$2.5 million in bribes for the contract.<sup>1090</sup>

In Estonia, the trial began in early 2019 of employees at the state-owned Port of Tallinn, charged by local prosecutors with accepting bribes between 2005 and 2015 from several Turkish and Polish companies, in exchange for contracts to build ferries for the Estonian company.<sup>1091</sup>

### Recent developments

Turkey has made only limited progress in implementing the OECD WGB’s recommendations in its 2014 Phase 3 Report<sup>1092</sup> and 2017 Phase 3 Follow-up Report.<sup>1093</sup> In March 2019, the OECD WGB announced that it would send a High-Level Mission to Ankara in 2020 unless Turkey took concrete action by October 2019 to address deficiencies.<sup>1094</sup> In October 2019, Turkey submitted a report on its efforts to implement the WGB’s recommendations. The report focused on the existing legal framework and aspects of the enforcement system, such as training efforts and an increase in the number of prosecutors.<sup>1095</sup>

Turkey also reported in 2017 that it had issued a legally binding direction to prosecutors and investigators about international corruption cases, Circular No. 157.<sup>1096</sup> However, this circular includes an incorrect definition of foreign bribery, as the bribery of Turkish officials by foreign companies.

In 2019, the Financial Action Task Force Mutual Evaluation Report on Turkey criticised the country’s lack of necessary measures to regulate politically exposed persons in the country’s legislation.<sup>1097</sup>

### Transparency of enforcement information

Turkey maintains aggregated data on domestic bribery offences but does not publish statistics on foreign bribery enforcement. There is no published data on mutual legal assistance requests sent and received. Unless otherwise stated, all court decisions may be accessed from courts on request.

### Beneficial ownership transparency

There is no central register for beneficial ownership information. Turkey has several registers which record information on shareholders, which may be useful in determining beneficial owners, such as the Trade Registry Gazette, the Central Registration System database, tax records and the Central Registry Agency’s (*Merkezi Kayıt Kuruluşu*) records.<sup>1098</sup> Information on publicly traded companies can also be accessed through the Public Disclosure Platform.<sup>1099</sup> Only some of these registers are accessible to the public, notably the Trade Registry Gazette and the Public Disclosure Platform. In addition, according to the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism,<sup>1100</sup> certain legal entities are required to hold beneficial ownership information and make it available to inquiries by law enforcement officials.<sup>1101</sup> Trusts are not governed by Turkish law.<sup>1102</sup> Professional trustees governed by foreign laws are not required to have records in Turkish registries.

### Inadequacies in legal framework

Deficiencies in the Turkish legal framework have been repeatedly noted by the OECD WGB.<sup>1103</sup> Among these, the corporate liability framework does not clearly cover state-owned and state-controlled enterprises. In addition, the prosecution or conviction of a natural person is required for sanctioning a legal person.<sup>1104</sup> However, it is possible to confiscate the bribe or proceeds of bribery and impose security measures specific to legal entities without prior conviction of a natural person. Sanctions for legal persons found guilty of committing foreign bribery are not sufficiently effective, proportionate or dissuasive. Considering

the context of big multinational companies paying bribes to obtain million-dollar contracts, available sanctions are too low.

Apart from these issues, there is no criminal liability for legal persons. Turkey also lacks whistleblower protection legislation covering the public and private sectors, and there are deficiencies in its anti-money laundering framework.

## Inadequacies in enforcement system

The OECD WGB Phase 3 Report on Turkey in 2014 raised serious concerns about Turkey's lack of active enforcement and called on the country to review its overall approach, provide sufficient resources and expertise to prosecutors and the police, take a more proactive approach to detection, and ensure that investigation and prosecution of foreign bribery is not influenced by the factors prohibited under Article 5 of the Anti-Bribery Convention. The OECD WGB expressed concerns that "foreign bribery investigations and prosecutions may be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved". The OECD WGB's Follow-up Report in 2017 found only limited progress.

There are also serious concerns about the independence of Turkey's judiciary.<sup>1105</sup> The removal of judges and investigators has, in the past, led to a halt in corruption investigations into leading members of the government.<sup>1106</sup> The wholesale removal of more than 4,000 judges and prosecutors following an attempted coup gravely impacted the justice system.<sup>1107</sup> As a result, the average level of experience among the country's 14,000 judges is 2.5 years.<sup>1108</sup>

Political interference and a lack of expertise in judges and prosecutors are therefore a central issue in the enforcement of anti-corruption provisions. In particular, the executive branch's power over the High Council of Judges and Prosecutors should be reduced. It is also of the utmost importance "that evaluations of the performance of judges and prosecutors, as well as disciplinary proceedings against them, are free from undue influence".<sup>1109</sup>

## Recommendations

- Require courts to publish all decisions relating to foreign bribery, and collect and publish data regarding investigations and cases in implementation reports
- Create a publicly available

central register for beneficial ownership information

- As recommended by the OECD WGB's Phase 3 Report in 2017, ensure that investigation and prosecution of foreign bribery are not influenced by considerations of national economic interest, the potential effect on relations with another state, or the identity of the natural or legal person involved
- Ensure the independence of the judiciary and the Prosecutor's Office from improper political influence
- As recommended by the OECD WGB's Phase 3 Report in 2017, ensure that any reassignment of police, prosecutors or magistrates does not adversely affect foreign bribery investigations and prosecutions
- Proactively and effectively investigate foreign bribery allegations
- Increase available sanctions to deter foreign bribery by corporations and introduce criminal liability of legal persons
- Raise awareness about foreign bribery among the general public and train private-sector employees and public officials to increase anti-corruption awareness within their organisations
- Regulate and enforce whistleblower protection in the public and private sectors
- Regulate politically exposed persons through relevant anti-money laundering legislation.

# UNITED KINGDOM

## Active enforcement

3.6% of global exports

## Investigations and cases

In the period 2016-2019, the UK opened 35 investigations, commenced seven cases and concluded 10 cases with sanctions.

In February 2019, David Lufkin, former Head of Global Sales at **Petrofac International Limited**, an energy service provider, pleaded guilty to 11 counts of bribery as part of a wider investigation into **Petrofac Limited** and its subsidiaries.<sup>1110</sup> His offences related to corrupt payments intended to secure oil contracts worth over US\$4.2 billion in Iraq and Saudi Arabia. In another case, **Alstom Network UK Ltd** was found guilty in April 2018 of paying €2.4 million (US\$2.8 million) in bribes in order to secure a tram and infrastructure contract in Tunisia worth €85 million (US\$99.7 million).<sup>1111</sup> In addition, **Alstom Power Ltd** and two individuals pleaded

guilty to paying senior Lithuanian figures over €5 million (US\$5.9 million) in bribes to secure a contract worth €240 million (US\$281 million) to upgrade and refit a power station. In November 2019, the company was ordered to pay a fine of £15 million (US\$19.3 million) and £1.4 million (US\$1.8 million) in costs.<sup>1112</sup>

In 2018, the Serious Fraud Office (SFO) charged four **Unaoil** employees with conspiracy to make corrupt payments to secure the award of contracts in Iraq, and filed additional charges against two of them. One pleaded guilty in July 2019 and the trial of the other three began in January 2020.<sup>1113</sup> The SFO had commenced an investigation into Unaoil, its officers, employees and agents in July 2016.<sup>1114</sup>

In July 2019, three individuals working for **Sarclad Limited** were acquitted of bribery charges relating to 27 overseas companies. On their acquittal, the SFO's deferred prosecution agreement (DPA) with their employer, Sarclad Limited, expired and lifted reporting restrictions on the DPA.<sup>1115</sup> In October 2019, the SFO and **Güralp Systems Ltd** finalised a DPA in which the company agreed to pay a little over £2 million (US\$2.6 million) for conspiracy to bribe and failure to prevent bribery of the Korea Institute of Geoscience and Mineral Resources.<sup>1116</sup>

Long-running investigations include those into **ENRC Ltd** (previously **ENRC PLC**)<sup>1117</sup> and **GPT Special Project Management**. Charges were brought to court in the GPT case in 2020. More recent SFO investigations include those into **De La Rue PLC** and the **Glencore** group of companies.<sup>1118</sup> In February 2019, the SFO closed its long-running investigation into **GlaxoSmithKline PLC** without seeking prosecution.<sup>1119</sup>

## Recent developments

In May 2018, the House of Lords scrutiny committee reviewed implementation of the Bribery Act 2010, publishing its report in March 2019.<sup>1120</sup> It counselled against legalising facilitation payments and reserved judgement on whether there was merit in introducing vicarious liability for bribery offences.<sup>1121</sup> (See also points mentioned below.) In May 2019, the UK government published its response to the report.<sup>1122</sup>

In 2018, the National Economic Crime Centre (NECC) was established within the National Crime Agency (NCA) to coordinate the UK response to economic crime, including strategic oversight of bribery cases. The NECC contains officers or representatives from seven key law enforcement agencies and

government departments.<sup>1123</sup> The International Anti-Corruption Coordination Centre (IACCC) – an international initiative launched in July 2017 and hosted in the NCA – has reported on impact that includes progressing nine grand corruption cases and identifying 227 suspicious bank accounts across 15 different jurisdictions.<sup>1124</sup>

## Transparency of enforcement information

The main investigatory and prosecutorial bodies in England and Wales are the SFO and the NCA, with the Crown Prosecution Service (CPS) for England and Wales prosecuting.<sup>1125</sup> Police Scotland and the Procurator Fiscal, and the equivalent bodies in Northern Ireland, can also pursue cases in Scotland and Northern Ireland. The SFO publishes some information on investigations, and cases in its annual report.<sup>1126</sup> Scotland's Procurator Fiscal publishes separate statistics on enforcement under the Bribery Act, but without disaggregating cases of bribery of foreign public officials.<sup>1127</sup> UK authorities do not routinely publish mutual legal assistance (MLA) statistics, except in response to freedom of information requests.<sup>1128</sup> In such cases, the data released covers all MLA requests, not only those regarding foreign bribery. The UK Central Authority was due to introduce a new case management system in April 2019, but there have thus far been no updates. When introduced, it should allow for more accurate measurement of the time taken to respond to foreign bribery-related MLA requests.<sup>1129</sup>

The OECD WGB has commended the SFO for “exemplary” publishing of information about concluded foreign bribery cases on its website.<sup>1130</sup> This includes the date and location of offending, value of the bribe and the advantage received, and how penalties imposed were calculated. The publication of court decisions regarding foreign bribery offences remains inconsistent.<sup>1131</sup>

## Beneficial ownership transparency

The UK was the first G20 country to launch a public register of company beneficial ownership, the Persons with Significant Control (PSC) register. In 2018, it was extended to incorporate Scottish Limited Partnerships. PSC data is available free of charge from the Companies House website, in a readable excel format (CSV files) as a bulk download, and via the Companies House application programming interface.<sup>1132</sup> The UK government also funds and sponsors the global Open Ownership register, which includes UK PSC data alongside

beneficial ownership data from around the world.<sup>1133</sup>

In January 2018, the UK established a central register of beneficial ownership for express trusts with tax consequences in the UK, maintained by Her Majesty's Revenue and Customs.<sup>1134</sup> The register is not publicly available, but is accessible to any law enforcement agency in the UK.<sup>1135</sup> The UK has not yet complied with the 5th EU Anti-Money Laundering Directive, which requires that the details of trust beneficiaries be made available to those with a "legitimate interest" – a term disputed between civil society and the government.<sup>1136</sup>

The UK's Crown Dependencies in Guernsey, the Isle of Man and Jersey have voluntarily committed to introducing public beneficial ownership registers by 2023.<sup>1137</sup> The 5th EU Anti-Money Laundering Directive required Gibraltar, a UK Overseas Territory, to introduce a public register by January 2020. This is now live.<sup>1138</sup> UK law enforcement agencies have access to information on beneficial owners of companies incorporated in the Crown Dependencies and Overseas Territories, on request. A statutory review by the UK government in June 2019 found this information exchange very useful.<sup>1139</sup>

## Inadequacies in legal framework

The Bribery Act 2010 continues to provide a sound legal basis for prosecuting foreign bribery by both natural and legal persons. However, three legal aspects could be improved. The defence of adequate procedures has only been tested recently by the courts and is still largely defined by guidance; the jurisdiction of the Bribery Act does not extend to legal persons incorporated in the Crown Dependencies and Overseas Territories,<sup>1140</sup> and a longstanding issue regarding corporate liability in the UK<sup>1141</sup> inhibits the successful prosecution of large multinationals for substantive bribery offences.<sup>1142</sup>

## Inadequacies in enforcement system

The core purpose of the DPA regime is to incentivise the exposure and self-reporting of corporate wrongdoing. The recent Airbus judgement explicitly shifts away from self-reporting being a condition for a DPA when it states, "there is no necessary bright line between self-reporting and co-operation".<sup>1143</sup> The failure to differentiate penalty discounts for those companies that self-report and cooperate and those that start cooperation once under

investigation seriously reduces the incentive for companies to self-report their wrongdoing in the first place, calling into question the use of DPAs.

The Crime and Courts Act states that a DPA may impose on companies a requirement to compensate victims of an alleged offence.<sup>1144</sup> However, compensation has only been pursued and given in one foreign bribery DPA, with **Standard Bank**.<sup>1145</sup> In both the **Rolls Royce** (2017)<sup>1146</sup> and **Airbus** (2020)<sup>1147</sup> cases, which involved hundreds of millions of pounds in disgorged profits, the SFO did not seek compensation. Under the joint NCA, CPS and SFO principles for compensation of victims of foreign bribery and other economic crimes, UK law enforcement agencies should seek compensation where it is appropriate – e.g., where there is a clearly identifiable victim.<sup>1148</sup> Based on the Rolls Royce and Airbus DPAs, it appears that the more egregious, widespread and complex a bribery scheme, the less likely it is that compensation will be sought, despite the greater harm self-evidently caused by such a scheme.

In October 2019, Transparency International UK and Spotlight on Corruption wrote to the Attorney General expressing concern over ongoing delays in the prosecution of an Airbus subsidiary, **GPT**, for alleged corruption. The SFO's investigation started in 2012, and it sought consent to prosecute in 2018, which was never provided. The alleged corruption relates to a government-to-government contract with Saudi Arabia, and the investigation may have been obstructed on national security grounds. Airbus shut down GPT as of the end of 2019,<sup>1149</sup> precluding its prosecution.<sup>1150</sup>

The House of Lords scrutiny committee's report found areas for improvement in the implementation and enforcement of the Bribery Act. These include the speed of bribery investigations, the provision of sufficient training for law enforcement officers, and the adequacy of guidance provided to businesses, especially small and medium-sized enterprises.<sup>1151</sup>

There is a lack of dedicated crown courts to try cases of serious economic crime. Coupled with underfunding of the court system, this results in long delays. There are also no provisions to ensure courts can impose a review of compliance procedures within sentencing.

## Recommendations

- Publish court sentencing remarks and judgements for cases of economic crime, including bribery
- Task the Law Commission to review the UK's

outdated and inadequate corporate liability laws on a priority basis • Broaden corporate criminal liability beyond failure to prevent foreign bribery and tax evasion • Extend the jurisdiction of the Bribery Act to legal persons incorporated in Crown Dependencies and Overseas Territories • Provide greater support and education on the UK Bribery Act for small and medium-sized enterprises • Ensure that DPAs are used only in cases of strong public interest, with utmost transparency, and as a means to encourage self-reporting by others in the future • Ensure the NCA, CPS and SFO principles for compensation of victims are incorporated into the use of DPAs • Strengthen mechanisms to determine whether companies convicted of bribery should be debarred from public contracts • Ensure that the SFO's role as the principal actor for enforcing foreign bribery offences is maintained and consolidated • Include anti-corruption and transparency provisions in future trade agreements • Continue to support the timely introduction of public beneficial ownership registers in the UK's Overseas Territories and Crown Dependencies • Closely monitor the impact of Brexit on the UK's foreign bribery enforcement, particularly in relation to international cooperation arrangements with EU countries.

## UNITED STATES

### Active enforcement

**10.4% of global exports**

#### Investigations and cases

In the period 2016-2019, the United States opened at least 72 investigations,<sup>1152</sup> commenced 24 cases and concluded 130 cases with sanctions.

The Department of Justice (DoJ) and Securities and Exchange Commission (SEC), the principal enforcement agencies, together recovered more than US\$1 billion in penalties in each of the four years, with the total exceeding US\$2 billion in three of those years.<sup>1153</sup> In recent years, the SEC has recovered more in disgorgement than in civil penalties.<sup>1154</sup> The DoJ and SEC had 11 instances of coordinating corporate foreign bribery resolutions from 2016 to 2019, compared to only two such instances prior to 2007.<sup>1155</sup> After a sharp decrease in resolved cases and penalties in 2017,

enforcement activity under the Foreign Corrupt Practices Act (FCPA), the primary foreign bribery enforcement tool, rebounded in 2018 and 2019.<sup>1156</sup>

Brazil, China and Venezuela were the focus of many enforcement actions during this period. At least 15 actions involved corruption in Brazil, resulting in DoJ and SEC sanctions against well-known multinationals such as **Samsung Heavy Industries**, **Walmart** and **Rolls-Royce**.<sup>1157</sup> At least 14 enforcement actions involved China, as some of the world's largest companies violated the FCPA, including **Ericsson**, **Deutsche Bank**, Walmart and **GlaxoSmithKline**.<sup>1158</sup> At least nine enforcement actions concerned corrupt activity in Venezuela, with most cases involving the payment of bribes to officials at the national oil company, **Petróleos de Venezuela S.A.**. The DoJ has criminally charged more than two dozen individuals in its ongoing investigation of the company.<sup>1159</sup>

The period 2016-2019 saw several noteworthy foreign bribery case resolutions. In September 2018, **Petrobras** entered into agreements with US and Brazilian authorities and paid a total of US\$1.78 billion in penalties for allegedly facilitating the payment of millions of dollars in bribes to politicians and political parties in Brazil.<sup>1160</sup> In December 2019, Swedish telecommunications company **Ericsson** agreed to pay more than US\$1 billion in civil and criminal fines to resolve an investigation into tens of millions of dollars in improper payments made to government officials in China, Djibouti, Indonesia, Kuwait and Vietnam to win contracts.<sup>1161</sup> Ericsson's Egyptian subsidiary pleaded guilty to one count of conspiracy to violate the FCPA.<sup>1162</sup>

Swedish telecom **Telia Company AB** agreed to a global foreign bribery resolution in 2017.<sup>1163</sup> The same bribery investigation also caught Russian telecom company **Mobile TeleSystems PJSC (MTS)** and Dutch telecom company **VimpelCom Limited**. In March 2019, MTS agreed to pay a total of US\$850 million to resolve civil and criminal FCPA charges,<sup>1164</sup> and in February 2016, VimpelCom entered into a global civil/criminal settlement worth more than US\$795 million.<sup>1165</sup> As with Telia, MTS and VimpelCom's deals also included a guilty plea by their Uzbek subsidiaries.<sup>1166</sup>

The FCPA is enforced disproportionately against companies not based in the US. Non-US companies have fared worse under the Act, both in terms of the average cost of resolving actions and of post-settlement obligations, despite the fact that since 1978, the DoJ and the SEC have brought more enforcement actions against US companies. In 2018

and 2019, there were more enforcement actions against foreign companies than against US companies, and of the FCPA cases brought from 2001 to 2012, around half involved foreign companies.<sup>1167</sup>

## Recent developments

The DoJ adopted a new, more coordinated approach to assessing monetary punishments in foreign bribery actions, involving multiple enforcement authorities, domestically and abroad. In May 2018, the DoJ instructed prosecutors handling corporate misconduct cases to “consider the totality of fines, penalties and/or forfeiture imposed by all Department components, as well as other law enforcement agencies and regulators”, in order to “avoid the unnecessary imposition of duplicative fines, penalties and/or forfeiture against the company.”<sup>1168</sup> This policy resulted in settlements in which the US government credited and apportioned penalties. For example, in a June 2019 foreign bribery settlement with UK-based oil and gas services company TechnipFMC, the DoJ credited the company with the roughly US\$214 million it paid to settle a parallel Brazilian investigation.<sup>1169</sup>

In 2016, the DoJ adopted a policy of terminating some FCPA cases through declinations for companies that voluntarily self-report FCPA violations, fully cooperate with investigating agencies, remediate conditions at the company, and pay disgorgement, forfeiture or restitution. The DoJ has followed up with a practice known as “declinations with disgorgement”, meaning the DoJ drops charges if the company agrees to pay “disgorgement, forfeiture and/or restitution”.<sup>1170</sup> By the end of 2019, 13 cases had been resolved in this manner.<sup>1171</sup> In 2019, the DoJ issued two declinations involving alleged misconduct by senior leadership in the company. In recent years, the SEC has recovered more in disgorgement than in civil penalties.<sup>1172</sup>

In March 2019, the Commodity Futures Trading Commission Division of Enforcement announced it was expanding its scope to identify conduct that violates the FCPA, as well as US commodity trading law, as commodity market violations are sometimes facilitated through bribery.<sup>1173</sup> The agency will coordinate with the DoJ and the SEC to address conduct that potentially violates the FCPA.

Increasingly, US enforcement authorities are pairing FCPA charges against the bribe payer with non-FCPA charges against the bribe recipient, who under established case law cannot be charged under the

FCPA, but can be charged with other criminal offences associated with the receipt of those bribes – most frequently money laundering.<sup>1174</sup> Another significant target of FCPA-related charges are so-called “facilitators” who allegedly participated in the transfer of corrupt proceeds, but for jurisdictional, evidentiary or other reasons are charged with money laundering rather than FCPA counts. Examples of each abound in the 2019 enforcement statistics.<sup>1175</sup>

To expand the enforcement armoury against foreign officials, the US Congress is considering a proposed Foreign Extortion Prevention Act, which would impose criminal liability on any foreign official who “corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value” to influence an official act.<sup>1176</sup>

The US Congress is also considering the Corporate Transparency Act of 2019, which would require corporations and limited liability companies to disclose beneficial ownership information to the US Department of the Treasury’s Financial Crimes Enforcement Network at the time they are formed and every year subsequently.<sup>1177</sup>

There were four notable court decisions directly bearing on FCPA enforcement. The first was a June 2017 ruling by the US Supreme Court that the SEC has a five-year window for seeking the penalty of disgorgement in all corporate enforcement actions.<sup>1178</sup> The second was in February 2018 when the Supreme Court held that whistleblowers must report alleged corporate misconduct directly to the SEC to qualify for the enhanced anti-retaliation protections under the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>1179</sup> The third was an August 2018 ruling by the US Court of Appeals for the Second Circuit that a non-resident foreign national cannot be charged under the FCPA unless the government can prove the individual acted either as an “agent” of an American company or while physically present in the United States.<sup>1180</sup> In the fourth, in September 2019, a federal judge in New York ruled that investors in a Canadian mining company were victims of a bribery scheme involving **Och-Ziff Capital Management Group** (Och-Ziff Case), and were therefore entitled to restitution for their losses. If this ruling is not overturned and the underlying legal principle is adopted in other courts, it could complicate efforts to settle FCPA cases if companies face uncertain legal exposure to victims’ restitution claims stemming from the case.<sup>1181</sup>

## Transparency of enforcement information

The US DoJ publishes partial FCPA criminal enforcement statistics in its annual publication "The Fraud Section Year in Review".<sup>1182</sup> These statistics do not include data on investigations,<sup>1183</sup> nor do they identify numbers of enforcement actions resulting in DPAs, non-prosecution agreements or acquittals. The SEC publishes a list of enforcement actions by calendar year.<sup>1184</sup> The US government does not publish statistics on mutual legal assistance (MLA) requests received and made.<sup>1185</sup>

The DoJ and the SEC maintain centralised FCPA information web portals that list cases where charges have been filed and public cases that have been resolved.<sup>1186</sup> They also provide enforcement-related news,<sup>1187</sup> explain the law and link to the text of the statute.<sup>1188</sup> Both agencies publicly announce the filing of new enforcement cases and resolutions of closed cases, posting summaries and legal documents on the internet.

US trial and appellate court pleadings, decisions and transcripts can be obtained for a fee on the Public Access to Court Electronic Records (PACER) online repository.<sup>1189</sup>

## Beneficial ownership transparency

The US lacks a centralised database of corporate beneficial ownership information, as well as any sort of centralised national register of company information. The SEC collects some beneficial ownership information, but only for publicly traded companies and only in certain circumstances. At the state level, where the process of company formation and registration takes place, state governments collect minimal ownership data.<sup>1190</sup>

Companies wishing to do business with the US government must register in a public database called the System for Award Management (SAM).<sup>1191</sup> The information in SAM is self-reported by the company and is not reviewed or verified by the government.<sup>1192</sup> Companies need only disclose their "highest-level" and "immediate" owners,<sup>1193</sup> who may not be their beneficial owners. Subcontractors are not required to register in the SAM database.<sup>1194</sup>

The US also lacks a central register of beneficial ownership of trusts.<sup>1195</sup> The draft Corporate Transparency Act does not extend to trusts, but does require the Comptroller General of the United States to report to Congress on whether other legal

entities, including trusts, should be required to disclose their beneficial owners.

For beneficial ownership data, US authorities must rely on a patchwork of sources: state company registries, financial institutions, the SEC, the Internal Revenue Service and the SAM database. Access to some of these sources requires a subpoena, and the data is not guaranteed to reflect the true beneficial owner(s) of a particular company.

## Inadequacies in legal framework

The United States does not commonly seek restitution for the victims of foreign bribery in FCPA enforcement actions. If restitution is ordered, it is usually in cases involving individual, not corporate, defendants, when there are other criminal violations, such as embezzlement and fraud.<sup>1196</sup> However, there have been at least three FCPA cases in which a corporate defendant was ordered to provide compensation, as well as two cases involving individuals.<sup>1197</sup> This issue received renewed attention in September 2019 in the Och-Ziff case previously mentioned. There is debate whether this ruling – which has been challenged – will help or hinder foreign bribery enforcement and whether it will incentivise US enforcement authorities to include known potential victims in foreign bribery settlement processes.<sup>1198</sup>

The lack of a centralised company register and beneficial ownership database remains a problem in the United States. The absence of such resources hampers efforts to crack down on many forms of domestic and international corruption.<sup>1199</sup>

Whistleblower protection in the United States is inadequate in several respects. Whistleblower protection laws have loopholes, and agencies responsible for enforcing them do not always have the staffing, resources or even desire to do so. Retaliation or reprisal against whistleblowers remains widespread. Legal protections exist, but only a small fraction of whistleblowers who file retaliation claims ultimately prevail through the legal process.<sup>1200</sup>

## Inadequacies in enforcement system

US law provides that individuals who blow the whistle on foreign bribery and other corporate wrongdoing may be rewarded with a percentage of the funds the government recovers.<sup>1201</sup> However, the processing of rewards is very slow. In 2019, the Wall Street Journal attributed this growing delay to

an increasing “flood” of award requests and whistleblower tips received by the SEC every year.<sup>1202</sup>

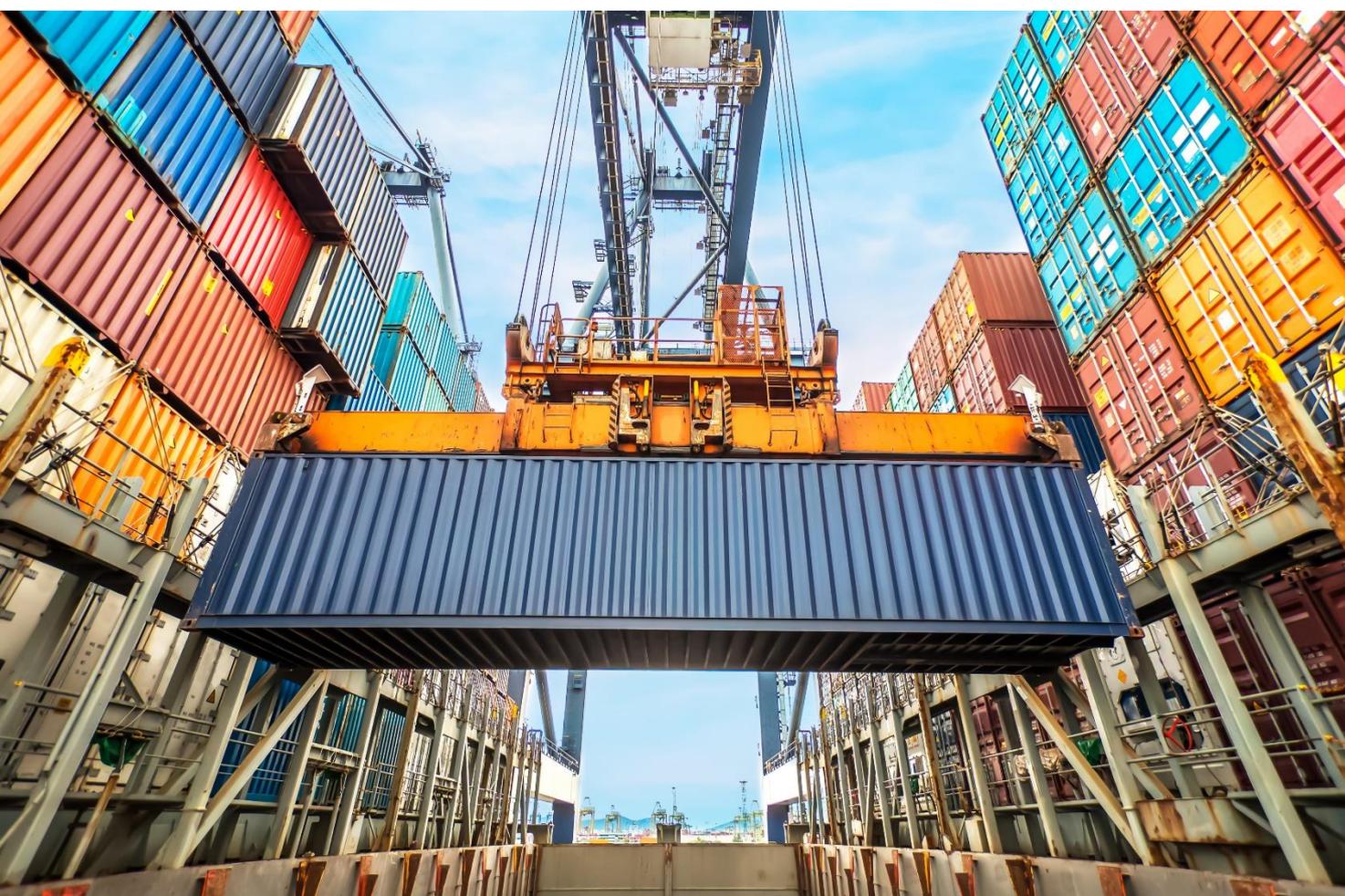
The United States does not expressly prohibit facilitation (“grease”) payments to foreign officials. However, this exception to the FCPA is interpreted relatively narrowly, and is not regarded as a hindrance to US enforcement efforts.<sup>1203</sup>

## Recommendations

- Enhance transparency and accountability by publicly reporting in a centralised location statistics detailing the number of investigations commenced, ongoing and concluded without enforcement action; the reason(s) no action was taken in investigations and cases concluded without enforcement action;

the facts the company disclosed and why, based on those facts, no action was taken, in investigations and cases concluded without enforcement action that were initiated by a company disclosure; and, for those cases resolved by non-prosecution and deferred prosecutions agreements, the reasons a particular type of agreement was chosen, its terms and duration, and how the company has satisfied or failed to satisfy those terms • The DoJ and the SEC should also be required to analyse the deterrent effect of non-prosecution and deferred prosecution agreements and the number of referrals provided to and received from other countries • Introduce a central public register of beneficial ownership • Establish and implement guidelines for restitution and compensation to victims in foreign bribery cases, including for indirect or diffuse harm.

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# COUNTRY BRIEFS: NON-OECD CONVENTION COUNTRIES

Transparency International has over the years repeatedly called on all G20 countries to adhere to the OECD Anti-Bribery Convention. In our last report in 2018, we included for the first time country briefs on four major exporting countries not parties to the convention that each had a share of world trade of over 2 per cent.<sup>1204</sup> Reports on these same four countries are included again, in view of the importance of robust enforcement by these countries, as well as other major exporters not party to the convention.

## CHINA

 Little or no enforcement

10.7% of global exports

### Investigations and cases

In the period 2016-2019, China opened no investigations, commenced no cases and concluded no cases.<sup>1205</sup>

There have been a number of investigations and enforcement actions against Chinese entities and individuals in other jurisdictions in connection with alleged bribery of foreign officials (some of these are listed in Table 2 below). As courts or regulatory bodies in relevant jurisdictions have not always adjudicated the allegations, they have not always been proven. There is no evidence that Chinese authorities have pursued action against the implicated Chinese entities and individuals in these foreign matters.

**TABLE 3: SELECTED REPORTS ON FOREIGN BRIBERY INVESTIGATIONS OR CASES CONCERNING CHINESE COMPANIES AND BUSINESSPEOPLE**

No.	Chinese company and employees	Bribery of foreign official	Brief summary	Report date	News sources
1	China Communications Construction Company (CCCC), a state-owned enterprise, China Harbour Engineering Company (CHEC), subsidiary of CCCC	Mahinda Rajapaksa (former president of Sri Lanka)	A Sri Lankan investigation was reported of bribery allegations involving China Harbour Engineering Company (CHEC). The investigation is reportedly looking into whether the company paid 149 million rupees (US\$797,000) through proxies to Rajapaksa for his re-election campaign, in return for a US\$1.4 billion deal to build a port city in Colombo. The project was reportedly suspended in 2015. In January 2018, it was reported that CHEC signed a memorandum of understanding with the Sri Lankan government on funding for the same project.	July 2015 January 2018	<a href="https://www.reuters.com/article/sri-lanka-rajapaksa/rajapaksa-comeback-bid-checked-by-sri-lanka-bribery-probe-idUSL3N1043EF20150724">https://www.reuters.com/article/sri-lanka-rajapaksa/rajapaksa-comeback-bid-checked-by-sri-lanka-bribery-probe-idUSL3N1043EF20150724</a> ; <a href="https://www.reuters.com/article/us-sri-lanka-china-portcity/china-harbour-engineering-to-invest-1-billion-in-sri-lankas-port-city-minister-idUSKBN1ER1DX">https://www.reuters.com/article/us-sri-lanka-china-portcity/china-harbour-engineering-to-invest-1-billion-in-sri-lankas-port-city-minister-idUSKBN1ER1DX</a>

2	Tang Ju and Liu Yabin, senior managers of China Roads and Bridge Construction Company, a state-owned enterprise	Highway authority officials of Kenya	Liu was accused of offering 30,000 Kenyan shillings (US\$275) and Tang of offering KS100,000 (US\$918) to Kenyan highways authority officials to avoid charges for overloaded trucks belonging to the China Roads and Bridge Construction Company. Both pleaded guilty and were fined KS380,000 (US\$3,487) by the Kenyan court.	September 2015 to October 2015	<a href="http://www.fcpablog.com/blog/2015/9/28/kenya-arrests-two-chinese-construction-company-executives-fo.html">http://www.fcpablog.com/blog/2015/9/28/kenya-arrests-two-chinese-construction-company-executives-fo.html</a> ; <a href="http://www.scmp.com/news/china/diplomacy-defence/article/1857073/two-chinese-state-firm-officials-face-bribery-charges">http://www.scmp.com/news/china/diplomacy-defence/article/1857073/two-chinese-state-firm-officials-face-bribery-charges</a> ; <a href="http://www.scmp.com/news/china/diplomacy-defence/article/1863452/managers-chinese-state-owned-enterprise-building-us38b">http://www.scmp.com/news/china/diplomacy-defence/article/1863452/managers-chinese-state-owned-enterprise-building-us38b</a>
3	David Ng Lap Seng, chairman of the Sun Kian Ip Group (Macau), member of the National Committee of the Chinese People's Political Consultative Conference	Two UN ambassadors, including former UN General Assembly president John Ashe	From 2010 to 2015, Ng paid US\$1.7m in bribes to two UN ambassadors, including John Ashe, to build a UN centre in Macau, which was never built. Ashe was charged in 2015, but was later found dead in his home from neck injuries. Ng was subject to bail of US\$50 million and convicted of bribery, conspiracy and money laundering charges by a federal court in July 2017.	October 2015 to July 2017	<a href="http://www.scmp.com/news/china/society/article/2104421/macau-billionaire-ng-lap-seng-convicted-us-jury-un-bribery-case">http://www.scmp.com/news/china/society/article/2104421/macau-billionaire-ng-lap-seng-convicted-us-jury-un-bribery-case</a> ; <a href="http://www.jiemian.com/article/394420.html">http://www.jiemian.com/article/394420.html</a> ; <a href="http://www.epochtimes.com/gb/15/10/8/n4545684.htm">http://www.epochtimes.com/gb/15/10/8/n4545684.htm</a> ; <a href="http://www.bbc.com/zhongwen/trad/china/2015/10/151007_profile_david_ng">http://www.bbc.com/zhongwen/trad/china/2015/10/151007_profile_david_ng</a> ; <a href="http://www.bbc.com/zhongwen/simp/china/2015/09/150930_macau_estate_developer_arrest">http://www.bbc.com/zhongwen/simp/china/2015/09/150930_macau_estate_developer_arrest</a>
4	Sam Pa, President of China International Fund (CIF) and China Sonangol International Ltd., and associated with over 30 companies registered to the address 88 Queensway in London	Mahmoud Thiam, former Minister of Mines and Geology, Guinea	Thiam, a US citizen and resident, was sentenced to seven years imprisonment in December 2016 for receiving and laundering US\$8.5 million in bribes from executives of China Sonangol International Ltd. and China International Fund, SA, when he was Guinean Minister of Mines and Geology in 2009-2010. In return, the Chinese companies were awarded lucrative mining rights in Guinea. Thiam was also found to have laundered the bribes by making false claims to banks in Hong Kong and the United States.	December 2016 to August 2017	<a href="https://www.justice.gov/opa/pr/former-guinean-minister-mines-sentenced-seven-years-prison-receiving-and-laundering-85">https://www.justice.gov/opa/pr/former-guinean-minister-mines-sentenced-seven-years-prison-receiving-and-laundering-85</a> ; <a href="http://www.fcpablog.com/blog/2016/12/14/former-guinea-mining-minister-charged-in-us-with-laundering.html">http://www.fcpablog.com/blog/2016/12/14/former-guinea-mining-minister-charged-in-us-with-laundering.html</a> ; <a href="http://www.p5w.net/news/gncj/201612/t20161215_1667420.htm">http://www.p5w.net/news/gncj/201612/t20161215_1667420.htm</a> ; <a href="https://theinitium.com/article/20151126-hongkong-xujinghua01/">https://theinitium.com/article/20151126-hongkong-xujinghua01/</a>
5	Patrick Ho Chi-ping, chairman of China Energy Fund Committee, and Cheikh Tidiane Gadio (former foreign minister of Senegal)	President of Chad, the Ugandan foreign minister, and President of Uganda	Ho and Gadio were arrested in New York on bribery and money laundering charges. The authorities allege bribery in the amount of US\$2.9 million to obtain business advantages including oil rights from the Chadian government for a "Shanghai-headquartered multibillion-dollar conglomerate that operates internationally in the energy and financial sectors". Arrested in 2017, Ho was denied bail. The case is expected to proceed to trial.	November 2017 to present	<a href="https://www.justice.gov/opa/press-release/file/1012531/download">https://www.justice.gov/opa/press-release/file/1012531/download</a> ; <a href="https://edition.cnn.com/2018/02/09/world/patrick-ho-corruption-china-africa/index.html">https://edition.cnn.com/2018/02/09/world/patrick-ho-corruption-china-africa/index.html</a> ; <a href="https://player.fm/series/the-china-in-africa-podcast-108224/hong-kong-millionaires-arrest-exposes-problem-of-chinese-corruption-in-africa">https://player.fm/series/the-china-in-africa-podcast-108224/hong-kong-millionaires-arrest-exposes-problem-of-chinese-corruption-in-africa</a> ; <a href="http://www.fcpablog.com/blog/2017/11/20/doj-charges-two-in-chinese-plot-to-bribe-africa-officials.html">http://www.fcpablog.com/blog/2017/11/20/doj-charges-two-in-chinese-plot-to-bribe-africa-officials.html</a> ; <a href="http://world.huanqiu.com/exclusive/2017-11/11393298.html">http://world.huanqiu.com/exclusive/2017-11/11393298.html</a> ; <a href="http://www.ntdtv.com/xtr/gb/2017/12/02/a1353388.html">http://www.ntdtv.com/xtr/gb/2017/12/02/a1353388.html</a> ;
6	China Harbour Engineering Company (CHEC)	Communication Secretary (road transport and bridges ministry) of Bangladesh government	CHEC had previously won a contract for expansion of the Dhaka-Sylhet Highway in Bangladesh. The Minister of Finance told the media that CHEC offered bribes worth 50 lakh (5 million) in an unknown currency, so officials would permit the company to misappropriate money. The officials refused the bribes and informed the government. According to the Bangladeshi Finance Minister, CHEC has been blacklisted for all government projects in Bangladesh.	January 2018	<a href="http://www.thedailystar.net/frontpage/no-job-china-harbour-future-1520917">http://www.thedailystar.net/frontpage/no-job-china-harbour-future-1520917</a> ; <a href="http://www.dailymail.co.uk/wires/afp/article-5280767/Bangladesh-blacklists-Chinese-firm-alleged-bribe.html">http://www.dailymail.co.uk/wires/afp/article-5280767/Bangladesh-blacklists-Chinese-firm-alleged-bribe.html</a> ; <a href="http://www.epochtimes.com/gb/18/1/20/n10074672.htm">http://www.epochtimes.com/gb/18/1/20/n10074672.htm</a> ; <a href="https://hk.news.appledaily.com/china/realtime/article/20180120/57730902">https://hk.news.appledaily.com/china/realtime/article/20180120/57730902</a>
7	Zhiyuan "Aaron" Cui	Officer in Charge of the Gordons Police Station Minor Crimes Unit, Papua New Guinea	Cui was charged with attempted bribery in Papua New Guinea and police are investigating whether he is running an illegal immigration scheme for workers for Chinese state-owned companies. Police were quoted saying he offered 10,000 Kina (US\$2,800) to the Officer in Charge as inducement for the police to stop ongoing investigations and release confiscated documents.	May 2018	<a href="https://www.abc.net.au/news/2018-05-07/chinese-businessman-charged-with-attempted-bribery-in-png/9733708">https://www.abc.net.au/news/2018-05-07/chinese-businessman-charged-with-attempted-bribery-in-png/9733708</a>
8	ZTE Corporation	Suspected bribes paid to foreign officials to gain advantage in	ZTE is currently under investigation for violating the settlement. Reliable news outlets have reported that the US government is investigating ZTE for possible bribes of foreign officials, involving potential	2020-present (investigation ongoing)	<a href="https://www.wsj.com/articles/u-s-probes-chinese-telecom-giant-zte-for-possible-bribery-11584130936">https://www.wsj.com/articles/u-s-probes-chinese-telecom-giant-zte-for-possible-bribery-11584130936</a> ;

the company's international operations

violations of the US Foreign Corrupt Practices Act. However, ZTE claims it has not received notices from the relevant government departments.

<https://www.reuters.com/article/us-usa-zte-justice/chinas-zte-subject-to-new-u-s-bribery-investigation-nbc-news-says-idUSKBN2102BW>

## Recent developments

There were several new developments in China's legal framework. The amendment of the Anti-Unfair Competition Law, which came into effect on 1 January 2018, defines commercial bribery as the giving of something of value to three categories of persons in order to secure a business opportunity or competitive advantage. The categories are employees of a counterparty to a transaction, any person a counterparty uses or any person who can influence a transaction. The amendment assumes vicarious liability of the company where its employees are found to have committed bribery.<sup>1206</sup> Where a business bribes another person in violation of Article 7 of the statute, income generated from the bribery will be confiscated and a fine imposed. The amended Law has increased the financial penalties from the range of RMB10,000-200,000 (US\$1,400-29,000) to the range of RMB100,000-3 million (US\$14,000-429,000).<sup>1207</sup> It further adds the possible penalty of suspension or revocation of a business licence.<sup>1208</sup> If a business operator is found to have engaged in commercial bribery and receives an administrative penalty, this will be recorded in the business operator's credit record as a matter of public record.<sup>1209</sup>

The amendment of the International Criminal Judicial Assistance (ICJA) Law came into effect on 26 October 2018. It governs mutual legal assistance (MLA) between China and foreign countries in criminal cases. No individual or entity within the Chinese territory can provide foreign countries with such evidence or assistance without the consent of the Chinese government. In 2018, the National People's Congress established an anti-corruption agency, the National Supervision Commission (NSC), the remit of which includes the bribery of foreign public officials.<sup>1210</sup>

The State-Owned Assets Supervision and Administration Commission of the State Council has promulgated regulations on supervision and management of overseas investment by central enterprises, and guiding opinions on strengthening risk prevention and control of integrity in overseas enterprises. Since 2018, the Chinese government has held many training courses with the World

Bank, Tsinghua University and other institutions focusing on corporate compliance under "The Belt and Road Initiative", as well as seminars on compliance management and other activities.

## Transparency of enforcement information

The NSC and the Communist Party of China's Central Commission for Discipline Inspection released statistics in 2019 on domestic corruption cases being investigated, and sanctions imposed, where applicable.<sup>1211</sup> However, no statistics on foreign bribery enforcement have been released. There are no statistics published in relation to MLA.

China generally publishes court cases and related information in three public databases which it maintains.<sup>1212</sup> No foreign bribery cases or enforcement actions were identified in the relevant databases, but it is unclear how comprehensive these are.

## Beneficial ownership transparency

There is no central register of beneficial ownership information in China.

Relevant provisions of the People's Bank of China include the "Notice on strengthening the identification of anti-money laundering customers" (Yin FA 2017-235) and the "Notice on the further identification of beneficial owners" (Yin FA 2018-164). Their coverage includes trust institutions and foreign corporate bodies in China. Regulatory authorities and business organisations can inquire about beneficiary information through the relevant information system of the People's Bank of China. Registration information includes the legal representative and shareholder information of the legal person.

In early 2020, the China Banking and Insurance Regulatory Commission<sup>1213</sup> adopted Interim Measures for the Equity Management of Trust Companies, which came into effect in March 2020.<sup>1214</sup> These require the equity structure of a trust company to be traced back to ultimate beneficiaries level by level. The relationship between

such parties and the controlling shareholder and actual controller must be clear and transparent.<sup>1215</sup> There are no requirements regarding the accurate record-keeping of beneficial ownership information for domestic civil trusts or for foreign legal arrangements operating in China.<sup>1216</sup>

Otherwise, current laws and regulations do not require Chinese legal entities to maintain information on beneficial ownership. The Financial Action Task Force (FATF) 2019 Mutual Evaluation Report on China notes that China is non-compliant with its beneficial ownership-related requirements.<sup>1217</sup> Basic registered information on a business operator, such as its legal owner or shareholder information, can be accessed publicly through the National Enterprise Credit Information Publicity System.<sup>1218</sup> However, this only reveals beneficial ownership information when the legal owner or shareholder and the beneficial owner are the same. Financial institutions are only required to take reasonable measures to identify beneficial ownership. FATF's 2019 report highlights the need for guidance and training to be provided to China's financial institutions and designated non-financial businesses and professions, to enhance their understanding of FATF's beneficial ownership standards.

Law enforcement agencies may gain access to information held by a legal person or its representative. However, this is of limited use, as there is no legal requirement for such persons to maintain beneficial ownership-related information.

## Inadequacies in legal framework

The inadequacies set out in the *Exporting Corruption* Report 2018 remain. The Criminal Law does not define several key terms, such as "foreign public official" and "official of an international public organisation". The 2016 UN Convention against Corruption (UNCAC) review stated that China should ensure that "the similarities of bribery of foreign and national public officials are taken into account in order to maintain necessary consistency in the criminalisation of these two types of acts".<sup>1219</sup>

While the amended Anti-Unfair Competition Law (AUCL) clarifies the liability of a business operator for the unauthorised conduct of commercial bribery by an employee, it remains silent on liability for the acts of a business operator's subsidiary where a subsidiary involved in an act of bribery was used as an agent by the parent company. There is also no legal requirement for business operators in China to

have anti-bribery compliance procedures in place, nor is it a statutory defence under either the Criminal Law or the AUCL.<sup>1220</sup>

## Inadequacies in enforcement system

There have been no significant developments since the *Exporting Corruption* Report 2018. There is no evidence of cases or investigations brought by the Chinese authorities against Chinese nationals or companies for bribery of foreign officials.<sup>1221</sup> Given the robust enforcement against domestic corruption, it would appear that priority is not given to foreign bribery enforcement. At the same time, Transparency International China reports that China faces difficulty in foreign bribery investigations, in that requests from Chinese law enforcement agencies for relevant criminal judicial assistance often fail to receive timely feedback.

The FATF 2019 report notes that the effectiveness of China's Financial Intelligence Unit to properly analyse and share intelligence relevant for law enforcement is inhibited by incomplete sharing of information, inconsistent reporting practices in relation to suspicious transaction reports, and either limited or non-existent beneficial ownership information.<sup>1222</sup>

While the FATF report rated the financial intelligence unit's co-operation with its domestic competent authorities as generally good, it notes there is a lack of international cooperation requests to foreign financial intelligence units. It is unclear whether international cooperation efforts will be hindered by the recently enacted ICJA Law and how this interplays with existing MLA agreements between China and other countries.

## Recommendations

- Establish laws and regulations requiring legal entities in China to identify, verify and maintain beneficial ownership information and to establish a beneficial ownership register allowing authorities a gateway to access such information on a timely basis
- Define and clarify key terms in Article 164 of the Criminal Law (or explicitly link them to the corresponding UNCAC definitions)
- Expand the scope of conduct covered in Article 164, in particular to explicitly cover the promising and offering of bribes, indirect bribery, and bribery committed by companies' subsidiaries, joint venture partners and agents, among others
- Eliminate the criminal threshold for foreign bribery, so law enforcement officials and prosecutors can investigate and

prosecute the offence, regardless of the value of a bribe • Substantially increase the size of penalties for violations of anti-money laundering law • Give priority to foreign bribery enforcement and allocate any additional resources required • Continue to provide training to law enforcement officials, prosecutors and judges about Article 164 and relevant UNCAC provisions, and in conducting investigations • Increase collaboration with foreign governments, Interpol and international anti-bribery organisations • Provide guidance and training to financial institutions and designated non-financial businesses and professions on beneficial ownership and ongoing due diligence • Clarify the penalties for violations of the ICJA Law and the procedure for obtaining government permission to oblige with foreign court orders.

## HONG KONG, SAR

### Little or no enforcement

2.3% of global exports

#### Investigations and cases

In the period 2016-2019, it is unknown whether Hong Kong opened any investigations. It commenced no known cases and concluded no known cases.

Several cases involving Hong Kong residents or companies were brought in the United States. Former Hong Kong Secretary for Home Affairs Patrick Ho Chi-Ping was convicted in 2019 of violations of the US Foreign Corrupt Practices Act (FCPA) for his role in a multi-year, multi-million-dollar scheme to bribe top officials of Chad and Uganda in exchange for business advantages for **CEFC China Energy Company**.<sup>1223</sup> Former **Goldman Sachs** Southeast Asia Chairman Tim Leissner, who had a base in Hong Kong, pleaded guilty in 2018 to FCPA violations in connection with the Malaysian 1MDB scandal.<sup>1224</sup> The violations involved the transfer of funds through a Hong Kong bank account in the name of a holding company.<sup>1225</sup> According to an order by the US Securities and Exchange Commission (SEC) in 2019, Leissner, "in coordination with other Goldman Sachs senior executives, authorised and paid bribes and kickbacks to government officials in Malaysia and...

Abu Dhabi in order to secure lucrative business for Goldman Sachs".<sup>1226</sup> Hong Kong's financial regulator banned him from re-entering the industry for life and the SEC took a similar step.<sup>1227</sup> A Hong Kong Goldman Sachs executive resident in Hong Kong was also charged. **Credit Suisse (Hong Kong)**, a Hong Kong-based subsidiary of the **Credit Suisse Group AG (CSAG)**, reached a resolution with the US Department of Justice in 2018 and agreed to pay a US\$47 million criminal penalty for its role in a scheme to corruptly win banking business by awarding employment to friends and family of Chinese officials.<sup>1228</sup>

#### Recent developments

Several reforms have been enacted to help align Hong Kong's system with Financial Action Task Force (FATF) standards.<sup>1229</sup> Since 1 March 2018, a number of additional Hong Kong businesses and professions have been subject to enhanced customer due diligence and record-keeping obligations under Hong Kong anti-money laundering legislation.<sup>1230</sup> In December 2018, the Hong Kong Monetary Authority issued a circular to the financial industry recommending standards for the prevention and management of risks of misconduct, including a whistleblowing policy and training programmes.<sup>1231</sup> Amendments introduced in 2019 to the rules on stock exchange listings aim to limit the misuse of listed companies for "backdoor" listings and to restrict the creation of shell companies.<sup>1232</sup>

In October 2019, a proposed extradition bill that would have permitted the transfer of individuals suspected of criminal activity, including bribery offences, to mainland China for investigation and prosecution was formally withdrawn.<sup>1233</sup>

#### Transparency of enforcement information

The Independent Commission Against Corruption (ICAC) publishes statistics on the number of prosecutions and reports of corruption, as well as notable corruption-related investigations and cases.<sup>1234</sup> Otherwise, data on foreign bribery enforcement is difficult to locate, as Hong Kong has no centralised database or press release outlet on foreign corruption enforcement. Hong Kong does not publish statistics on mutual legal assistance (MLA) requests made or received.

Court decisions and case resolutions which are significant as precedents on points of law,

procedure, court practice and the public interest are reported in full and made available to the public through the judiciary's official website.<sup>1235</sup>

## Beneficial ownership transparency

There is no central register of beneficial ownership of companies or trusts. However, the Companies Ordinance was amended in 2018 to require companies incorporated in Hong Kong to identify persons who exercise significant control, and to maintain a significant controllers' register (SCR).<sup>1236</sup> While the ordinance does not require SCRs to be publicly available, they must be accessible to law enforcement officers on demand.<sup>1237</sup> SCRs must be kept at the company's registered office or a prescribed place in Hong Kong, in either hard copy or electronic form.<sup>1238</sup> Trusts are also required to meet these requirements, although beneficiaries with less than a 25 per cent stake are not identified as beneficial owners.<sup>1239</sup> Companies listed on the Hong Kong stock exchange are exempt, as they are subject to more stringent disclosure requirements.<sup>1240</sup> Foreign companies are also exempt.

## Inadequacies in legal framework

Hong Kong's Prevention of Bribery Ordinance (POBO) still has no specific offence of bribery of foreign public officials. Instead, this crime is dealt with through the offence of corrupt transactions with agents, as Hong Kong courts have broadly interpreted the term "agent" to include foreign public officials.<sup>1241</sup> However, the POBO only applies if the offer of a bribe is made in Hong Kong.<sup>1242</sup> This means that Hong Kong enforcement authorities have no grounds to prosecute a person or entity for bribing foreign government officials outside Hong Kong.

Hong Kong has no specific legislation protecting or rewarding whistleblowers, in either the public or the private sector.

The POBO does not include strict liability offences for companies for failure to prevent bribery, as under the UK Bribery Act. Hong Kong courts are willing to find corporate entities liable under common law, in particular under the "identification principle", which holds a corporate entity liable for the acts of officers in control of the entity. The identification principle has been criticised as unsuitable to the modern realities of multinational corporations, in which complex corporate structures make it difficult to identify a single decision-maker

with the requisite criminal intent. The POBO does not address liability of a company for the acts of its subsidiaries. Liability is subject to the general rules of attribution, which refer to whether or not the acts of a subsidiary can be attributed to the mind or direction of the parent.<sup>1243</sup>

Penalties are inadequate, especially in relation to corporate entities. There is no specific regime for recovery against corporate entities, nor is there a formal scheme in place to ban convicted corporate entities from participating in public procurement processes.<sup>1244</sup>

## Inadequacies in enforcement system

Money laundering continues to be a high risk for Hong Kong, as highlighted by the Tim Leissner case. The government's own review rated the city's overall money laundering threats and vulnerabilities as "medium-high", with the banking sector in particular facing a "high" risk.<sup>1245</sup> Hong Kong has not prosecuted any legal persons for money laundering.

As Hong Kong has no foreign bribery offence, an MLA request relating to foreign bribery may not satisfy the dual criminality requirement for coercive MLA unless the underlying conduct constitutes a crime under Hong Kong law.<sup>1246</sup> The 2019 FATF Mutual Evaluation Report on Hong Kong noted that the low number of outgoing MLA requests does not reflect Hong Kong's risk profile.<sup>1247</sup>

## Recommendations

- Become a party to the OECD Anti-Bribery Convention
- Expand the coverage of beneficial ownership of trusts by requiring that all beneficiaries of a trust with nexus to Hong Kong are identified and the information can be accessed
- Establish laws that clearly prohibit Hong Kong persons and entities from engaging in corrupt practices overseas, including bribery of foreign public officials
- Define "foreign public officials" in POBO and other applicable laws
- Establish a robust legal framework addressing whistleblower protection
- Establish laws that expressly address liability of legal persons
- Establish laws that expressly prescribe foreign bribery-related sanctions
- Criminalise the failure of companies to prevent bribery
- Continue efforts at monitoring the newly introduced SCR and to adequately address any legal gaps that may arise
- Increase enforcement efforts, including through the ICAC and collaborative initiatives with foreign governments and other international anti-bribery organisations.

# INDIA

## Little or no enforcement

### 2.1% of global exports

### Investigations and cases

In the period 2016-2019, India initiated no investigations of foreign bribery, commenced no cases and concluded no cases.

### Recent developments

The office of *Lokpal* (the Ombudsman) became functional in 2019 with the appointment of the first *Lokpal*.<sup>1248</sup> This is the first institution of its kind in independent India, established under the Lokpal and Lokayuktas Act, 2013 to investigate allegations of corruption against public officials.<sup>1249</sup>

Pursuant to amendments to the Prevention of Corruption Act passed in July 2018, persons who pay bribes can be penalised as those principally responsible for instigating a bribe, not merely as abettors. It is now an offence punishable by up to seven years in prison to give or offer an “undue advantage” to another person, with the intention to “induce” or “reward” a public servant to improperly perform a public duty.<sup>1250</sup> A mere promise, coupled with the requisite intention, is sufficient to constitute the offence of bribe-giving. The intended bribe recipient need not accept the “undue advantage” offered.

Under the Companies Act, 2013, company management can be held liable for corrupt practices committed by the director. As per the amended Prevention of Corruption Act of India, an offence committed by an employee, agent or subcontractor of a commercial organisation shall be presumed to have been performed on behalf of the organisation, unless proven to the contrary.

In 2019, the Ministry of Corporate Affairs issued a notification to amend the Companies (Significant Beneficial Owners) Rules. The rules were formulated under section 90 of the Companies Act, 2013, which provides the disclosure requirements for significant beneficial owners in a company.

### Transparency of enforcement data

The Indian government does not publish any statistics on foreign bribery enforcement, nor does it provide such statistics on request. However, enforcement agencies do release some general enforcement statistics.

The Central Bureau of Investigation (CBI) is the main investigating and prosecuting agency of India.<sup>1251</sup> It publishes information related to the First Information Report, number of charge sheets filed and the outcome of cases investigated and prosecuted by the CBI.<sup>1252</sup> The Central Vigilance Commission also publishes data in annual reports.<sup>1253</sup> The Indian government does not publish any statistics on mutual legal assistance requests made or received. Decisions of the Supreme Court of India are published on a government website.<sup>1254</sup>

### Beneficial ownership transparency

Beneficial ownership information is contained in an online public register of company documents maintained by the Ministry of Corporate Affairs.<sup>1255</sup> The Companies (Amendment) Act, 2017 introduced the concepts of “beneficial interest in shares” and “significant beneficial owner” under sections 89 and 90 of the Companies Act, 2013, with a view to promoting corporate transparency and preventing misuse of corporate vehicles for illicit purposes, such as corruption, tax evasion and money laundering.<sup>1256,1257</sup> The Amendment Rules came into force in February 2019. Anyone who knows the name of a company can access documents including beneficial ownership declaration forms by paying a nominal fee.

Section 90 of the Companies Act, 2013 provides that every “significant beneficial owner” is required to make a declaration to the company specifying the nature of their interest and other particulars, in the prescribed manner. Under the amended rules, a “significant beneficial owner” is one owning not less than 10 per cent of shares or voting rights, or who has the right to participate in not less than 10 per cent of dividends in a financial year, or who has the right to exercise or actually exercises, significant influence or control, in any manner other than through direct holdings alone.<sup>1258</sup>

### Inadequacies in legal framework

Although India has been a party to the UN Convention against Corruption since 2011, it has yet

to meet the Article 16 obligation to define and criminalise foreign bribery. The country's legal framework also suffers from other shortcomings which affect its capacity to prevent and prosecute foreign bribery. The G20 has repeatedly encouraged its member countries, including India, to ratify the OECD Anti-Bribery Convention.<sup>1259</sup>

The Companies Act, 2013 has a greater focus on transparency, accountability and corporate governance than the previous Companies Act, 1956. It obliges companies to keep "true and fair accounts" and requires an improvement in the transparency of company ownership. The Act also prohibits companies from recording payments with an "illegal purpose" as expenses and imposes significant sanctions for doing so. Penalties include blacklisting offending companies and other penal actions provided for in the Indian Penal Code. However, it is not certain whether bribing a foreign public official would be considered an illegal purpose under the 2013 Act.

Listed companies, companies which accept deposits from the public, and companies which have borrowed money from banks and public financial institutions in excess of fifty crore (500 million) rupees (US\$6.7 million) are required to establish a vigilance mechanism for directors and employees to report their genuine concerns about unethical behaviour, misconduct or corruption.<sup>1260</sup> In reality, these provisions are minimal and ineffective.

The Whistleblowers Protection Act, 2014 affords protection to a "person or public servant".<sup>1261</sup> This is a wide ambit, because "public servant" has been defined broadly and the meaning of "person" is also not limited in the Act.<sup>1262</sup> However, the Act is not operational, as rules are yet to be framed by the central government.<sup>1263</sup>

### Inadequacies in enforcement system

As foreign bribery is not yet criminalised in India, the adequacy of the enforcement system in relation to the specific offence cannot be assessed. However, certain shortcomings in the enforcement system evident from current enforcement of domestic corruption regulations suggest reason for concern over foreign bribery enforcement. While the Indian Penal Code and Prevention of Corruption Act prescribe criminal and civil liability for domestic corruption, the reality is that actions taken against the perpetrators have been rare.

There are multiple agencies in India involved in investigation of cases related to corruption and

fraud, and coordination among agencies is seen as the biggest challenge in the timely prosecution of offenders.

High-profile investigations are delayed due to political interference. The Indian investigating agencies are short-staffed and many lack the skills to investigate white-collar crime and other economic offences. The investigation of transnational crimes, especially those linked with corruption and money laundering, are delayed due to lack of timely coordination with foreign investigating agencies. This has long been an area of concern, but remains unaddressed to date.

### Recommendations

- Become a party to the OECD Anti-Bribery Convention
- Pass legislation criminalising foreign bribery
- Extend coverage of whistleblower protection to the private sector
- Enforce against foreign bribery to the extent possible under existing legislation.

## SINGAPORE

### Little or no enforcement

**1.8% of global exports**

### Investigations and cases

In the period 2016-2019, Singapore opened at least one investigation, commenced no cases and concluded one foreign bribery case with sanctions.

In 2018, Singapore's Attorney General reportedly requested evidence through mutual legal assistance (MLA) from relevant foreign authorities for use in its investigations and those of the Corrupt Practices Investigation Bureau (CPIB) into individuals involved in the alleged corrupt conduct of Singapore-based shipbuilder **Keppel Offshore & Marine Ltd (Keppel)**.<sup>1264</sup> In 2017, Keppel and its US subsidiary reached a settlement with Singapore's Attorney General's Chambers (AGC), the US Department of Justice and the Public Prosecutor's Office in Brazil. The two companies jointly agreed to pay a combined total penalty of more than US\$422 million to resolve charges with authorities in the United States, Brazil and Singapore, arising out of a decade-

long scheme to pay millions of dollars in bribes to officials in Brazil. Singapore will receive 25 per cent of the penalty paid.<sup>1265</sup> The CPIB issued Keppel a “conditional warning”.<sup>1266</sup>

In July 2019, the Singapore police announced that the country was returning to Malaysia SG\$50 million (US\$35 million) in funds seized in connection with an investigation into a transnational money-laundering case by the Monetary Authority of Singapore (MAS) regarding the Malaysian state investment fund **1MDB**.<sup>1267</sup> Several major banks and individuals have been charged and fined for their roles in the case.<sup>1268</sup>

Also in 2019, the Attorney General’s Office reported that the prosecution service secured the first conviction of a foreign accused person based overseas, who had set up shell companies and corporate bank accounts in Singapore for the purposes of money laundering.<sup>1269</sup>

In other jurisdictions, in the UK, the Serious Fraud Office (SFO) started criminal proceedings against **Unaoil Ltd** and **Unaoil Monaco** in mid-2018, in relation to alleged corrupt payments to secure the award of a contract worth US\$733 million for **Leighton Contractors Singapore PTE Ltd** to build two oil pipelines in southern Iraq.<sup>1270</sup> In 2018, the Central Bureau of Investigation (CBI) in India commenced investigations into allegations that unnamed public servants and others entered into a conspiracy with a private airline to expedite action by officials at the Ministry of Civil Aviation in an approval process and change in aviation policies to suit that company.<sup>1271</sup> According to media reports, AirAsia India had engaged HNR Trading PTE Ltd, a Singapore-registered entity to assist its “regulatory and corporate affairs liaising”. One news report said the CBI filed a First Information Report stating “During 2015-16, AirAsia remitted about Rs12.28 crore [US\$1.7 million] to M/s HNR Trading Ltd, Singapore (co-accused) for a sham contract on the basis of a bogus agreement on plain papers, which was utilised for paying bribe to unknown public servants of Indian government and others for securing permit for operation of international scheduled air transport services [sic]”.<sup>1272</sup> AirAsia Group Bhd has denied the allegations.

## Recent developments

The MAS has increased its focus on money laundering. As a leading financial centre and fintech hub, Singapore is vulnerable to money laundering, with large cross-border flows and the use of

Singapore-based shell firms to evade detection.<sup>1273</sup> The MAS has been getting tougher with banks since 2016 and has levied nine separate fines for non-compliance, totalling SG\$28.5 million (US\$21 million).<sup>1274</sup> In early 2020, it imposed a SG\$400,000 (US\$289,000) penalty on accounting firm **TMF Trustees Singapore Limited** for its failure to comply with anti-money laundering requirements.

From May 2020, Singapore’s Accounting and Corporate Regulatory Authority (ACRA) has required all companies, foreign companies and Limited Liability Partnerships, unless exempted, to lodge beneficial ownership (controller) information in their Registers of Registrable Controllers with ACRA’s online filing and information retrieval system.

The Financial Action Task Force (FATF) issued a Follow-Up Report on Singapore in 2019.<sup>1275</sup> It found that some of the deficiencies identified in its 2016 report were addressed, but some remain, including inadequate customer due diligence requirements applicable to casinos and real-estate agents, and a lack of reporting obligations required of real-estate agents.

Amendments to Singapore’s Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act came into effect on 1 April 2019. The amendments subject legal persons to confiscation of SG\$1 million (US\$737,900) or twice the value of the property involved, the benefit from drug dealing or the benefit from criminal conduct, whichever is higher. According to FATF’s 2019 report, the fines now available for legal persons are sufficiently dissuasive.

## Transparency of enforcement data

The Singapore government does not publish statistics on its foreign bribery enforcement. However, crime statistics are produced by the police and the Ministry of Home Affairs.<sup>1276</sup> The Singapore government does not publish updated statistics on MLA requests made and received and responses provided. However, the Attorney General Chambers’ 2019 Annual Report states that it handled a total of 1,243 MLA and extradition matters in 2019.<sup>1277</sup>

All Singapore Supreme Court judgments are published in full.<sup>1278</sup> Selected latest judgments issued by the Singapore state court are published on its website and are available for three days from the date of posting.<sup>1279</sup> Thereafter, users are redirected to LawNet, run by the Singapore

Academy of Law, for civil and criminal case judgments.<sup>1280</sup>

## Beneficial ownership transparency

Singapore now has a central register of companies' beneficial ownership information, maintained by ACRA, which is accessible to agencies in Singapore, such as law enforcement, but not to the public.<sup>1281</sup> This is in addition to the existing requirement, in force since March 2017, for companies, including foreign companies, and Limited Liability Partnerships to maintain beneficial ownership information at registered office addresses, in the form of a Register of Registrable Controllers.<sup>1282</sup> A controller is defined as someone who has either significant interest or significant control over the company. This is defined at the 25 per cent threshold recommended by FATF. In general, the controller can be either an individual or an entity (such as a corporate shareholder). The new ACRA requirement does not apply to trusts.

## Inadequacies in legal framework

There is no definition of foreign public officials under the Prevention of Corruption Act (PCA), and Singapore has no other specific legislation on corruption committed by foreign public officials. It is of concern that the PCA does not apply to some individuals acting for or on behalf of delinquent corporations, such as the board of directors, senior management and agents. A company can only be found legally liable if the employee involved in bribery is established to be a "controlling mind", i.e. a senior executive of the company.<sup>1283</sup> In addition, the extraterritorial element of the law applies only to Singaporean citizens, not Singaporean companies.<sup>1284</sup>

Penalties for bribery are either a fine not exceeding SG\$100,000 (US\$70,000) or imprisonment for up to five years (private-sector bribery) or seven years (public-sector bribery), or both. This maximum fine is too low, given that bribes in recent years have amounted to millions of US dollars. The UN Convention against Corruption (UNCAC) first cycle review of Singapore in 2015 stated that "the reviewers welcome indications by Singapore that it is considering amending the PCA to distinctly provide for, and increase, the maximum penalties applicable to legal persons in corruption cases, an indirect consequence of which would be to further clarify the separate liability of entities and principals

engaging in acts of corruption".<sup>1285</sup> This has yet to occur.

Singapore does not have dedicated legislation on whistleblower protection, including for reporting on corporate crimes. However, the CPIB makes a commitment to keep a complainant's identity confidential. The UNCAC first cycle review of Singapore recommended that Singapore "consider further expanding measures to protect reporting persons against unjustified treatment (art. 33)".<sup>1286</sup>

## Inadequacies in enforcement system

Enforcement of laws that can be applied to bribery of foreign public officials remains low. Reasons given for this by commentators are, among other things, that the authorities give priority to prosecuting domestic corruption and there are difficulties in securing evidence in foreign bribery cases.<sup>1287</sup> While Singapore introduced deferred prosecution agreements (DPAs) with the passing of the Criminal Justice Reform Bill in 2018, to date it has not used the process.

## Recommendations

- Become a party to the OECD Anti-Bribery Convention
- Make public information on investigations and cases and the beneficial ownership information contained in the Registers of Registrable Controllers
- Define "foreign public officials" in the PCA and other applicable laws and broaden the scope of the PCA to include such individuals and third parties retained by corporations, who are involved in corrupt practices committed overseas
- Establish laws that clearly prohibit Singaporean persons and entities from engaging in corrupt practices overseas
- Expand the extra-territorial reach of the PCA so that the law can apply to non-Singaporeans who commit corrupt practices overseas where they are agents of a Singaporean company, or who have a Singaporean nexus
- Strengthen criminal penalties under the PCA and other applicable anti-corruption laws
- Enact overarching legislation to protect whistleblowers
- Make greater use of alternatives to judicial proceedings, such as DPAs and non-prosecution agreements, in combatting corrupt practices
- Increase collaboration with foreign governments, Interpol and other international anti-bribery organisations.



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# METHODOLOGY

In *Exporting Corruption*, Transparency International places OECD Convention countries in one of four categories showing their level of enforcement of the convention in the period 2016-2019 (the previous report covered 2014-2017):

- + **Active enforcement**
- + **Moderate enforcement**
- + **Limited enforcement**
- + **Little or no enforcement.**

“Active enforcement” reflects a major deterrent to foreign bribery. “Moderate enforcement” shows encouraging progress, but still insufficient deterrence, while “Limited enforcement” indicates some progress, but only little deterrence. Where there is “Little or no enforcement”, there is no deterrence.

Transparency International takes into account two factors to categorise the OECD Convention countries according to enforcement level:

- + **Different enforcement activities and point system weighting**
- + **Share of world exports.**

## **Factor 1: Different enforcement activities and point system weighting**

Each country is evaluated based on its enforcement activities, in terms of effort and commitment to enforcement, as well as deterrent effect, via investigations, filing charges to commence cases and concluding cases with sanctions. Cases concluded without sanctions are not counted. Commencing or concluding a major case<sup>1288</sup> is considered to involve more effort and deterrence. Concluding a major case with substantial

sanctions<sup>1289</sup> is considered to involve the most effort and deterrence.

The weighted scores for the different degrees of enforcement are as follows:

- + **for commencing investigations – 1 point**
- + **for commencing cases – 2 points**
- + **for commencing major cases – 4 points**
- + **for concluding cases with sanctions – 4 points**
- + **for concluding major cases with substantial sanctions – 10 points**

The date of commencement of a case is when an indictment or a civil claim is received by the court. Prior to that, it is counted as an investigation.

This point system reflects two factors: 1) the level of effort required by different enforcement actions, and 2) their deterrent effect. Based on expert consultations, it was agreed that concluding a major case with substantial sanctions requires the greatest effort and has the greatest deterrent effect of any enforcement efforts. Likewise, commencing a case requires more effort and has greater deterrent effect than launching an investigation. Therefore, it was agreed to differentiate and give extra points to these different enforcement levels.

For the purposes of this report, foreign bribery cases and investigations include civil and criminal cases and investigations, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or violations of accounting and disclosure requirements. These cases and investigations concern active bribery of foreign public officials, not bribery of domestic officials by foreign companies.

Cases and investigations involving multiple corporate or individual defendants, or multiple

charges, are counted as one if they are commenced as a single proceeding. If, during the course of a proceeding, cases against different defendants are separated, they may be counted as separate concluded cases.

Cases brought on behalf of European Union institutions or international organisations are not counted – for example, in Belgium and Luxembourg. These are cases identified and investigated by European Union bodies and referred to domestic authorities.

## Factor 2: Share of world exports

The underlying presumption is that the prevalence of foreign bribery is roughly in proportion to export activities and that exporting countries can be compared. Transparency International recognises that the potential for foreign bribery could be affected by factors other than the level of world exports, such as foreign investment, a country’s culture of business ethics, and corruption risks in specific industry sectors and economies. As reliable country-by-country information for most of these factors is not currently available, an inclusion of these variables in the weighting scheme was not deemed possible. However, Transparency International will continue to explore possibilities for improving this methodology.

Thresholds for enforcement categories are based on a country’s average percentage of world exports over a four-year period, using annual data on share of world exports provided by the OECD.

## Calculation of enforcement category

Each country collects enforcement points through its enforcement actions. The sum of these points is multiplied by the average of the country’s share of world exports during the four-year period assessed.

To enter the categories of “Active enforcement”, “Moderate enforcement” or “Limited enforcement”, a country’s result has to reach the pre-defined threshold of the particular enforcement category (“Minimum points required for enforcement levels”, indicated below in green). If the result is below the “Limited enforcement” threshold, the country is classified in the “Little or no enforcement” category.

The thresholds for each per cent share of world exports are as follows: 40 points for the “Active enforcement” category, 20 points for the “Moderate enforcement” category, and 10 points for the “Limited enforcement” category. A country that has a 1 per cent share in world exports but collects less than 10 points through its enforcement activities is placed in the “Little or no enforcement” category. The table below gives examples of thresholds of enforcement categories based on share of world exports.

In addition to the necessary point scores, for a country to be classified in the “Active enforcement” category, at least one major case with substantial sanctions needs to have been concluded during the past four years. In the “Moderate enforcement” category, at least one major case needs to have been commenced or concluded in the past four years.

## CALCULATION OF ENFORCEMENT

Share of world exports \ Enforcement Categories	0.5%	1%	2%	4%
Active enforcement	20	40	80	160
Moderate enforcement	10	20	40	80
Limited enforcement	5	10	20	40
Little or no enforcement	<5	<10	<20	<40

For example, Argentina has a 0.4 per cent share of world exports. This percentage multiplied by 40, by 20 and by 10 renders the following thresholds: 16 points to be in the “Active enforcement” category, 8 points for the “Moderate enforcement” category, and 4 points for the “Limited enforcement” category.

## Differences between Transparency International and OECD Working Group on Bribery Reports

Transparency International’s report differs from the OECD Working Group on Bribery (WGB) reports in several key respects. Transparency International’s report is broader in scope than the WGB’s, as Transparency International covers investigations, commenced cases and convictions, settlements or other dispositions of cases that have become final, and in which sanctions were imposed. However, the WGB covers only convictions, plea agreements, settlements and sanctions in administrative and civil actions. Transparency International uses a broader definition of foreign bribery cases, covering cases where foreign bribery is the underlying issue, whether brought under laws dealing with

corruption, money laundering, tax evasion, fraud or violations of accounting or disclosure requirements. The WGB covers only foreign bribery cases. Its report is based on data supplied directly by the government representatives who serve as members of the WGB. Transparency International uses data supplied to its experts by government representatives, as well as media reports.

Transparency International selects corporate or criminal lawyers who are experts in foreign bribery matters to assist in the preparation of the report. They are primarily local lawyers selected by Transparency International national chapters. The questionnaires are filled in by the experts and are reviewed by lawyers in the Transparency International Secretariat. The Secretariat provides the country representatives of the OECD WGB with an advanced draft of the full report, for their comment. The draft is further reviewed by the experts and the Transparency International Secretariat after the country representatives provide feedback.

To enable comparison between the results in 2018 and in this 2020 report, we include here the scoring results from the 2018 report.

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**TABLE 4: INVESTIGATIONS AND CASES (2014- 2017)**

Country	% Share of exports Average 2014-2017*	Investigations commenced (weight of 1)				Major cases commenced (weight of 4)				Other cases commenced (weight of 2)			
		2014	2015	2016	2017	2014	2015	2016	2017	2014	2015	2016	2017
<b>Active Enforcement (7 countries) 27% global exports</b>													
United States	9.8	17	3	8	4	2	0	1	3	2	3	1	1
Germany	7.7	11	13	8	8	1	3	0	1	1	4	3	0
United Kingdom	3.7	6	3	8	19	2	3	1	1	0	1	1	0
Italy	2.7	3	3	11	10	1	0	1	3	7	0	3	1
Switzerland	2.0	27	61	27	/	1	0	0	0	0	0	0	2
Norway	0.7	0	2	0	1	1	0	0	0	1	0	0	0
Israel	0.4	1	6	2	4	0	0	1	0	0	0	0	0
<b>Moderate Enforcement (4 countries) 3.8% global exports</b>													
Australia	1.2	4	4	7	4	0	1	0	1	0	0	0	0
Sweden	1.1	0	4	3	0	0	0	0	2	0	1	0	0
Brazil	1.1	2	3	2	2	1	0	0	0	0	0	0	0
Portugal	0.4	2	2	0	0	0	0	1	0	0	0	0	0
<b>Limited Enforcement (11 countries) 12.3% global exports</b>													
France	3.5	16	8	8	8	0	0	0	1	0	0	0	0
Netherlands	3.1	0	1	3	3	0	0	0	0	0	0	1	1
Canada	2.3	0	0	0	0	2	1	0	0	0	0	1	0
Austria	1.0	0	0	0	0	0	0	0	2	0	0	0	0
Hungary**	0.5	0	2	3	2	0	0	0	0	0	2	2	2
South Africa**	0.5	15	0	0	0	0	0	0	0	0	0	0	0
Chile**	0.4	0	2	2	7	0	0	0	0	0	0	0	0
Greece**	0.3	3	2	0	1	0	0	0	0	1	0	1	0
Argentina**	0.3	0	1	3	5	0	0	0	0	0	0	0	0
New Zealand**	0.2	1	3	2	2	0	0	0	0	0	0	0	0
Lithuania	0.2	0	0	2	0	0	0	0	0	0	0	0	0
<b>Little or No Enforcement (22 countries) 39.6% global exports</b>													
China***	10.8	0	0	0	0	0	0	0	0	0	0	0	0
Japan	3.8	0	0	0	0	1	0	0	0	0	0	0	0
South Korea	3.0	0	0	0	1	0	1	0	0	0	0	0	0
Hong Kong***	2.8	0	0	0	0	0	0	0	0	0	0	0	0
Singapore***	2.3	0	0	0	0	0	0	0	0	0	0	0	0
India***	2.1	0	0	0	0	0	0	0	0	0	0	0	0
Spain	1.9	2	2	1	1	1	0	0	0	0	0	1	0
Mexico	1.9	1	2	0	0	0	0	0	0	0	0	0	0
Russia	1.9	0	0	0	0	0	0	0	0	0	0	0	0
Belgium	1.8	1	0	1	4	0	0	0	0	0	1	0	0
Ireland	1.6	0	0	0	0	0	0	0	0	0	0	0	0
Poland	1.2	0	0	0	0	0	0	0	0	0	0	0	0
Turkey	0.9	0	0	0	0	0	0	0	0	0	0	0	0
Denmark	0.8	0	1	4	1	0	0	0	0	0	0	0	0
Czech Republic	0.7	0	1	0	0	0	0	0	0	0	0	0	0
Luxembourg	0.6	0	0	0	0	0	0	0	0	0	0	0	0
Slovakia	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Finland	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Colombia	0.2	0	0	0	1	0	0	0	0	0	0	0	0
Slovenia	0.2	1	0	0	0	0	0	0	0	0	0	0	0
Bulgaria	0.1	0	0	0	0	0	0	0	0	0	0	0	0
Estonia	0.1	0	0	0	0	0	0	0	0	0	0	0	0

Country	Major cases concluded with subst. sanctions (weight of 10)				Other cases concluded with sanctions (weight of 4)				Total points	Minimum points required for enforcement levels depending on share of world exports		
	2014	2015	2016	2017	2014	2015	2016	2017	Past 4 years	Active	Moderate	Limited
<b>Active Enforcement (7 countries) 27% global exports</b>												
United States	16	8	30	12	8	7	10	7	858	392	196	98
Germany	2	2	1	1	11	12	9	11	308	308	154	77
United Kingdom	2	1	2	4	1	0	1	0	166	148	74	37
Italy	2	0	1	0	0	1	1	1	111	108	54	27
Switzerland	1	0	2	1	4	0	1	2	191	80	40	20
Norway	1	0	0	1	1	0	0	0	33	28	14	7
Israel	0	0	1	0	0	0	0	0	27	16	8	4
<b>Moderate Enforcement (4 countries) 3.8% global exports</b>												
Australia	0	0	0	1	0	0	0	0	37	48	24	12
Sweden	0	0	0	0	0	2	0	1	29	44	22	11
Brazil	0	0	1	0	0	0	0	0	23	44	22	11
Portugal	0	0	0	0	0	0	0	0	8	16	8	4
<b>Limited Enforcement (11 countries) 12.3% global exports</b>												
France	0	0	1	0	0	0	0	1	58	140	70	35
Netherlands	1	0	1	1	0	0	1	0	45	124	62	31
Canada	0	0	0	1	0	0	0	0	24	92	46	23
Austria	0	1	0	0	0	0	0	0	18	40	20	10
Hungary**	0	0	0	0	0	0	1	0	23	20	10	5
South Africa**	0	0	0	0	0	0	0	0	15	20	10	5
Chile**	0	0	0	0	0	1	0	0	15	16	8	4
Greece**	0	0	0	0	0	0	0	0	10	12	6	3
Argentina**	0	0	0	0	0	0	0	0	9	12	6	3
New Zealand**	0	0	0	0	0	0	0	0	8	8	4	2
Lithuania	0	0	0	0	0	0	0	0	2	8	4	2
<b>Little or No Enforcement (22 countries) 39.6% global exports</b>												
China***	0	0	0	0	0	0	0	0	0	423	216	108
Japan	0	1	0	0	0	0	0	0	14	152	76	38
South Korea	0	0	0	0	5	0	1	0	29	120	60	30
Hong Kong***	0	0	0	0	0	0	0	0	0	112	56	28
Singapore***	0	0	0	1	0	0	0	0	10	92	46	23
India***	0	0	0	0	0	0	0	0	0	84	42	21
Spain	0	0	0	0	0	0	0	1	16	76	38	19
Mexico	0	0	0	0	0	0	0	0	3	76	38	19
Russia	0	0	0	0	0	0	0	0	0	76	38	19
Belgium	0	0	0	0	0	1	1	0	16	72	36	18
Ireland	0	0	0	0	0	0	0	0	0	64	32	16
Poland	0	0	0	0	1	1	0	0	8	48	24	12
Turkey	0	0	0	0	0	0	0	0	0	36	18	9
Denmark	0	0	0	0	0	0	0	0	6	32	16	8
Czech Republic	0	0	0	0	0	0	0	0	1	28	14	7
Luxembourg	0	0	0	0	0	0	1	0	4	24	12	6
Slovakia	0	0	0	0	0	0	0	0	0	16	8	4
Finland	0	0	0	0	0	0	0	0	0	16	8	4
Colombia	0	0	0	0	0	0	0	0	1	8	4	2
Slovenia	0	0	0	0	0	0	0	0	1	8	4	2
Bulgaria	0	0	0	0	0	0	0	0	0	4	2	1
Estonia	0	0	0	0	0	0	0	0	0	4	2	1

\* OECD figures

\*\*Without any major case commenced during the past four years a country does not qualify as being a moderate enforcer, and without a major case with substantial sanctions being concluded in the past four years a country does not qualify as being an active enforcer

\*\*\*Non-OECD Convention country.

# NATIONAL AND REGIONAL EXPERTS

Country/ Region	National experts
<b>Argentina</b>	Jose David Bisillac, Coordinator of the Area of Transparency and Fight against Corruption, <i>Poder Ciudadano</i> German Cosme Emanuele, Director of the Area of Transparency and Fight against Corruption, <i>Poder Ciudadano</i>
<b>Australia</b>	Felicity Kirk, International Pro Bono, Ropes & Gray
<b>Austria</b>	Ksenia Koroleva, Associate, Latham & Watkins Dr. Alexander Picker, Member of the Board of Directors, Transparency International - Austrian Chapter Luca Mak, Executive Director, Transparency International – Austrian Chapter
<b>Belgium</b>	Pierre-Axel Aberg and Evelyne Girio, Latham & Watkins Guido De Clercq, Chief Executive Officer, Transparency International Belgium
<b>Brazil</b>	Bruno Maeda, Lawyer, Maeda, Ayres & Sarubbi Advogados Muriel Sotero, Lawyer, Maeda, Ayres & Sarubbi Advogados Lorena Faria, Lawyer, Maeda, Ayres & Sarubbi Advogados Guilherme France, Research Coordinator, Transparencia Internacional Brasil Vinicius Reis, Researcher, Transparencia Internacional Brasil
<b>Bulgaria</b>	Ecaterina Camenscic, Programme Coordinator, Transparency International Bulgaria
<b>Canada</b>	Jennifer Quaid, Professor, University of Ottawa James Cohen, Executive Director, Transparency International Canada Amee Sandhu, Lawyer, Lex Integra
<b>Chile</b>	Michel Figueroa Mardones, Research Director, Chile Transparente Francisca González Mozo, Project Coordinator, Chile Transparente
<b>Colombia</b>	Andrés Hernandez, Executive Director, Corporación Transparencia por Colombia Ana Paulina Sabbagh Acevedo, Consultant, Transparencia por Colombia Bibiana Andrea Clavijo Romero, Consultant, Transparencia por Colombia

<b>Costa Rica</b>	Juan Carlos Astúa, Member, Costa Rica Íntegra Evelyn Villarreal Fernández, Member, Costa Rica Íntegra
<b>Czech Republic</b>	Fergus O'Domhnaill, Associate, Latham & Watkins Petr Leyer, Legal Adviser, Transparency International Česká Republika
<b>Denmark</b>	Marina Buch Kristensen, Member of the Board of Directors, Transparency International Danmark
<b>Estonia</b>	Marko Kairjak, Partner, Ellex Raidla
<b>Finland</b>	Pekka Suominen, Partner, Mercatoria Attorneys Ltd
<b>France</b>	Laurence Fabre, Business Integrity Officer, Transparency International France Sara Brimbeuf, Advocacy Officer, Transparency International France
<b>Germany</b>	Angela Reitmaier, Member of the Board of Directors, Transparency International Deutschland
<b>Greece</b>	Antonis Baltas, Lawyer
<b>Hong Kong</b>	Felicity Kirk, International Pro Bono, Ropes & Gray
<b>Hungary</b>	Daniel Tran, Lawyer Tran & Nemes Law Firm, visiting lecturer, ELTE University Faculty of Law, Department of Criminology Miklos Ligeti, Head of Legal Affairs, Transparency International Hungary
<b>India</b>	Ashutosh Kumar Mishra, Lawyer and Senior Adviser at AGAM, An Initiative for Good Governance and Partners for Transparency Foundation, India.
<b>Ireland</b>	John Devitt, Chief Executive, Transparency International Ireland
<b>Israel</b>	Niv Sivan, Partner, Herzog Fox & Neeman Law Office
<b>Italy</b>	Cesare Milani, Lawyer, Latham & Watkins Virginia List, Trainee, Latham & Watkins

<b>Japan</b>	Aki Wakabayashi, Chairperson, Transparency International Japan
<b>Korea (South)</b>	Jee Yun (Jen) Oh, Lawyer, Ropes & Gray LLP Abraham Sumalinog, Climate Governance Project Director, Transparency International Korea
<b>Latvia</b>	Aija Lejniece, Associate, Latham & Watkins
<b>Lithuania</b>	Ieva Kimontaitė, Project Coordinator, Transparency International Lithuania Deimantė Žemgulytė, Project Coordinator, Transparency International Lithuania Sergejus Muravjovas, Executive Director, Transparency International Lithuania
<b>Mexico</b>	Paola Palacios, International Affairs Coordinator, Transparencia Mexicana Carla Crespo, Project Consultant, Transparencia Mexicana
<b>Netherlands</b>	Jeroen Brabers, Member of the Board of Directors, Transparency International Nederland Paul Vlaanderen, Chair, Transparency International Nederland Arjen Tillema, Partner, Ivy Advocaten
<b>New Zealand</b>	Dr W John Hopkins, Professor of Law, University of Canterbury
<b>Norway</b>	Guro Slettemark, Secretary General, Transparency International Norway Helge Kvamme, CEO/partner, Kvamme Associates
<b>Peru</b>	Natasha Gutiérrez, Lawyer, Proética Alberto Calixtro, Lawyer, Proética
<b>Poland</b>	Maria Kozłowska, Advocat, Wardynski & Partners
<b>Portugal</b>	Karina Carvalho, Executive Director, Transparência & Integridade João Oliveira, Communications Officer, Transparência & Integridade Cátia Andrade, Legal Expert, Transparência & Integridade
<b>Russia</b>	Grigory Mashanov, Legal Expert, Transparency International Russia
<b>Slovakia</b>	Fergus O'Domhnaill, Associate, Latham & Watkins Gabriel Sipos, Director, Transparency International Slovakia

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<b>Slovenia</b>	Vid Jakulin, Professor, Faculty of Law, University of Ljubljana Vasja Cepic, Legal Expert, Transparency International Slovenia Vid Tomić, Secretary General, Transparency International Slovenia
<b>South Africa</b>	Karam Singh, Head, Legal and Investigations, Corruption Watch
<b>Spain</b>	Silvina Bacigalupo Saggese, President, Transparency International España Leticia Sitges Caverro, Lawyer, Latham & Watkins Anna Escrigas Canameras, Lawyer, Latham & Watkins
<b>Sweden</b>	Pierre-Axel Aberg, Associate, Latham & Watkins
<b>Switzerland</b>	Jean-Pierre Méan, Lawyer, Eigenmann Associés
<b>Turkey</b>	Oya Özarıslan, Chair, Transparency International Turkey
<b>UK</b>	Rose Whiffen, Research Officer, Transparency International UK James Ford, Senior Associate, Mayer Brown
<b>United States</b>	Neil Gordon, Investigator, Project on Government Oversight

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## Pro bono recognition

Transparency International would like to acknowledge the support provided by the International Senior Lawyers Project-UK, which identified national experts in several countries who prepared country reports pro bono or made other pro bono contributions to the report.

# ENDNOTES

<sup>1</sup> <https://www.theglobeandmail.com/opinion/article-bribery-is-just-the-cost-of-doing-business/>

<sup>2</sup> <http://www.oecd.org/daf/anti-bribery/Phase-4-Guide-ENG.pdf>, pp.45 onwards. The questionnaire calls for detailed data on investigations, prosecutions, court proceedings and civil or administrative proceedings and their outcomes.

<sup>3</sup> For example, the OECD WGB Phase 3 and Phase 4 Reports on Germany commented that it should strengthen its efforts to compile at the federal level, for future assessment, information and statistics relevant to monitoring and follow-up of the enforcement of the German legislation implementing the Convention; The Phase 4 Report on Switzerland in 2018 recommended that Switzerland collect exhaustive statistics on the number of concluded cases at cantonal and federal levels and more detailed statistics on MLA requests received, sent and rejected that relate to money laundering where foreign bribery is the predicate offence. See also Phase 3 Reports on Brazil (2014) and Portugal in (2015) on the need for statistics about confiscation and money laundering.

<sup>4</sup> See e.g. OECD WGB Phase 4 Report on Czech Republic (June 2017), <https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>. The OECD WGB stated: “expedient access to court judgements concerning foreign bribery is necessary to ensure that sanctions for foreign bribery are effective, proportionate and dissuasive as required by the Convention. Their publication is also necessary for raising awareness of the risks of foreign bribery, and to ensure that Czech companies understand how to manage those risks through effective compliance measures”. <http://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>

<sup>5</sup> See articles on the benefits of transparency of case information: <http://www.oecd.org/corruption/anti-bribery/NRGI-White-Paper-Court-Case-Disclosures-Dec-2018.pdf>; <https://oecdonthellevel.com/2018/06/28/closed-courts-how-could-open-data-help-the-fight-against-corruption-in-the-uk/>; <https://oecdonthellevel.com/2017/12/05/anti-bribery-enforcement-the-case-for-making-court-decisions-freely-available-in-germany/>

<sup>6</sup> <https://www.bnamericas.com/en/news/inassa-fined-in-colombia-for-transnational-bribery>

<sup>7</sup> <http://www.oecd.org/corruption/data-on-enforcement-of-the-anti-bribery-convention.htm>

<sup>8</sup> As noted in a 2019 OECD study, the Parties to the Convention take various approaches to whether a court or other authority should have an oversight role over the conclusion or execution of non-trial resolutions. In the cases reviewed by the study, the court did not have any role in non-trial resolutions in 40 per cent of cases involving legal persons and in 29 per cent of cases involving natural persons, <https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf>, p.142.

<sup>9</sup> <https://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>, p.39. This refers to Swiss simplified procedures.

<sup>10</sup> <https://www.bloomberg.com/news/features/2017-06-08/no-one-has-ever-made-a-corruption-machine-like-this-one>

<sup>11</sup> <https://www.gov.br/cgu/pt-br/assuntos/responsabilizacao-de-empresas/lei-anticorruptao/acordo-leniencia>

<sup>12</sup> Information provided by Brazilian authorities.

<sup>13</sup> See OECD WGB Phase 4 Reports on the UK and Czech Republic, <https://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf>; <https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>

<sup>14</sup> StAR, 2011, “The Puppet Masters” <https://star.worldbank.org/publication/puppet-masters>

<sup>15</sup> OECD WGB Phase 3 and Phase 4 reports show many such cases.

<sup>16</sup> <https://www.icij.org/investigations/panama-papers/20160725-natural-resource-africa-offshore/>

<sup>17</sup> <https://www.transparency.org/en/publications/who-is-behind-the-wheel-fixing-the-global-standards-on-company-ownership>

<sup>18</sup> These are: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Ireland, Italy, Hungary, Latvia, Netherlands, Romania, Slovakia and Sweden, [https://ec.europa.eu/info/publications/anti-money-laundering-directive-4-transposition-status\\_en](https://ec.europa.eu/info/publications/anti-money-laundering-directive-4-transposition-status_en)

<sup>19</sup> These are: Bulgaria, Croatia, Denmark, Finland, France, Germany, Italy, Latvia, Lithuania, Malta and Sweden, [https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status\\_en](https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status_en)

<sup>20</sup> Transparency International, 2019, “Recommendations on Beneficial Ownership for OGP Action Plans”, <https://images.transparencycdn.org/images/Rec-on-Beneficial-Ownership-Transparency-for-OGP-action-plans-FINAL.pdf>; <https://www.openownership.org/uploads/oo-implementation-guide-booklet-68508a.pdf>

<sup>21</sup> <https://www.taxjustice.net/2019/11/27/fatf-beneficial-ownership-report-reveals-cutting-edge-verification-processes-hesitates-to-endorse-public-registries/>

<sup>22</sup> There is now wide consensus that corruption has adverse human rights impacts, e.g. <https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx>

<sup>23</sup> See: ICHRP, 2009, Integrating Human Rights in the Anti-Corruption Agenda, [http://ichrp.org/files/reports/58/131b\\_report.pdf](http://ichrp.org/files/reports/58/131b_report.pdf)

<sup>24</sup> OECD-StAR, 2012, "Identification and Quantification of the Proceeds of Bribery: A joint OECD-StAR analysis", <https://www.oecd.org/corruption/anti-bribery/50057547.pdf>

<sup>25</sup> See also SERAP v. Nigeria, 2011, <http://serap-nigeria.org/ecowas-court-orders-nigeria-to-provide-free-and-compulsory-education-to-every-child.ngo/>

<sup>26</sup> UN Guiding Principles on Business and Human Rights, Chapter III, Access to Remedy, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf); plus

<sup>27</sup> UNGA Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>; Paragraph 21 says: "States should... enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts", <http://www.un.org/documents/ga/res/40/a40r034.htm>

<sup>28</sup> The Council of Europe Civil Law Convention against Corruption contains similar language.

<sup>29</sup> Article 53(b) also requires States Parties to permit their courts to order corruption offenders to pay compensation or damages to foreign States that have been harmed by corruption offences. Article 57 (3)(b) refers to situations whereby "the requested State Party recognises damage to the requesting State Party as a basis for returning the confiscated property".

<sup>30</sup> In civil law countries, procedures generally allow for crime victims to apply to join a criminal prosecution as a civil party and claim compensation from a criminal court in case of conviction. This is the case under the French Criminal Procedure Code, which allows victims, including states, to be granted the status of "*partie civile*".

<sup>31</sup> See StAR, 2014, "Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery", <https://star.worldbank.org/document/left-out-bargain>

<sup>32</sup> <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>

<sup>33</sup> OECD (2019), "Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention", in particular 4.5.4., Compensation to victims, [www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm](http://www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm)

<sup>34</sup> <https://www.sfo.gov.uk/2018/06/01/new-joint-principles-published-to-compensate-victims-of-economic-crime-overseas/>

<sup>35</sup> Subsection 715.34(1)(g) Criminal Code of Canada, <https://fcpablog.com/2016/09/22/the-netherlands-tougher-foreign-bribery-laws-with-gaps-help/>

<sup>36</sup> In the Czech Republic, this is conceived of as an "effort to restore damage or eliminate other harmful effects of the criminal act", <https://rm.coe.int/16806d11e6>; In Mexico pursuant to article 256 of the Criminal Procedures National Code, once an investigation begins, the offender can request that the prosecution authorities refrain from instituting a criminal prosecution based on the application of "opportunity criteria", as long as the damage caused to the victims has been repaired or guaranteed, <https://www.lexology.com/library/detail.aspx?g=62df2f53-c23e-4118-84c1-fc8f7b409b5d>; In Spain it is defined as "mitigation of damages caused as a consequence of the offence before the trial hearing takes place", <https://globalcompliancenews.com/anti-corruption/anti-corruption-in-spain/>; In the United States, principles of federal prosecution of organisations and sentencing guidelines allows for credit given for restitution or other forms of remediation, in the US Justice Manual Title 9 and US Sentencing Guidelines, <https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.1000>; and: <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2012/05/deferred-prosecution-agreements-and-us-approaches-to-resolving-criminal-and-civil-enforcement-actions.pdf>.

<sup>37</sup> Agencies work collaboratively with DFID, the Foreign and Commonwealth Office (FCO), the Home Office and the Treasury to identify potential victims overseas, assess the case for compensation, obtain evidence in support of compensation claims, ensure the process for the payment is "transparent, accountable and fair", and identify means by which compensation can be paid to avoid the risk of further corruption. See SFO (2018), "New joint principles published to compensate victims of economic crime overseas" (1 June), <https://www.sfo.gov.uk/2018/06/01/new-joint-principles-published-to-compensate-victims-of-economic-crime-overseas/>

<sup>38</sup> <https://www.sfo.gov.uk/cases/rolls-royce-plc/>; <https://www.sfo.gov.uk/2020/01/31/sfo-enters-into-e991m-deferred-prosecution-agreement-with-airbus-as-part-of-a-e3-6bn-global-resolution/>

<sup>39</sup> StAR, 2014, "Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery", <https://star.worldbank.org/document/left-out-bargain>

<sup>40</sup> Mintz Group, 2020, "Where the Bribes Are", <https://www.fcpamap.com/>

<sup>41</sup> Messick, R., 2016, Legal Remedies for Victims of Bribery under US Law, June 2016 [https://www.opensocietyfoundations.org/sites/default/files/legal-remedies-5-messick-20160601\\_1.pdf](https://www.opensocietyfoundations.org/sites/default/files/legal-remedies-5-messick-20160601_1.pdf) In the United States, compensation can be made to victims "directly harmed" in FCPA conspiracy cases, in line with the Victims and Witness Protection Act and the Mandatory Victim Restitution Act". The court may also order, if agreed to by the parties in a plea agreement, "restitution to persons other than the victim of the offense".

<sup>42</sup> StAR, 2014, "Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery", <https://star.worldbank.org/document/left-out-bargain>

<sup>43</sup> The OECD has observed that those harmed by foreign bribery are, with the exception of competitors, often difficult to identify, or may be the population of a country as a whole, and restitution may present particular challenges because the harm may be difficult to quantify. OECD, 2019, "Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention", <https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf>. The range of legal, procedural and practical obstacles in the EU was also analysed in a European Parliament report in 2019 on access to legal remedies for victims of human rights abuses in third countries, [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO\\_STU\(2019\)603475](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2019)603475)

<sup>44</sup> OECD, 2018, "OECD Due Diligence Guidance for Responsible Business Conduct", <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

<sup>45</sup> <https://knowledgehub.transparency.org/helpdesk/country-experience-with-reparation-for-social-damages> ; [https://www.transparency.de/fileadmin/Redaktion/Aktuelles/2020/TI\\_Comments\\_2009\\_Anti-Bribery\\_Recommendation.6.5.2019.final.pdf](https://www.transparency.de/fileadmin/Redaktion/Aktuelles/2020/TI_Comments_2009_Anti-Bribery_Recommendation.6.5.2019.final.pdf)

<sup>46</sup> Costa Rica, defines social damages as "the impairment, impact, detriment or loss of social welfare (within the context of the right to live under a healthy environment) caused by an act of corruption and suffered by a plurality of individuals without any justification, whereby their material or immaterial diffuse or collective interests are affected, and so giving rise to the obligation to repair". In Costa Rica the Attorney General is authorised to file a civil suit for compensation when the offence caused damage to society. The Conference of Ministers of Justice of the Ibero-American countries held in Madrid in 2011 agreed to use Costa Rica's proposal to create a concept of social damage. <https://www.unodc.org/documents/treaties/UNCAC/COSP/session4/V1186372s.pdf>

<sup>47</sup> <https://knowledgehub.transparency.org/helpdesk/country-experience-with-reparation-for-social-damages>

<sup>48</sup> French *Cour de Cassation*, 4 May 2006, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007608830/> In this decision, relating to a corruption-related offense between a public official working for the Ministry of Defence and a private company, the Supreme Court granted the French State the sum of € 10 000 as compensation for its non-pecuniary damage, on the grounds that the offences committed by the defendants "have brought discredit on all the civilian and military personnel of the Ministry of Defence and constitute a factor of weakening of the authority of the State in public opinion."

<sup>49</sup> Some states provide for compensation "in kind", such as the issuance of a public apology or a declaration to help restore the reputation of the victim, the publication of the judgement of conviction as a means to repair non-proprietary damage, and the notification of the case in a newspaper.

<sup>50</sup> 18 U.S.C. para 3663 (a)(6)

<sup>51</sup> See eg. the criminal complaint, or *querrela*, filed against the Obiang family by the Asociación pro Derechos Humanos de España (APDHE) <https://www.justiceinitiative.org/litigation/apdhe-v-equatorial-guinea>

<sup>52</sup> French *Cour de Cassation*, 9 November 2010, <https://www.transparency.org/en/press/20101109-biens-mal-acquis-case-french-supreme-court-overrules-court-of-appe>

<sup>53</sup> [https://www.justiceinitiative.org/uploads/4759d161-17c9-4264-b5cc-215030ba7223/legal-remedies-2-20160202\\_0.pdf](https://www.justiceinitiative.org/uploads/4759d161-17c9-4264-b5cc-215030ba7223/legal-remedies-2-20160202_0.pdf)

<sup>54</sup> <https://www.raid-uk.org/victimsofcorruption>

<sup>55</sup> <https://www.sfo.gov.uk/cases/enrc/>

<sup>56</sup> <https://wkzo.com/news/articles/2020/may/13/congolese-citizens-bring-civil-action-in-belgium-against-passport-maker/1017787/>

<sup>57</sup> FACTI Panel, 2020, "Interim Report", page IX [https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/5f6b68c7bffa4ad6cf6cb53a7\\_FACTI\\_Interim\\_Report\\_final.pdf](https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/5f6b68c7bffa4ad6cf6cb53a7_FACTI_Interim_Report_final.pdf)

<sup>58</sup> Global Forum on Asset Recovery (2017), "Principles for Disposition and Transfer of Stolen Assets in Corruption Cases", <https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf>

<sup>59</sup> See for example, the BOTA Foundation, "Final Summative Report", IREX <https://www.justice.gov/opa/file/798316/download>

<sup>60</sup> <https://star.worldbank.org/content/gfar-principles-action-mantra-projects-monitoring-disbursement-abacha-ii-funds-nigeria>;

<sup>61</sup> <https://mantra-acorn.com/> ; <https://www.aneej.org/poor-nigerians-receive-n23-7billion-from-recovered-322-5million-abacha-loot-mantra-report/>

<sup>62</sup> <https://globalinvestigationsreview.com/benchmarking/the-practitioner%E2%80%99s-guide-to-global-investigations-fourth-edition/1212691/austria>

<sup>63</sup> <https://www.jota.info/especiales/cooperacion-internacional-en-el-caso-odebrecht-argentina-29052019>

<sup>64</sup> <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/anti-bribery-and-corruption/south-korean-anti-graft-reforms-alone-wont-resolve-poor-enforcement-record>

<sup>65</sup> The nine countries are: Argentina, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Panama, Peru and Venezuela.

<sup>66</sup> <https://globalanticorruptionblog.com/2018/04/19/guest-post-further-developments-on-french-law-regarding-anti-bribery-prosecutions-by-multiple-states/#more-11459>

<sup>67</sup> Since 2017, the IACCC reports that it has advanced nine grand corruption cases and identified 227 suspicious bank accounts across 15 different jurisdictions, although it is not yet clear how many of these cases relate to foreign bribery and related offences, <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/bribery-corruption-and-sanctions-evasion/international-anti-corruption->

centre; Radu Mares, 2019, Liability Within Corporate Groups: Parent Company's Accountability for Subsidiary Human Rights Abuses, [https://www.researchgate.net/publication/337022663\\_Liability\\_within\\_corporate\\_groups\\_Parent\\_company%27s\\_accountability\\_for\\_subsidary\\_hu  
man\\_rights\\_abuses](https://www.researchgate.net/publication/337022663_Liability_within_corporate_groups_Parent_company%27s_accountability_for_subsidary_human_rights_abuses)

<sup>68</sup> [https://europa.eu/european-union/about-eu/agencies/eurojust\\_en](https://europa.eu/european-union/about-eu/agencies/eurojust_en)

<sup>69</sup> [https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/networks-and-bodies-supporting-judicial-cooperation/european-public-prosecutors-office\\_en](https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/networks-and-bodies-supporting-judicial-cooperation/european-public-prosecutors-office_en)

<sup>70</sup> OECD, 2016, "The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report" <https://www.oecd.org/daf/anti-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking.pdf>; Clifford Chance, 2019, "An international guide to anti-corruption legislation" [https://www.cliffordchance.com/briefings/2019/03/an\\_internationalguidetoanti-corruptio.html](https://www.cliffordchance.com/briefings/2019/03/an_internationalguidetoanti-corruptio.html)

<sup>71</sup> Radu Mares, 2019, Liability Within Corporate Groups: Parent Company's Accountability for Subsidiary Human Rights Abuses, [https://www.researchgate.net/publication/337022663\\_Liability\\_within\\_corporate\\_groups\\_Parent\\_company%27s\\_accountability\\_for\\_subsidary\\_hu  
man\\_rights\\_abuses](https://www.researchgate.net/publication/337022663_Liability_within_corporate_groups_Parent_company%27s_accountability_for_subsidary_hu<br/>man_rights_abuses)

<sup>72</sup> Ibid

<sup>73</sup> OECD, 2016, "The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report", at 80, <https://www.oecd.org/daf/anti-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking.pdf> p. 79

<sup>74</sup> US DoJ and SEC, 2012, A Resource Guide to the FCPA, at 43, <https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>

<sup>75</sup> OECD, 2016, The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report, at 80, <https://www.oecd.org/daf/anti-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking.pdf>

<sup>76</sup> Radu Mares, 2019, Liability Within Corporate Groups: Parent Company's Accountability for Subsidiary Human Rights Abuses, [https://www.researchgate.net/publication/337022663\\_liability\\_within\\_corporate\\_groups\\_parent\\_company%27s\\_accountability\\_for\\_subsidary\\_hu  
man\\_rights\\_abuses](https://www.researchgate.net/publication/337022663_liability_within_corporate_groups_parent_company%27s_accountability_for_subsidary_hu<br/>man_rights_abuses)

<sup>77</sup> <http://www.respect.international/french-corporate-duty-of-vigilance-law-english-translation/>; "Europe moves on human rights due diligence?", 2019, <https://nordicfinancialunions.org/europe-moves-on-human-rights-due-diligence/>

<sup>78</sup> <https://nabu.gov.ua/en/novyny/energoatom-case-indictment-two-more-persons-was-sent-court>; <https://antac.org.ua/en/news/martynenko-facilitated-russian-company-skoda-js-in-winning-tenders-in-ukraine-with-the-help-of-fake-competitors/>

<sup>79</sup> <https://www.e15.cz/byznys/prumysl-a-energetika/korejci-udajne-kupuji-od-rusu-plzenskou-spolecnost-skoda-js-ruska-strana-obchod-popira-1364903>

<sup>80</sup> <https://globalinvestigationsreview.com/article/1167634/ey-to-be-prosecuted-in-the-netherlands-over-vimpelcom-transactions;> <https://nos.nl/artikel/2225653-accountantskantoor-ey-vervolgd-vanwege-vimpelcom-fraude.html>

<sup>81</sup> <https://www.publiceye.ch/en/media-corner/press-releases/detail/mozambiques-hidden-debt-public-eye-files-a-criminal-complaint-against-credit-suisse>; <https://www.reuters.com/article/mozambique-credit-suisse-gp/update-1-swiss-prosecutors-open-mozambique-loan-scandal-investigation-idUSL8N2DI2Q0>

<sup>82</sup> <https://www.publiceye.ch/en/topics/commodities-trading/glencore-in-drc>

<sup>83</sup> <https://www.transparency.org/en/publications/brazil-setbacks-in-the-legal-and-institutional-anti-corruption-frameworks>

<sup>84</sup> <https://transparency-france.org/actu/un-an-apres-lelection-presidentielle-lethique-et-la-transparence-de-la-vie-publique/#.XI0SICFKJIU>

<sup>85</sup> <https://www.cbc.ca/news/politics/trudeau-wilson-raybould-attorney-general-snc-lavalin-1.5014271>

<sup>86</sup> <https://www.oecd.org/daf/anti-bribery/EstoniaPhase3ReportEN.pdf>;

<sup>87</sup> *CSO Letter to OECD Secretary General Angel Gurría*, 2018, <https://www.oecd.org/daf/anti-bribery/CSO-Letter-to-OECD-SG-Gurria-December-2018.pdf>; Transparency International, Policy Brief: *Can justice to achieved through negotiated settlements?* (2015) [https://images.transparencycdn.org/images/2015\\_PolicyBrief1\\_Settlements\\_EN.pdf](https://images.transparencycdn.org/images/2015_PolicyBrief1_Settlements_EN.pdf)

<sup>88</sup> OECD figures (2016-2019 average)

<sup>89</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Argentina-3bis-follow-up-report-ENG.pdf>

<sup>90</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Argentina-3bis-follow-up-report-ENG.pdf>

<sup>91</sup> <https://www.fiscales.gov.ar/criminalidad-economica/imputaron-a-empresarios-de-la-firma-argentina-unetel-s-a-por-el-presunto-pago-de-sobornos-en-el-salvador/>

<sup>92</sup> <https://www.perfil.com/noticias/cuadernos-de-las-coimas/caso-techint-fiscal-italiana-pide-cruzar-informacion-con-el-fiscal-stornelli.phtml>

<sup>93</sup> <https://www.lanacion.com.ar/politica/acusan-a-techint-de-pagar-us-9-millones-de-sobornos-en-brasil-nid2054977>

<sup>94</sup> <http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/executivos-ligados-ao-grupo-techint-sao-investigados-pela-lava-jato-por-participacao-no-cartel-de-empreiteiras>

<sup>95</sup> Law n°. 27.401

<sup>96</sup> DNU n° 795/2019

<sup>97</sup> <https://www.infobae.com/politica/2020/02/20/el-gobierno-derogara-el-decreto-de-macri-que-creo-la-agencia-de-proteccion-de-testigos/>

- <sup>98</sup> [https://www.mpf.gov.ar/transparencia-activa/files/2019/03/Informe\\_Anuar\\_MPFN-2018.pdf](https://www.mpf.gov.ar/transparencia-activa/files/2019/03/Informe_Anuar_MPFN-2018.pdf)
- <sup>99</sup> <http://www.cij.gov.ar/causas-de-corrupcion.html>
- <sup>100</sup> Resolution 7/15 IGJ, arts. 510 and 518, [http://www.jus.gov.ar/media/2951604/resolucion\\_general\\_07-15\\_actualizada.pdf](http://www.jus.gov.ar/media/2951604/resolucion_general_07-15_actualizada.pdf)
- <sup>101</sup> Resolution UIF 30 E/2017, <http://servicios.infoleg.gov.ar/infolegInternet/anexos/275000-279999/275996/norma.htm>
- <sup>102</sup> Resolution 4697/2020, <https://www.boletinoficial.gob.ar/detalleAviso/primera/227833/20200415?busqueda=2>; <http://poderciudadano.org/a-partir-de-hoy-se-deberan-informar-los-beneficiarios-reales-de-las-empresas/>
- <sup>103</sup> Resolution 140/12, <http://servicios.infoleg.gov.ar/infolegInternet/anexos/200000-204999/200723/texact.htm>
- <sup>104</sup> Resolution 6/16, [http://www.jus.gov.ar/media/3140423/resoluci\\_n\\_general\\_6-16.pdf](http://www.jus.gov.ar/media/3140423/resoluci_n_general_6-16.pdf)
- <sup>105</sup> Digest 2013, <https://www.cnv.gov.ar/sitioWeb/Content/assets/files/TOC2013.pdf>
- <sup>106</sup> <http://www.oecd.org/corruption/anti-bribery/Argentina-Phase-3bis-Report-ENG.pdf>
- <sup>107</sup> <https://www.lanacion.com.ar/politica/causas-nuevas-jueces-nuevos-otras-perlitas-reforma-nid2408750>
- <sup>108</sup> <http://www.oecd.org/corruption/anti-bribery/Argentina-Phase-3bis-Report-ENG.pdf>
- <sup>109</sup> <https://www.mpf.gov.ar/procelac-ap/files/2013/10/Los-procesos-judiciales-en-materia-de-corrupci%C3%B3n.pdf>
- <sup>110</sup> <https://www.jota.info/especiais/cooperacion-internacional-en-el-caso-odebrecht-argentina-29052019>
- <sup>111</sup> <https://www.theguardian.com/australia-news/2020/mar/01/this-is-a-practical-joke-the-moment-police-called-about-alleged-foreign-bribery>
- <sup>112</sup> SKM self-reported corrupt misconduct to the World Bank relating to Bank-financed projects in the East Asia and Pacific region. In 2013, the World Bank reached a Negotiated Resolution Agreement with SKM and its parent companies, Sinclair Knight Merz Management Pty Ltd and Sinclair Knight Merz Holdings Ltd, imposing a conditional non-debarment on SKM and any firm it directly or indirectly controls for a period of 2.5 years, <https://www.worldbank.org/en/news/press-release/2013/07/24/world-bank-group-announces-settlement-sinclair-knight-merz>
- <sup>113</sup> <https://www.theguardian.com/global-development/2018/dec/07/labor-ministers-knew-of-skm-bribery-claims-but-continued-giving-firm-work>. AusAid is now the Department of Foreign Affairs and Trade.
- <sup>114</sup> *Global Legal Insights, Bribery and Corruption 2020: Australia*, <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/australia>. According to media reports, Radiance had received an AU\$2.5 million (US\$1.6 million) Australian government contract to build housing for refugees held on the island, <https://www.abc.net.au/news/2018-09-17/company-linked-to-alleged-nauru-bribery-received-2.5m-from-aus/10258152>
- <sup>115</sup> The case involved bribery of foreign public officials in several countries to secure contracts to produce banknotes. The companies Security International Ltd and Note Printing Australia and nine of their former executives and sales agents were charged with foreign bribery, conspiracy to commit foreign bribery and/or false accounting. The two companies involved had pleaded guilty in 2011 and four individuals pleaded guilty in the intervening years, <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/australia>
- <sup>116</sup> <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>; <https://www.smh.com.au/business/companies/seven-years-and-millions-of-dollars-later-australia-s-biggest-bribery-prosecution-finally-revealed-20181108-p50eut.html>
- <sup>117</sup> See the *Exporting Corruption Report 2018* for more details; <https://www.smh.com.au/business/companies/afp-drops-bribery-probe-into-tabcorp-s-cambodian-payment-20190911-p52q5d.html>
- <sup>118</sup> According to CIMIC's 2019 annual report, its largest shareholder is HOCHTIEF Australia Holdings Limited, a wholly owned subsidiary of HOCHTIEF AG, which owned 72.8 per cent of CIMIC as at 31 December 2019. The largest shareholder in HOCHTIEF AG is Spanish-based company *Actividades de Construcción y Servicios, SA (ACS)*, which held 50.41 per cent of the shares as at 31 December 2019.
- <sup>119</sup> Contrary to s.1307 of the Corporations Act, *Global Legal Insights, Bribery and Corruption 2020: Australia*
- <sup>120</sup> <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-196mr-former-leighton-holdings-executive-receives-decision-on-sentence/>; The Crown submitted that it was open for the Court to find that the true purpose of the payment was to secure the waiver of a financial obligation that one of LHL's subsidiaries had in connection with its business in India, <https://www.abc.net.au/news/2018-12-11/leighton-executive-peter-gregg-found-guilty-falsifying-accounts/10606970>
- <sup>121</sup> <https://www.afr.com/companies/infrastructure/peter-gregg-to-submit-errands-schedule-to-court-20190829-p52lyj>; <https://www.smh.com.au/business/companies/businessman-peter-gregg-faces-home-detention-for-falsifying-records-20190730-p52c15.html>
- <sup>122</sup> <https://www.smh.com.au/business/companies/australian-firm-paid-multi-million-dollar-bribe-say-us-court-documents-20191115-p53auz.html>; <https://www.oilandgasmiddleeast.com/article-9951-illegal-iraq-payments-probe-underway-for-leighton>
- <sup>123</sup> <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-1/the-company-that-bribed-the-world.html>
- <sup>124</sup> <https://www.sfo.gov.uk/cases/unaoil/>; <https://www.sfo.gov.uk/2018/06/26/unaoil-group-companies-summonsed-as-part-of-sfos-ongoing-corruption-investigation/>; <https://www.afr.com/companies/cimic-signs-investigation-agreement-with-uss-doj-on-alleged-leighton-bribes-20190301-h1bw3u>. The SFO subsequently dropped its investigation into three of the executives, for which it was criticised, <https://www.theguardian.com/uk-news/2019/jun/30/serious-office-faces-questions-over-decision-to-drop-bribery-investigation>
- <sup>125</sup> <https://grcsolutions.co/departament-justice-indicts-australian-company-million-dollar-bribes-iraqi-officials/>; <https://www.justice.gov/opa/pr/oil-executives-plead-guilty-roles-bribery-scheme-involving-foreign-officials>

- <sup>126</sup> <https://www.afr.com/companies/cimic-signs-investigation-agreement-with-uss-doj-on-alleged-leighton-bribes-20190301-h1bw3u>; <https://www.pleasebeinformed.com/publications/node/2808/page/0/2>
- <sup>127</sup> <https://www.smh.com.au/business/companies/construction-giant-cimic-settles-bribery-class-action-20191220-p53lz1.html>
- <sup>128</sup> Report published 20 March 2020, [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024438/toc\\_pdf/CrimesLegislationAmendment\(CombattingCorporateCrime\)Bill2019.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024438/toc_pdf/CrimesLegislationAmendment(CombattingCorporateCrime)Bill2019.pdf;fileType=application%2Fpdf). The re-introduction of the Bill, which had lapsed earlier in 2019, was welcomed by the OECD WGB, <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>
- <sup>129</sup> [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024438/toc\\_pdf/CrimesLegislationAmendment\(CombattingCorporateCrime\)Bill2019.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024438/toc_pdf/CrimesLegislationAmendment(CombattingCorporateCrime)Bill2019.pdf;fileType=application%2Fpdf)
- <sup>130</sup> <https://www.alrc.gov.au/inquiry/corporate-crime/>. A final report was due in April 2020.
- <sup>131</sup> <https://www.legislation.gov.au/Details/C2017B00259>
- <sup>132</sup> <https://www.austrac.gov.au/about-us/media-release/civil-penalty-orders-against-westpac>; <https://www.moneylaunderingnews.com/2019/11/westpac-banking-corporation-faces-money-laundering-scandal-in-the-land-down-under/>
- <sup>133</sup> <https://www.bloomberg.com/news/articles/2019-11-27/why-heads-are-rolling-at-another-big-australian-bank-quicktak>. One transaction involved money transferred from Australia to the Philippines, which was subsequently linked to serious allegations of child trafficking and sexual exploitation.
- <sup>134</sup> <https://www.theguardian.com/australia-news/2019/dec/17/westpac-scandal-apra-launches-full-investigation-into-bank-over-child-exploitation-allegations>
- <sup>135</sup> <https://www.afp.gov.au/search/node/bribery>
- <sup>136</sup> <https://www.ag.gov.au/Crime/Foreignbribery/Documents/Foreignbriberyagencyrolesandresponsibilities.PDF>
- <sup>137</sup> Courts publish decisions on their own websites. For example, the Australian Federal Court: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications>. Decisions of all courts can be found at <http://www.austlii.edu.au/>, a joint facility run by the University of Technology Sydney and the University of UNSW Faculties of Law.
- <sup>138</sup> [https://treasury.gov.au/sites/default/files/2019-03/C2017-004\\_CP\\_Increasing\\_Transparency\\_of\\_the\\_Beneficial\\_Ownership\\_of\\_Companies.pdf](https://treasury.gov.au/sites/default/files/2019-03/C2017-004_CP_Increasing_Transparency_of_the_Beneficial_Ownership_of_Companies.pdf); <https://ogpau.pmc.gov.au/commitment/12-beneficial-ownership-transparency>
- <sup>139</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Economics/ASICReview2018/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/ASICReview2018/Report)
- <sup>140</sup> <https://www.theguardian.com/australia-news/2019/feb/11/coalition-abandons-plan-for-register-to-help-beat-tax-avoidance>
- <sup>141</sup> <https://www.ag.gov.au/Consultations/Pages/Deferred-prosecution-agreement-scheme-code-of-practice.aspx>
- <sup>142</sup> <https://www.austrade.gov.au/ArticleDocuments/1358/Antibribery-Facilitation-Payments.pdf.aspx>
- <sup>143</sup> <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Report-ENG.pdf>; <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>
- <sup>144</sup> In March 2018, the Senate Economics References Committee published a report on foreign bribery in which it recommended the adoption of a debarment framework requiring companies to disclose if they have been found guilty of foreign bribery offences, and granting agencies the power to preclude companies from being awarded contracts, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Foreignbribery45th/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Foreignbribery45th/Report)
- <sup>145</sup> <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Report-ENG.pdf>; <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>
- <sup>146</sup> For example, <https://www.theguardian.com/australia-news/2018/jul/14/sinclair-knight-merz-foreign-bribery-case-sparks-call-for-greater-police-resources>
- <sup>147</sup> <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>
- <sup>148</sup> <https://www.theguardian.com/australia-news/2018/jul/14/sinclair-knight-merz-foreign-bribery-case-sparks-call-for-greater-police-resources>. For example, the Securrency/NPA pecuniary penalty order was the largest ever imposed in Australia, but significantly low in the context.
- <sup>149</sup> <http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Two-Year-Written-Follow-Up-Report-ENG.pdf>. The FATF has looked at the Australian approach more favourably, <http://www.fatf-gafi.org/countries/a-c/australia/documents/fur-australia-2018.html>
- <sup>150</sup> <https://www.derstandard.at/story/2000081994881/causa-oeps-abgeschlossen-zwei-angeklagte-anwaelte-freigesprochen>. In Azerbaijan there is apparently no interest in clarifying whether those affected are still in office, <https://www.sn.at/wirtschaft/oesterreich/causa-oeps-niedrigere-strafen-bei-verfahrenswiederholung-24438316>. The investigations, other prosecutions and acquittals in relation to this case can be found in the *Exporting Corruption* Report 2018.
- <sup>151</sup> Four individuals were acquitted earlier this year.
- <sup>152</sup> Information received by Transparency International Austria from the Ministry of Justice. The legal person is unknown.
- <sup>153</sup> Paid via letterbox firms in Cyprus and other offshore destinations, as well as a Panamanian firm with a Swiss bank account, <https://www.sn.at/wirtschaft/oesterreich/wiener-anklage-im-siemens-schwarzgeldskandal-rechtskraeftig-505627>; in countries across Eastern and Southern Europe, <https://industriemagazin.at/a/prozess-gegen-siemens-in-wien-koffer-mit-bargeld-in-richtung-balkan>

- <sup>154</sup> <https://industriemagazin.at/a/prozess-gegen-siemens-in-wien-koffer-mit-bargeld-in-richtung-balkan>; <https://www.derstandard.at/story/2000059509160/schwarze-kassen-prozess-bei-siemens-oesterreich-startet>
- <sup>155</sup> Information received by Transparency International Austria from the Ministry of Justice.
- <sup>156</sup> €1.3 million (US\$1.1 million), <https://www.derstandard.at/story/2000110239044/zweiter-bewag-prozess-endet-mit-freispruechen-im-zweifel>. The proceedings concern nine former employees of BEWAG and a local Hungarian company of the Hohegger group, <https://www.noen.at/in-ausland/burgenland-ungarn-prozess-um-bewag-windpark-projekt-neu-aufgerollt-eisenstadt-alternativen-burgenland-prozess-strom-bewag-windpark-166101777#>. The former employees are: 1. Hans L., 2. Hans P., 3. Dr. Laszlo J., 4. Josef M., 5. Andreas S., 6. Gabriella B., 7. Erwin S., 8. Dr. J., and 9. P., [https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=62a642ff-7e8f-4ab3-b4ce-a9aa167262c2&Position=1&Abfrage=Justiz&Gericht=&Rechtssatznummer=&Rechtssatz=&Fundstelle=&AenderungenSeit=Undefined&SucheNachR echtssatz=False&SucheNachText=True&GZ=170s8%2f18g&VonDatum=&BisDatum=01.04.2019&Norm=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Dokumentnummer=JIT\\_20190226\\_OGH0002\\_0170OS00008\\_18G0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=62a642ff-7e8f-4ab3-b4ce-a9aa167262c2&Position=1&Abfrage=Justiz&Gericht=&Rechtssatznummer=&Rechtssatz=&Fundstelle=&AenderungenSeit=Undefined&SucheNachR echtssatz=False&SucheNachText=True&GZ=170s8%2f18g&VonDatum=&BisDatum=01.04.2019&Norm=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Dokumentnummer=JIT_20190226_OGH0002_0170OS00008_18G0000_000).
- <sup>157</sup> OGH 170s8/18g, 26. February 2019
- <sup>158</sup> ORF News, BEWAG-Prozess: *Drei Freisprüche*, <https://burgenland.orf.at/stories/3018349/>
- <sup>159</sup> <https://www.sn.at/wirtschaft/welt/josef-h-kommt-in-korruptionsaffaere-mit-bewaehrung-davon-69668974>
- <sup>160</sup> <https://www.tt.com/artikel/15439596/rumaenien-frueherer-lokaler-swietelsky-manager-unter-anklage>
- <sup>161</sup> <https://www.diepresse.com/5410799/hausdurchsuchung-bei-swietelsky-wegen-korruptionsskandal-in-rumanien>
- <sup>162</sup> <https://www.sn.at/wirtschaft/welt/josef-h-kommt-in-korruptionsaffaere-mit-bewaehrung-davon-69668974>
- <sup>163</sup> <https://www.romaniajournal.ro/society-people/criminal-prosecution-request-against-ex-finmin-sebastian-vladescu-okayed-searches-at-austria-based-company/>
- <sup>164</sup> As at end November 2019. Information received by Transparency International Austria from the Ministry of Justice.
- <sup>165</sup> <https://www.diepresse.com/5721742/geldwasche-osterreich-setzt-richtlinie-um>
- <sup>166</sup> <https://www.ris.bka.gv.at/eli/bgbl/I/2019/111>
- <sup>167</sup> <https://www.ti-austria.at/wp-content/uploads/2019/10/Forderungspapier-für-die-Regierungsbildung-2.pdf>
- <sup>168</sup> [https://www.bmi.gv.at/510/files/NAKS\\_Web.pdf](https://www.bmi.gv.at/510/files/NAKS_Web.pdf)
- <sup>169</sup> <https://rm.coe.int/16806ee0fc>
- <sup>170</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007924>; <https://www.politico.eu/article/austrian-vice-chancellor-resigns/>
- <sup>171</sup> The *Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung*, Austria's Federal Bureau of Anti-Corruption.
- <sup>172</sup> The *Wirtschafts- und Korruptionsstaatsanwaltschaft*, Austria's Central Public Prosecutor's Office for Economic Crimes and Corruption
- <sup>173</sup> *Korruptionsstatistik*, [https://www.parlament.gv.at/PAKT/VHG/XXVI/E/E\\_00124/fname\\_767947.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/E/E_00124/fname_767947.pdf). Estimated numbers of cases and investigations are currently based on information provided by the Federal Ministry of Justice to the OECD Working Group on Bribery and from media reports. Sections 302-313 StGB – crimes in connection with corruption.
- <sup>174</sup> <https://www.jusline.at/gesetz/spg/paragraf/93>, Clause 93 of the Police Law.
- <sup>175</sup> Annual Security Report. The security report is prepared jointly by the Federal Ministries for Justice and Interior Affairs and contains crime and convict statistics as well as a presentation of the major developments in criminal policy, <https://www.justiz.gv.at/home/justiz/daten-und-fakten/berichte/sicherheitsberichte~2c94848525f84a630132fdbd2cc85c91.de.html>
- <sup>176</sup> <https://www.justiz.gv.at/home/justiz/daten-und-fakten/berichte/sicherheitsberichte~2c94848525f84a630132fdbd2cc85c91.de.html>, p.26; [https://bak.gv.at/501/files/Jahresberichte/BF\\_Jahresbericht\\_2018\\_Homepage.pdf](https://bak.gv.at/501/files/Jahresberichte/BF_Jahresbericht_2018_Homepage.pdf), p.69.
- <sup>177</sup> <https://www.justiz.gv.at/home/justiz/daten-und-fakten/berichte/sicherheitsberichte~2c94848525f84a630132fdbd2cc85c91.de.html>, pp.269-271.
- <sup>178</sup> <https://www.ris.bka.gv.at/Jus/>
- <sup>179</sup> <https://www.bmf.gv.at/en/topics/financial-sector/beneficial-owners-register-act/Register-of-Beneficial-Owner.html>
- <sup>180</sup> *Wirtschaftliche Eigentümer Registergesetz*, <https://www.bmf.gv.at/services/wierereg/wierereg-register.html>; [https://www.usp.gv.at/Portal.Node/usp/public/content/laufender\\_betrieb/register\\_wirtschaftliche\\_eigentuemmer/303468.html](https://www.usp.gv.at/Portal.Node/usp/public/content/laufender_betrieb/register_wirtschaftliche_eigentuemmer/303468.html)
- <sup>181</sup> <https://www.bmf.gv.at/en/topics/financial-sector/beneficial-owners-register-act/Register-of-Beneficial-Owner.html>
- <sup>182</sup> <https://wieregms.bmf.gv.at/at.gv.bmf.wierereg-p/wierereg?execution=e1s1>. Public access has been available since January 2020.
- <sup>183</sup> Beneficial Owners Register Act, art.3.
- <sup>184</sup> <https://www.diepresse.com/5681444/straches-ibiza-sager-noch-keine-korruption>; <https://kurier.at/politik/inland/ibiza-ruf-nach-schaerferen-gesetzen/400592078>
- <sup>185</sup> <https://www.oecd.org/governance/procurement/toolbox/search/whistle-blower-hotline-austria.pdf>

- <sup>186</sup> <https://globalinvestigationsreview.com/benchmarking/the-practitioner%E2%80%99s-guide-to-global-investigations-fourth-edition/1212691/austria>
- <sup>187</sup> [https://one.oecd.org/document/DAF/WGB\(2017\)72/en/pdf](https://one.oecd.org/document/DAF/WGB(2017)72/en/pdf), p.2; [https://one.oecd.org/document/DAF/WGB\(2017\)72/en/pdf](https://one.oecd.org/document/DAF/WGB(2017)72/en/pdf)
- <sup>188</sup> <https://globalinvestigationsreview.com/benchmarking/the-practitioner%E2%80%99s-guide-to-global-investigations-fourth-edition/1212691/austria>
- <sup>189</sup> [https://www.transparency.org/news/feature/austrias\\_strache\\_affair\\_at\\_the\\_undue\\_influence\\_toolkit](https://www.transparency.org/news/feature/austrias_strache_affair_at_the_undue_influence_toolkit)
- <sup>190</sup> <https://www.ti-austria.at/wp-content/uploads/2019/10/Forderungspapier-für-die-Regierungsbildung-2.pdf>
- <sup>191</sup> <https://globalinvestigationsreview.com/benchmarking/the-practitioner%E2%80%99s-guide-to-global-investigations-fourth-edition/1212691/austria>
- <sup>192</sup> <https://www.reuters.com/investigates/special-report/africa-passports-karaziwan/>; [https://www.rtf.be/info/societe/detail\\_passe-droits-et-marche-tronques-la-societe-semlex-dans-le-collimateur-de-la-justice?id=9794251](https://www.rtf.be/info/societe/detail_passe-droits-et-marche-tronques-la-societe-semlex-dans-le-collimateur-de-la-justice?id=9794251)
- <sup>193</sup> <https://www.reuters.com/article/us-africa-passports-semlex/police-search-offices-of-belgian-company-supplying-passports-to-africa-idUSKBN1F61Z6>
- <sup>194</sup> <https://www.occrp.org/en/investigations/multimillion-passport-deal-under-investigation-in-kyrgyzstan>
- <sup>195</sup> <https://www.occrp.org/en/biometric-bribery-semlex/belgian-passport-maker-paid-bribes-to-win-madagascar-contract>
- <sup>196</sup> <https://www.reuters.com/article/us-congo-passports-belgium/congoese-citizens-bring-civil-action-in-belgium-against-passport-maker-idUSKBN22P2ZB>; <https://www.fidh.org/en/region/Africa/democratic-republic-of-congo/congo-s-passportgate-fidh-ldh-unis-and-51-victims-initiate>. The International Federation for Human Rights (FIDH), the League for Human Rights (Belgium – *Ligue des droits humains*) and UNIS (Pan-African Anti-Corruption Network) filed a civil party petition on 8 May 2020 in the criminal investigation into the Semlex case. Fifty-one Congolese victims have also filed as civil parties as part of the "Congo is not for sale" campaign.
- <sup>197</sup> [https://www.rtf.be/info/economie/detail\\_l-entreprise-belge-jan-de-nul-citee-dans-un-enorme-scandale-de-corruption-en-argentine?id=10000515](https://www.rtf.be/info/economie/detail_l-entreprise-belge-jan-de-nul-citee-dans-un-enorme-scandale-de-corruption-en-argentine?id=10000515)
- <sup>198</sup> <https://www.tribunaux-rechtbanken.be/fr/ik-zoek/jurisprudence>; <http://jure.juridat.just.fgov.be/JuridatSearchCombined/?lang=fr>
- <sup>199</sup> Including Jura, <https://jura.kluwer.be/beforelogin.aspx?lang=fr>, and Strada Lex, [https://www.stradalex.com/Stradalex/fr/publichome/html/display/homepage?redirect\\_counter=1](https://www.stradalex.com/Stradalex/fr/publichome/html/display/homepage?redirect_counter=1).
- <sup>200</sup> [https://finances.belgium.be/sites/default/files/20190719\\_FAQ\\_UBO\\_FR\\_%20OCC%202.pdf](https://finances.belgium.be/sites/default/files/20190719_FAQ_UBO_FR_%20OCC%202.pdf), paragraph 2.7, p.25.
- <sup>201</sup> [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=2017091806](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2017091806)
- <sup>202</sup> *Arrêté royal du 30 juillet 2018 relatif aux modalités de fonctionnement du registre UBO* (the "Anti-Money Laundering Order") [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi)
- <sup>203</sup> [https://finances.belgium.be/sites/default/files/20190719\\_FAQ\\_UBO\\_FR\\_%20OCC%202.pdf](https://finances.belgium.be/sites/default/files/20190719_FAQ_UBO_FR_%20OCC%202.pdf)
- <sup>204</sup> <https://finances.belgium.be/fr/E-services/ubo-register/acces#q1>
- <sup>205</sup> [https://finances.belgium.be/sites/default/files/20190719\\_FAQ\\_UBO\\_FR\\_%20OCC%202.pdf](https://finances.belgium.be/sites/default/files/20190719_FAQ_UBO_FR_%20OCC%202.pdf), paragraph 2.1.3, p.7,
- <sup>206</sup> Article 10 quater, paragraph 2 of the Preliminary Title of the Belgian Code of Criminal Procedure (*Titre préliminaire du Code d'instruction criminelle*)
- <sup>207</sup> GRECO Evaluation Report on Belgium, 5th Evaluation Round, December 2019, <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680998a40>
- <sup>208</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680998a40>, p.31
- <sup>209</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680998a40>, p.31
- <sup>210</sup> <https://www.justice.gov/opa/pr/embraer-agrees-pay-more-107-million-resolve-foreign-corrupt-practices-act-charges>
- <sup>211</sup> <http://www.mpf.mp.br/rj/sala-de-imprensa/noticias-rj/corruptacao-internacional-mpf-e-cvm-fecham-acordo-com-embraer>
- <sup>212</sup> <https://www1.folha.uol.com.br/mercado/2018/12/ex-executivos-da-embraer-sao-condenados-por-propina-na-republica-dominicana.shtml>
- <sup>213</sup> [https://www.jota.info/paywall?redirect\\_to=//www.jota.info/tributos-e-empresas/mercado/cvm-condenar-embraer-corrupcao-11092018](https://www.jota.info/paywall?redirect_to=//www.jota.info/tributos-e-empresas/mercado/cvm-condenar-embraer-corrupcao-11092018)
- <sup>214</sup> <https://economia.uol.com.br/noticias/efe/2018/09/28/justica-dominicana-condena-embraer-em-us-7-mi-por-pagamento-de-propinas.htm>
- <sup>215</sup> <https://www.gov.br/cgu/pt-br/assuntos/noticias/2018/07/acordo-de-leniencia-com-a-odebrecht-preve-ressarcimento-de-2-7-bilhoes>
- <sup>216</sup> <https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>
- <sup>217</sup> [https://www.bbc.com/portuguese/noticias/2016/03/160318\\_java\\_jato\\_portugal\\_mdb\\_mf](https://www.bbc.com/portuguese/noticias/2016/03/160318_java_jato_portugal_mdb_mf); <https://www1.folha.uol.com.br/poder/2016/12/1838033-caixa-do-pt-bancou-aliado-em-el-salvador-diz-delacao.shtml>
- <sup>218</sup> <https://www.gov.br/cgu/pt-br/assuntos/responsabilizacao-de-empresas/lei-anticorrupcao/acordo-leniencia>
- <sup>219</sup> <https://www1.folha.uol.com.br/mundo/2018/09/operacao-no-brasil-expoe-nos-da-camargo-correa-na-america-latina.shtml>
- <sup>220</sup> [https://brasil.elpais.com/brasil/2018/05/25/politica/1527260854\\_168241.html](https://brasil.elpais.com/brasil/2018/05/25/politica/1527260854_168241.html)

- <sup>221</sup> <https://politica.estadao.com.br/blogs/fausto-macedo/delacoes-da-andrade-detalham-propina-em-contrato-indicado-por-lula-na-venezuela/>
- <sup>222</sup> <https://www1.folha.uol.com.br/poder/2017/01/1854126-andrade-gutierrez-e-queiroz-galvao-tambem-estao-sob-suspeita-no-peru.shtml>
- <sup>223</sup> [https://brasil.elpais.com/brasil/2017/05/05/internacional/1494021386\\_280573.html](https://brasil.elpais.com/brasil/2017/05/05/internacional/1494021386_280573.html)
- <sup>224</sup> [brasil.elpais.com/brasil/2019/09/16/politica/1568669762\\_784011.html](https://brasil.elpais.com/brasil/2019/09/16/politica/1568669762_784011.html)
- <sup>225</sup> [https://brasil.elpais.com/brasil/2017/02/18/internacional/1487438625\\_752332.html](https://brasil.elpais.com/brasil/2017/02/18/internacional/1487438625_752332.html); <https://noticias.r7.com/brasil/presidente-peruano-citadado-em-outro-depoimento-da-lava-jato-em-2015-01032016>
- <sup>226</sup> <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/sassou-nguessos-laundromat-a-congolese-state-affair-part-ii/>
- <sup>227</sup> <https://www1.folha.uol.com.br/mundo/2019/08/ong-aponta-empresa-brasileira-como-parte-de-esquema-de-corrupcao-na-africa.shtml>
- <sup>228</sup> [https://www.transparency.org/whatwedo/publication/brazil\\_setbacks\\_in\\_the\\_legal\\_and\\_institutional\\_anti\\_corruption\\_frameworks](https://www.transparency.org/whatwedo/publication/brazil_setbacks_in_the_legal_and_institutional_anti_corruption_frameworks)
- <sup>229</sup> <http://www.fatf-gafi.org/countries/a-c/brazil/documents/outcomes-plenary-october-2019.html>
- <sup>230</sup> <http://www.oecd.org/corruption/brazil-must-immediately-end-threats-to-independence-and-capacity-of-law-enforcement-to-fight-corruption.htmv>
- <sup>231</sup> <https://www.reuters.com/article/us-brazil-politics-prosecutor/brazils-bolsonaro-picks-top-prosecutor-who-agrees-with-him-on-environment-idUSKCN1VR000> <https://www.aljazeera.com/news/2020/04/bolsonaro-taps-family-friend-brazil-federal-police-chief-200429010421684.html>; <https://www.gazetadopovo.com.br/república/coaf-chefe-demissao-entenda/> <https://politica.estadao.com.br/noticias/geral,com-cargo-ameacado-delegado-da-receita-relata-em-carta-interferencia-de-forças-externas,70002971995>
- <sup>232</sup> <https://knowledgehub.transparency.org/helpdesk/financial-intelligence-units-fius-effective-institutional-design-mandate-and-powers>
- <sup>233</sup> <https://voices.transparency.org/the-role-of-financial-intelligence-units-and-the-fight-against-corruption-in-brazil-e745f1c8e749>
- <sup>234</sup> <https://www.oecd.org/brazil/abuse-of-authority-provisions-adopted-by-the-senate-raise-concerns-over-brazil-s-capacity-to-ensure-independence-of-prosecutors-and-judges-in-fighting-corruption.htm>
- <sup>235</sup> <https://oglobo.globo.com/brasil/cnj-fez-estudos-em-2010-concluiu-que-juiz-de-garantias-era-inviavel-24181899>
- <sup>236</sup> <http://www.justica.gov.br/sua-protecao/cooperacao-internacional/estatisticas>
- <sup>237</sup> <https://www.jota.info/tudo-sobre/lava-jato-around-the-world>
- <sup>238</sup> For most cases (except those deemed confidential), this includes the location of the proceedings, the type of proceedings (investigation, criminal case, etc.), case number, start date and details of its processing. <http://aplicativos.pgr.mpf.mp.br/mapas/mpf/atuacao/index.php?UID=1448285810>
- <sup>239</sup> <http://www.mpf.mp.br/atuacao-tematica/ccr5/painel-acordos>
- <sup>240</sup> <http://www.mpf.mp.br/grandes-casos/lava-jato/resultados>
- <sup>241</sup> <http://paineis.cgu.gov.br/corregedorias/index.htm>
- <sup>242</sup> <https://cgugovbr.sharepoint.com/:x:/s/oe-crg-direp-diretoria/EVslAxc9-b5Lpb-AVmbgDPQBHg8jJFH1D8cPwITWd-telg?rt=5YalRVfl10g>
- <sup>243</sup> <https://www.gov.br/cgu/pt-br/assuntos/responsabilizacao-de-empresas/lei-anticorrupcao/acordo-leniencia>
- <sup>244</sup> <https://www.cnj.jus.br/programas-e-acoas/processo-judicial-eletronico-pje/>
- <sup>245</sup> <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=97729>
- <sup>246</sup> <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=97729#1954228>
- <sup>247</sup> <https://www.bbc.com/portuguese/brasil-50211661>
- <sup>248</sup> [https://issuu.com/transparencyinternational/docs/brazil\\_annual\\_review\\_2019](https://issuu.com/transparencyinternational/docs/brazil_annual_review_2019)
- <sup>249</sup> <https://www.transparency.org/en/publications/brazil-setbacks-in-the-legal-and-institutional-anti-corruption-frameworks>
- <sup>250</sup> <https://g1.globo.com/politica/noticia/2020/06/26/governo-exonera-delegada-que-integrava-forca-tarefa-da-lava-jato.ghtml>; <https://g1.globo.com/rj/rio-de-janeiro/noticia/2020/03/05/ex-secretario-nacional-de-justica-e-suspeito-de-ajudar-na-fuga-do-empresario-rei-arthur.ghtml>
- <sup>251</sup> Prom. SG 16/2018.
- <sup>252</sup> Law on recognition, enforcement and forwarding of judgments imposing custodial sentences or any measure involving deprivation of liberty, prom. SG 45/2019, in force as of 1 January 2020, <https://parliament.bg/bills/44/902-01-12.pdf>, p.35.
- <sup>253</sup> Council of Ministers Decree No. 240 of 24 September 2019; [https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498\\_en.pdf](https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498_en.pdf)
- <sup>254</sup> A new methodology for collecting statistics was developed in 2015. See “Improvement of competencies of judicial statisticians in judicial authorities” project, Activity Report for 1 April-30 June 2015, pp.2-3, <http://www.vss.justice.bg/root/f/upload/9/stat-rep-2015-2.pdf>. This is periodically updated by the SJC (latest, February 2018, [www.vss.justice.bg/root/f/upload/18/Metodika-13.02.2018.docx](http://www.vss.justice.bg/root/f/upload/18/Metodika-13.02.2018.docx)). Since 2016 there is a separate line for cases under Criminal Code Art. 301 para 5 (passive bribery involving a foreign official) and Art. 304 para 3 (active bribery involving a foreign official). The statistics also provide data on Art. 304b Criminal Code – regarding trading in influence, including over foreign officials.

- <sup>255</sup> Order no. 474/ 01.03.2017. The data is collected and published at the SCC website, <http://www.vks.bg/dela-za-korupcionni-prestaplenia.html>
- <sup>256</sup> All statistics on courts' activities published by SJC are available at <http://www.vss.justice.bg/page/view/1082>.
- <sup>257</sup> <http://www.vss.justice.bg/page/view/1082>
- <sup>258</sup> [https://www.prb.bg/media/filer\\_public/77/40/7740438f-08a8-4970-abd8-0ad7a98a7b26/GD%202018%20PRB.pdf](https://www.prb.bg/media/filer_public/77/40/7740438f-08a8-4970-abd8-0ad7a98a7b26/GD%202018%20PRB.pdf), pp.71-73
- <sup>259</sup> An inquiry to the Ministry of Justice for the purposes of this report received the reply that out of total 7,307 MLA requests made or received in 2016-2019, none concerned foreign bribery cases.
- <sup>260</sup> The SCC also provide for an annual summarised review of its decisions on corruption cases, e.g. for 2019, <http://www.vks.bg/dela-za-korupcionni-prestaplenia-reshenia/2019.pdf>
- <sup>261</sup> <https://legalacts.justice.bg/>
- <sup>262</sup> Commercial Register and Register of Non-for-Profit Legal Entities Act, Art. 2 para 1, <http://www.brra.bg/Default.ra>
- <sup>263</sup> Prom. SG 27/2018.
- <sup>264</sup> Art. 6 para 3, Economic and Financial Relations with Companies Registered in Jurisdictions with Preferential Tax Treatment, Entities Controlled by Them and Their Beneficial Owners Act.
- <sup>265</sup> <https://balkaninsight.com/2020/02/05/power-struggle-over-bulgarias-gambling-industry-sees-tycoon-detained/>
- <sup>266</sup> Art. 63 para 2, Measures Against the Money Laundering Act and Art. 7 para 1 point 19, BULSTAT Register Act.
- <sup>267</sup> BULSTAT Register is available at: <http://www.bulstat.bg/>. For information about the Commercial and the BULSTAT registers in English, [https://e-justice.europa.eu/content\\_business\\_registers\\_in\\_member\\_states-106-bg-maximizeMS-en.do?member=1](https://e-justice.europa.eu/content_business_registers_in_member_states-106-bg-maximizeMS-en.do?member=1).
- <sup>268</sup> Chapter 7 of the Prevention of Corruption and Forfeiture of Illegal Assets Act consists of three articles, regulating protection of complainants who submitted a report to CPCIFA from potential reprisal. The provisions are rather vague, and compensation might be received in a lawsuit under the general regime (art. 51).
- <sup>269</sup> [http://rai-see.org/wp-content/uploads/2015/08/Bulgaria\\_Anti-corruption\\_strategy\\_-2015.pdf](http://rai-see.org/wp-content/uploads/2015/08/Bulgaria_Anti-corruption_strategy_-2015.pdf)
- <sup>270</sup> By March 2020; the last amendment entered into force in October 2019.
- <sup>271</sup> Draft Concept for Penalty Policy 2020-2025, <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=4946>
- <sup>272</sup> [https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498\\_en.pdf](https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498_en.pdf)
- <sup>273</sup> [https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498\\_en.pdf](https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498_en.pdf)
- <sup>274</sup> The necessity of continued training of magistrates is noted in the 2016 Activity Report of the National Judicial Network for International Cooperation in Criminal Proceedings, p.11, <http://www.vss.justice.bg/root/f/upload/14/otcet-2016.pdf>
- <sup>275</sup> [www.vss.justice.bg/root/f/upload/23/Otchet-za-deinostta-NSMMSHD-2015\\_2018.pdf](http://www.vss.justice.bg/root/f/upload/23/Otchet-za-deinostta-NSMMSHD-2015_2018.pdf)
- <sup>276</sup> <https://www.cbc.ca/news/canada/calgary/rcmp-bribery-larry-kushniruk-canadian-general-aircraft-thai-airways-1.3866073>
- <sup>277</sup> <https://www.cbc.ca/news/canada/calgary/rcmp-bribery-larry-kushniruk-canadian-general-aircraft-thai-airways-charge-stayed-1.4436289>
- <sup>278</sup> Court Case: *R v Karigar*, 2013 ONSC 5199, <http://canlii.ca/t/g03dw> (conviction); Court Case: *R v Karigar*, 2014 ONSC 3093, <http://canlii.ca/t/g6zz0> (sentencing); <https://www.canlii.org/en/on/onca/doc/2017/2017onca576/2017onca576.pdf>; <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-18.aspx?lang=eng>; <https://fcpablog.com/2019/03/21/canada-convicts-american-and-brit-for-cfpoa-offenses/>
- <sup>279</sup> *R v SNC-Lavalin Construction Inc*, 2019 Court of Quebec (Criminal and Penal Division), Court file no. 500-73-00461-158, paras.6.7-6.40. There is also a brief summary of the facts of the case in the 20th Annual Report to Parliament, Sept 2018-August 2019, <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-20.aspx?lang=eng#fnbxvii>
- <sup>280</sup> *R v SNC-Lavalin Construction Inc*, 2019 Court of Quebec (Criminal and Penal Division), Court file no. 500-73-00461-158; <https://www.bloomberg.com/press-releases/2019-12-18/snc-lavalin-construction-inc-pleads-guilty-to-fraud>
- <sup>281</sup> *R v. Bebawi*, 2020 QCCS 22, par. 50-55 Mr. Bebawi has appealed both his conviction and his sentence. He is free on bail pending the outcome of his appeal: *Bebawi v. R.*, 2020 QCCA 20 (CanLII).
- <sup>282</sup> <https://business.financialpost.com/commodities/mining/magindustries-reveals-evidence-that-company-paid-major-bribes-in-republic-of-congo>; <https://www.cbc.ca/news/business/magindustries-probed-by-rcmp-over-bribery-allegations-in-congo-1.3091035>
- <sup>283</sup> <https://www.icis.com/explore/resources/news/2017/04/19/10098360/magindustries-says-it-will-not-face-canada-bribery-charges/>
- <sup>284</sup> <https://www.sec.gov/news/press-release/2018-47>
- <sup>285</sup> <https://www.sec.gov/news/press-release/2019-197>
- <sup>286</sup> Bill C-74, An Act to implement certain provisions of the budget tabled in Parliament on 27 February 2018 and other measures, 42nd Parliament, 1st session, House of Commons, 2018, Division 20, ss 403-409 ("Budget Implementation Act No. 1"). For ease of reference, in this section we refer to the relevant section numbers of Part XXII.1 of the Criminal Code, rather than those of the Bill.
- <sup>287</sup> The government's 2017 public consultation solicited responses to a set of general questions, including one on the merits of deferred prosecution agreements (DPAs). However, the consultation questionnaire did not present a draft of proposed legislative amendments, nor did it

ask about specific features of the design of a DPA regime. There was also no suggestion that the government was planning to table a proposed RA regime in early 2018. Canada (Department of Justice), "Expanding Canada's toolkit to address corporate wrongdoing: What we heard", Ottawa, 2018, <https://www.canada.ca/en/public-services-procurement/news/2018/03/canada-to-enhance-its-toolkit-to-address-corporate-wrongdoing.html>

<sup>288</sup> <https://www.cbc.ca/news/politics/trudeau-wilson-raybould-attorney-general-snc-lavalin-1.5014271>

<sup>289</sup> For further review of remediation agreements please see Transparency International Canada's "Briefing Note: Overview of Remediation Agreements in Canada" <https://static1.squarespace.com/static/5df7c3de2e4d3d3fce16c185/t/5f73e45e5c383345fa626237/1601430625022/Overview+of+Remediation+Agreements+in+Canada+%286%29.pdf>

<sup>290</sup> <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p3/ch21.html>

<sup>291</sup> [https://www.ic.gc.ca/eic/site/142.nsf/eng/h\\_00000.html](https://www.ic.gc.ca/eic/site/142.nsf/eng/h_00000.html); The provinces of Quebec and British Columbia also held consultations for a beneficial ownership registry in 2019 and 2020 respectively. The Government of Quebec proposed the establishment of a public registry in the 2020-2021 budget. Your Future Budget: Additional Information. Government of Quebec, March 2020, [http://www.budget.finances.gouv.qc.ca/budget/2020-2021/en/documents/Budget2021\\_AdditionalInfo.pdf](http://www.budget.finances.gouv.qc.ca/budget/2020-2021/en/documents/Budget2021_AdditionalInfo.pdf)

<sup>292</sup> <https://laws-lois.justice.gc.ca/eng/acts/C-45.2/FullText.html?txthl=report#h-112373>; See also

20<sup>th</sup> Annual Report to Parliament, Sept 2018-August 2019, <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-20.aspx?lang=eng#fnbxvii>; 19<sup>th</sup> Annual Report to Parliament, Sept 2017-August 2018, <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-19.aspx?lang=eng>; 18<sup>th</sup> Annual Report to Parliament, Sept 2016-August 2017, <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-18.aspx?lang=eng#highlights>; 17<sup>th</sup> Annual Report to Parliament, Sept 2015-August 2016, <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-17.aspx?lang=eng>

<sup>293</sup> <https://fcablog.com/2020/04/15/its-time-for-canada-to-embrace-public-ubo-registries/>

<sup>294</sup> Canada Gazette: Part II. Vol 1154, No. 12. 10 June 2020, Ottawa <http://gazette.gc.ca/rp-pr/p2/2020/2020-06-10/pdf/g2-15412.pdf>. Pp. 972-997.

<sup>295</sup> <https://www.oecd.org/corruption/oecd-will-follow-canadian-proceedings-addressing-allegations-of-political-interference-in-foreign-bribery-prosecution.htm>

<sup>296</sup> *R v Jordan*, 2016 SCC 27 (CanLII), [2016] 1 SCR 631, is the Supreme Court of Canada decision that set down strict timelines for the completion of criminal cases in light of the constitutional protection of trial within a reasonable time under s. 11(b) of the Canadian Charter of Rights and Freedoms.

<sup>297</sup> Mr. Roy was an executive at SNC-Lavalin beginning in 1997. He was charged in relation to his alleged role in the corruption scheme in Libya. He reported to Riadh Ben Aïssa, who was then President of Socotec and Executive Vice-President of SNC-Lavalin.

<sup>298</sup> <https://www.cbc.ca/news/politics/rcmp-significant-resourcing-challenges-security-1.5492424>

<sup>299</sup> <https://www.diarioconstitucional.cl/noticias/asuntos-de-interes-publico/2018/12/20/cs-rechaza-nulidad-y-confirma-fallo-que-condeno-a-militar-por-cohecho/>

<sup>300</sup> [www.oecd.org/corruption/anti-bribery/OECD-Chile-Phase-4-Report-ENG.pdf](http://www.oecd.org/corruption/anti-bribery/OECD-Chile-Phase-4-Report-ENG.pdf), pp.31-32.

<sup>301</sup> <https://cmiguate.org/caso-blue-oil-entramado-de-estructura-macrocriminal-con-insospechados-alcances/>

<sup>302</sup> <https://www.justice.gov/opa/pr/latam-airlines-group-resolves-foreign-corrupt-practices-act-investigation-and-agrees-pay-1275>

<sup>303</sup> <https://www.leychile.cl/Navegar?idNorma=1125600>

<sup>304</sup> <https://globalcompliancenews.com/chile-new-law-fight-corruption-20190118/>; <https://www.mondaq.com/crime/767708/law-no-21121-amends-rules-relating-to-corruption-and-other-crimes-incorporates-new-criminal-conducts-and-expands-criminal-liability-of-legal-entities>

<sup>305</sup> <http://www.fiscaliadechile.cl/Fiscalia/estadisticas/index.do>; <http://www.uaf.cl/acerca/quehacemos.aspx>

<sup>306</sup> <https://www.pjud.cl/consulta-unificada-de-causas>

<sup>307</sup> <https://www.opengovpartnership.org/members/chile/commitments/CL0061/>

<sup>308</sup> <https://www.uaf.cl/legislacion/beneficiario.aspx>

<sup>309</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Chile-Phase-4-Report-ENG.pdf>

<sup>310</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Chile-Phase-4-Report-ENG.pdf>

<sup>311</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Chile-Phase-4-Report-ENG.pdf>

<sup>312</sup> <https://www.supersociedades.gov.co/Noticias/Paginas/2018/supersociedades-impone-multa-de-5-078-millones-a-inassa-por-soborno-transnacional.aspx>; <https://www.bnamericas.com/en/news/inassa-fined-in-colombia-for-transnational-bribery>

<sup>313</sup> <https://colombiareports.com/colombia-investigating-12-companies-for-foreign-bribery-report/>

<sup>314</sup> <http://www.oecd.org/corruption/Colombia-Phase-3-Report-ENG.pdf>

<sup>315</sup> <https://www.laprensagrafica.com/elsalvador/San-Salvador-Apopa-y-Santa-Tecla-los-clientes-de-AGM-Desarrollos-20161011-0032.html>

<sup>316</sup> <https://www.dw.com/es/fiscal%C3%ADa-de-colombia-allana-avianca-por-investigaci%C3%B3n-de-soborno/a-52358954>

- <sup>317</sup> <https://www.financecolombia.com/avianca-statement-we-may-have-violated-the-us-foreign-corrupt-practices-act/>
- <sup>318</sup> Law 2,014/2019 <https://dapre.presidencia.gov.co/normativa/normativa/LEY%202014%20DEL%2030%20DE%20DICIEMBRE%20DE%202019.pdf>
- <sup>319</sup> Law 2,003/2019: 220
- <sup>320</sup> Law 2,013/2019: 220
- <sup>321</sup> [https://www.supersociedades.gov.co/delegatura\\_aec/Paginas/Curso-virtual-sobre-Soborno-Transnacional.aspx](https://www.supersociedades.gov.co/delegatura_aec/Paginas/Curso-virtual-sobre-Soborno-Transnacional.aspx)
- <sup>322</sup> [https://www.supersociedades.gov.co/nuestra\\_entidad/normatividad/normatividad\\_resoluciones/Resoluci%C3%B3n%20200-000558.pdf](https://www.supersociedades.gov.co/nuestra_entidad/normatividad/normatividad_resoluciones/Resoluci%C3%B3n%20200-000558.pdf);  
[https://www.supersociedades.gov.co/delegatura\\_aec/Documents/Circular\\_Externa\\_100-000003\\_del\\_26\\_de\\_julio\\_de\\_2016.pdf](https://www.supersociedades.gov.co/delegatura_aec/Documents/Circular_Externa_100-000003_del_26_de_julio_de_2016.pdf);  
[https://www.supersociedades.gov.co/delegatura\\_aec/Documents/RESOLUCION\\_BENEFICIOS\\_POR\\_COLABORACION.pdf](https://www.supersociedades.gov.co/delegatura_aec/Documents/RESOLUCION_BENEFICIOS_POR_COLABORACION.pdf)
- <sup>323</sup> [https://www.supersociedades.gov.co/delegatura\\_aec/Paginas/Decisiones\\_en\\_firme.aspx](https://www.supersociedades.gov.co/delegatura_aec/Paginas/Decisiones_en_firme.aspx)
- <sup>324</sup> <https://www.rues.org.co/>
- <sup>325</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GAFILAT-Mutual-Evaluation-Colombia-2018.pdf>
- <sup>326</sup> <http://www.oecd.org/corruption/Colombia-Phase-3-Report-ENG.pdf>
- <sup>327</sup> [https://www.supersociedades.gov.co/delegatura\\_aec/Paginas/Canal-de-Denuncias-Soborno-Internacional.aspx](https://www.supersociedades.gov.co/delegatura_aec/Paginas/Canal-de-Denuncias-Soborno-Internacional.aspx)
- <sup>328</sup> <http://www.oecd.org/corruption/Colombia-Phase-3-Report-ENG.pdf>
- <sup>329</sup> <https://www.nacion.com/el-pais/infraestructura/constructora-meco-negocio-con-fiscalia-panamena/27XJXJ35R5AKVE7SBZ6WMD6ZLE/story/>
- <sup>330</sup> <https://elperiodico.com.gt/nacion/2017/08/22/civ-beneficia-a-constructora-de-profugo-senalado-de-pagar-sobornos/>;  
<https://www.soy502.com/articulo/confesion-jaime-aporicio-capo-emergente-149>;  
<https://elperiodico.com.gt/nacion/2017/07/16/al-menos-123-contratos-recibieron-constructoras-que-pagaron-sobornos-a-empresas-ligadas-a-sinibaldi/>
- <sup>331</sup> *Ley de Responsabilidad de las Personas Jurídicas sobre Cohechos Domésticos, Soborno Transnacional y Otros Delitos*  
[http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=88954&nValor3=116544&strTipM=TC](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=88954&nValor3=116544&strTipM=TC)
- <sup>332</sup> <http://www.oecd.org/corruption/Costa%20Rica-Phase-2-Report-ENG.pdf>
- <sup>333</sup> <https://www.poder-judicial.go.cr/planificacion/index.php/estadistica/estadisticas-judiciales>
- <sup>334</sup> [http://jurisprudencia.poder-judicial.go.cr/SCIJ\\_PJ/busqueda/jurisprudencia/jur\\_indice\\_despachos\\_x\\_anno.aspx?param1=IA&cmbDespacho=0006&strNomDespacho=Sala%20Tercera%20de%20la%20Corte&param01=Sentencias%20por%20Despacho&txtRelevante=0](http://jurisprudencia.poder-judicial.go.cr/SCIJ_PJ/busqueda/jurisprudencia/jur_indice_despachos_x_anno.aspx?param1=IA&cmbDespacho=0006&strNomDespacho=Sala%20Tercera%20de%20la%20Corte&param01=Sentencias%20por%20Despacho&txtRelevante=0)
- <sup>335</sup> <http://www.oecd.org/corruption/costa-rica-has-improved-its-foreign-bribery-legislation-but-must-strengthen-enforcement-and-close-legal-loopholes.htm>
- <sup>336</sup> Executive Decree n° 41.040/2018
- <sup>337</sup> <https://www.internationalinvestment.net/news/4004161/costa-rica-strengthens-beneficial-ownership-rules>
- <sup>338</sup> <https://www.taxjustice.net/2020/04/03/costa-rica-a-bill-threatening-to-render-its-beneficial-ownership-register-useless/>
- <sup>339</sup> <http://www.oecd.org/corruption/costa-rica-has-improved-its-foreign-bribery-legislation-but-must-strengthen-enforcement-and-close-legal-loopholes.htm>
- <sup>340</sup> <http://www.oecd.org/corruption/Costa%20Rica-Phase-2-Report-ENG.pdf>
- <sup>341</sup> <http://www.oecd.org/corruption/Costa%20Rica-Phase-2-Report-ENG.pdf>
- <sup>342</sup> <http://www.oecd.org/corruption/costa-rica-has-improved-its-foreign-bribery-legislation-but-must-strengthen-enforcement-and-close-legal-loopholes.htm>
- <sup>343</sup> <http://www.oecd.org/corruption/costa-rica-has-improved-its-foreign-bribery-legislation-but-must-strengthen-enforcement-and-close-legal-loopholes.htm>
- <sup>344</sup> <https://korupce.cz/zahranicni-spoluprace/oecd-2/>; <https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>
- <sup>345</sup> <https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>
- <sup>346</sup> <https://eng.lsm.lv/article/society/crime/knab-czech-and-polish-companies-implicated-in-rigas-satiksme-graft-case.a302919/>
- <sup>347</sup> <https://nabu.gov.ua/en/novyny/energoatom-case-indictment-two-more-persons-was-sent-court>
- <sup>348</sup> <https://www.e15.cz/byznys/prumysl-a-energetika/korejci-udajne-kupuji-od-rusu-plzenskou-spolecnost-skoda-js-ruska-strana-obchod-popira-1364903>
- <sup>349</sup> <https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>
- <sup>350</sup> As of 3 July 2020.

<sup>351</sup> Foreign bribery falls within the scope of Sections 331-334 of the Criminal Code, which apply to all bribery crimes without making the distinction between “domestic” and “foreign” bribery or other special subtypes of bribery. The information regarding one foreign bribery case opened in the Czech Republic was published in the Anti-Bribery OECD Convention Implementation Phase 4 Report, <https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>

<sup>352</sup> [http://www.nsoud.cz/JudikaturaNS\\_new/ns\\_web.nsf/Edit/ONEjvyssimsoudu-Statistiky?Open&area=O%20Nejvy%C5%A1%C5%A1%C3%ADm%20soudu&grp=Statistiky&lng=](http://www.nsoud.cz/JudikaturaNS_new/ns_web.nsf/Edit/ONEjvyssimsoudu-Statistiky?Open&area=O%20Nejvy%C5%A1%C5%A1%C3%ADm%20soudu&grp=Statistiky&lng=)

<sup>353</sup> There is a constitutional right to access to information and the corresponding obligation by courts and other bodies to publicly announce and publish court decisions, unless to do so conflicts with another constitutional right, e.g. national security. In such cases, the court decision is anonymised or certain sensitive parts are omitted (e.g. those that could impact national security).

<sup>354</sup> Pursuant to Act no. 106/1999 Coll., on Free Access to Information.

<sup>355</sup> Section 118g of Act no 304/2013 Coll., on Public registers provides a list of authorities that have or may obtain access to the register, [https://e-justice.europa.eu/content\\_business\\_registers\\_in\\_member\\_states-106-cz-cs.do?member=1](https://e-justice.europa.eu/content_business_registers_in_member_states-106-cz-cs.do?member=1)

<sup>356</sup> Act no 304/2013: 256

<sup>357</sup> Via an amendment of the Act no. 304/2013 Coll. This amendment implemented the requirements of the EU's 4<sup>th</sup> Anti-Money Laundering Directive.

<sup>358</sup> This obligation is laid down by Section 29b(1) of Act no. 253/2008 Coll.

<sup>359</sup> As included in the recommendations of the OECD Working Group on Bribery Phase 4 Report on Czech Republic, 2017, <https://www.oecd.org/corruption/the-czech-republic-must-take-significant-steps-to-enforce-its-foreign-bribery-laws-but-demonstrates-commitment-to-improve.htm>

<sup>360</sup> Criticised by the OECD WGB, <http://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>

<sup>361</sup> <https://www.seatrade-maritime.com/europe/hempel-fires-four-german-bribery-scandal>; <https://fcpablog.com/2019/03/05/danish-coatings-maker-resolves-global-bribe-case/>

<sup>362</sup> <https://www.hempel.com/news/2019/hempel-annual-report-2018-press-release>

<sup>363</sup> <https://www.worldbank.org/en/news/press-release/2017/04/05/world-bank-debars-consia-consultants-aps-for-14-years>

<sup>364</sup> [https://development-today.com/archive/2017/dt-4-2017/world\\_bank\\_corruption\\_report\\_kicks\\_off\\_danish\\_police\\_investigation\\_of\\_consia](https://development-today.com/archive/2017/dt-4-2017/world_bank_corruption_report_kicks_off_danish_police_investigation_of_consia)

<sup>365</sup> [https://www.finanstilsynet.dk/Nyheder-og-Presse/Pressemeddelelser/2019/Hvid\\_rapport\\_090519](https://www.finanstilsynet.dk/Nyheder-og-Presse/Pressemeddelelser/2019/Hvid_rapport_090519)

<sup>366</sup> <https://www.occrp.org/en/poy/2018/>

<sup>367</sup> <https://www.reuters.com/article/us-deutsche-bank-raid/german-authorities-raid-deutsche-bank-over-danske-scandal-idUSKBN1WA1IX>

<sup>368</sup> <https://www.reuters.com/article/us-brazil-petrobras-corruption/brazil-expands-car-wash-graft-probe-into-petrobras-shipping-contracts-idUSKBN1YM19M>

<sup>369</sup> [https://m.energywatch.eu/article/11206963; file:///C:/Users/gdell/AppData/Local/Temp/BWSC-press-release-breach-of-companys-code-of-conduct\\_06FEB2019\\_ENG-1.pdf](https://m.energywatch.eu/article/11206963; file:///C:/Users/gdell/AppData/Local/Temp/BWSC-press-release-breach-of-companys-code-of-conduct_06FEB2019_ENG-1.pdf); <https://www.capital-media.mu/2020/06/press-release-bwsc-settles-whistleblower-case-with-african-development-bank/>

<sup>370</sup> <https://www.afdb.org/en/news-and-events/press-releases/integrity-development-projects-african-development-bank-debars-burmeister-wain-fraudulent-and-corrupt-practices-35995>

<sup>371</sup> <https://finans.dk/erhverv/ECE11916642/flsmidth-er-involveret-i-sag-om-korruption-for-225-mio-kr/?ctxref=ext;>  
<https://finans.dk/erhverv/ECE11977320/flsmidth-gav-medarbejdere-frit-lejde-i-korruptionssager/?ctxref=ext;>

<https://finans.dk/erhverv/ECE11964117/bagmandspolitiet-korruptionssagen-i-flsmidth-er-foraeldet/>

<sup>372</sup> <https://www.businesstoday.in/current/corporate/carlsberg-india-bribed-govt-officials-for-favours-danish-newspaper-berlingske/story/379565.html>

<sup>373</sup> Email of 20 August 2019 from SØIK to Transparency International Denmark.

<sup>374</sup> Agreement between the government (Venstre, Liberal Alliance and the Conservative People's Party) and the Social Democrats, the Danish People's Party, the Radical Left and the Socialist People's Party, “Strengthening efforts against financial crime”, Copenhagen, 2019,

[https://www.regeringen.dk/media/6607/aftale-om-styrkelse-af-indsatsen-mod-finansiel-kriminalitet-270319\\_endelig.pdf](https://www.regeringen.dk/media/6607/aftale-om-styrkelse-af-indsatsen-mod-finansiel-kriminalitet-270319_endelig.pdf)

<sup>375</sup> [http://www.bechbruun.com/-/media/Files/Viden-center/Nyhedsbreve/Finans+og+kapitalmarked/2017/Den+nye+hvidvasklov+uk\\_web+\(2\).pdf](http://www.bechbruun.com/-/media/Files/Viden-center/Nyhedsbreve/Finans+og+kapitalmarked/2017/Den+nye+hvidvasklov+uk_web+(2).pdf)

<sup>376</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Denmark-2017.pdf>

<sup>377</sup> <https://www.bloomberg.com/news/articles/2018-05-16/u-s-sanctions-head-of-hezbollah-in-joint-action-with-qatar-jh9ilw52>

<sup>378</sup> <http://www.ft.dk/samling/20171/almdel/REU/bilag/258/1885338.pdf>

<sup>379</sup> <https://www.ft.dk/samling/20171/lovforslag/l147/index.htm>

<sup>380</sup> <https://dab.dk/node/119>

<sup>381</sup> The fee is 175 Danish kroner (US\$27).

- <sup>382</sup> <http://www.oecd.org/daf/anti-bribery/Denmark-Phase-3-Written-Follow-Up-Report-EN.pdf>
- <sup>383</sup> <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5aml-d-patchy-progress/>
- <sup>384</sup> <http://www.oecd.org/daf/anti-bribery/Denmark-Phase-3-Written-Follow-Up-Report-EN.pdf>
- <sup>385</sup> <http://www.oecd.org/daf/anti-bribery/Denmark-Phase-3-Written-Follow-Up-Report-EN.pdf>
- <sup>386</sup> <http://www.oecd.org/daf/anti-bribery/Denmark-Phase-3-Written-Follow-Up-Report-EN.pdf>
- <sup>387</sup> COM/2019/504 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1560258090909&uri=CELEX%3A52019DC0504>
- <sup>388</sup> <http://www.fatf-gafi.org/countries/d-i/denmark/documents/fur-denmark-2019.html>
- <sup>389</sup> <http://www.fatf-gafi.org/countries/d-i/denmark/documents/fur-denmark-2019.html>
- <sup>390</sup> <https://www.reuters.com/article/us-danske-bank-moneylaundering/estonia-to-investigate-danske-bank-over-money-laundering-allegations-idUSKBN1KL176>
- <sup>391</sup> <https://www.reuters.com/article/us-danske-bank-moneylaundering-swedbank/estonia-investigates-alleged-swedbank-link-to-money-laundering-scandal-idUSKCN1Q90RW>
- <sup>392</sup> <https://news.err.ee/952734/three-tallinn-bank-employees-arrested-for-possible-money-laundering>
- <sup>393</sup> <https://voices.transparency.org/why-danske-bank-estonia-appears-in-so-many-money-laundering-scandals-424047fe987c>
- <sup>394</sup> Around US\$230 million was allegedly diverted by Russian officials from taxes paid by Hermitage Capital Management. The scheme was uncovered by Sergey Magnitsky in 2008. . According to a report by the Organised Crime and Corruption Reporting Project, evidence surfaced in 2013 that both Danske Bank and the Estonian branch of Swedbank had been used to launder part of those funds. Estonian authorities have recently relaunched investigations into the affair <https://www.forbes.com/sites/francescoppola/2018/09/29/danske-bank-estonia-the-magnitsky-connection/#7cb4278d37c5> ; <https://www.occrp.org/en/daily/9568-estonia-reopens-money-laundering-probe-linked-to-magnitsky-case>
- <sup>395</sup> <https://www.occrp.org/en/investigations/7698-report-russia-laundered-billions-via-danske-bank-estonia>
- <sup>396</sup> <https://www.occrp.org/en/azerbajjanilaundromat/denmarks-biggest-bank-hosted-azerbajjani-slush-fund> ; <https://www.occrp.org/en/azerbajjanilaundromat/denmarks-biggest-bank-hosted-azerbajjani-slush-fund>
- <sup>397</sup> <https://www.bbc.com/news/business-47292732>
- <sup>398</sup> <https://www.occrp.org/en/daily/11456-estonia-danske-bank-money-laundering-probe-expands>
- <sup>399</sup> <https://danskebank.com/news-and-insights/news-archive/press-releases/2018/pr19092018>
- <sup>400</sup> <https://danskebank.com/-/media/danske-bank-com/pdf/investor-relations/fsa-statements/fsa-decision-re-danske-bank-3-may-2018.pdf?rev=47d2a3f36ea54a27a4a06315617e48e3&hash=6FF0797DF9CCBCD211BD1D0578406123>
- <sup>401</sup> [https://www.kapo.ee/sites/default/files/public/content\\_page/Annual%20Review%202018.pdf](https://www.kapo.ee/sites/default/files/public/content_page/Annual%20Review%202018.pdf), p.38.
- <sup>402</sup> <https://eng.lsm.lv/article/society/society/prosecution-charges-magonis-estonian-magnate-with-bribery.a191184/>; [https://www.baltictimes.com/prosecution\\_seeks\\_four-year\\_sentences\\_for\\_former\\_ldz\\_ceo\\_magonis\\_and\\_estonian\\_businessman\\_ossinovski/](https://www.baltictimes.com/prosecution_seeks_four-year_sentences_for_former_ldz_ceo_magonis_and_estonian_businessman_ossinovski/)
- <sup>403</sup> [https://www.baltictimes.com/latvian\\_court\\_decides\\_to\\_hand\\_skinest\\_rail\\_bribery\\_case\\_to\\_court\\_in\\_estonia/](https://www.baltictimes.com/latvian_court_decides_to_hand_skinest_rail_bribery_case_to_court_in_estonia/); <https://bnn-news.com/prosecutor-requests-four-years-in-prison-for-ugis-magonis-and-oleg-ossinovski-212730>
- <sup>404</sup> <https://bnn-news.com/suspicious-over-cartel-agreement-knab-searches-construction-company-i-merks-i-204832>
- <sup>405</sup> <https://www.rahandusministeerium.ee/en/news/estonia-enhances-efficiency-fight-against-money-laundering>
- <sup>406</sup> <https://www.kriminaalpoliitika.ee/kuritegevuse-statistika/>
- <sup>407</sup> <https://www.just.ee/et>
- <sup>408</sup> <https://www.prokuratuur.ee/>
- <sup>409</sup> <https://aastaraamat.prokuratuur.ee/sites/default/files/inline-files/Prokuratuuri%20tegevus%202019.aastal%20%28002%29.pdf>
- <sup>410</sup> <https://www.kapo.ee/en/content/annual-reviews.html>
- <sup>411</sup> <https://www.riigiteataja.ee/index.html> ; <https://www.riigikohus.ee/>
- <sup>412</sup> <https://www.rik.ee/en/e-business-register>; <https://www.rik.ee/en/company-registration-portal/determining-beneficial-owners>
- <sup>413</sup> <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5aml-d-patchy-progress/>
- <sup>414</sup> <http://www.oecd.org/corruption/anti-bribery/Estonia-Phase-3-Written-Follow-up-Report-ENG.pdf>
- <sup>415</sup> <http://www.oecd.org/corruption/anti-bribery/Estonia-Phase-3-Written-Follow-up-Report-ENG.pdf>
- <sup>416</sup> <https://valtioneuvosto.fi/en/projects-and-legislation>
- <sup>417</sup> [http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162227/MEAE\\_guidelines\\_2b\\_2020\\_ENG\\_Anti\\_corruption\\_guide\\_for\\_SMES\\_07052020.pdf?sequence=1&isAllowed=y](http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162227/MEAE_guidelines_2b_2020_ENG_Anti_corruption_guide_for_SMES_07052020.pdf?sequence=1&isAllowed=y)

<sup>418</sup> FATF, Anti-money laundering and counter-terrorist financing measures in Finland, 2019, [www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Finland-2019.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Finland-2019.pdf)

<sup>419</sup> [https://www.stat.fi/til/oik\\_en.html](https://www.stat.fi/til/oik_en.html).

<sup>420</sup> <http://www.oecd.org/corruption/Finland-phase-4-follow-up-report-ENG.pdf>

<sup>421</sup> Introduced by amendment 28.6.2017/447 to the Trade Register Act.

<sup>422</sup> The FATF has determined that Finland should adopt appropriate measures to ensure mitigation of the misuse of legal persons, <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Finland-2019.pdf>

<sup>423</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Finland-2019.pdf>

<sup>424</sup> <https://www.oecd.org/corruption/anti-bribery/Finland-Phase-4-Report-ENG.pdf>; <http://www.oecd.org/corruption/Finland-phase-4-follow-up-report-ENG.pdf>

<sup>425</sup> Legal persons are subject to a maximum fine of €850,000 (US\$988,000) for all criminal offences that attract corporate liability, <https://www.oecd.org/corruption/anti-bribery/Finland-Phase-4-Report-ENG.pdf>, p.42.

<sup>426</sup> <http://www.oecd.org/corruption/Finland-phase-4-follow-up-report-ENG.pdf>

<sup>427</sup> <http://www.oecd.org/corruption/Finland-phase-4-follow-up-report-ENG.pdf>, p.4.

<sup>428</sup> <https://www.oecd.org/corruption/anti-bribery/Finland-Phase-4-Report-ENG.pdf>

<sup>429</sup> <https://www.airbus.com/content/dam/corporate-topics/publications/press-release/2020/01/EN-Airbus-final-agreements-with-French-UK-US-authorities.pdf>; <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>

<sup>430</sup> A total of 11 CJIPs has been concluded in this timeframe, but the remaining five concern tax fraud offences: <https://www.agence-francaise-anticorruption.gouv.fr/fr/convention-judiciaire-dinteret-public>

<sup>431</sup> <https://www.agence-francaise-anticorruption.gouv.fr/files/files/20200129%2520CJIP%2520AIRBUS%2520sign%25C3%25A9e.pdf>

<sup>432</sup> [https://www.agence-francaise-anticorruption.gouv.fr/files/2018-10/24.05.18\\_-\\_CJIP.pdf](https://www.agence-francaise-anticorruption.gouv.fr/files/2018-10/24.05.18_-_CJIP.pdf)

<sup>433</sup> <https://www.agence-francaise-anticorruption.gouv.fr/files/files/Lignes%20directrices%20PNF%20CJIP.pdf>

<sup>434</sup> <https://www.ccomptes.fr/system/files/2019-03/20190204-refere-S2018-3520-lutte-delinquance-economique-financiere.pdf>

<sup>435</sup> <https://www.ccomptes.fr/sites/default/files/2019-03/20190204-refere-S2018-3520-lutte-delinquance-economique-financiere-rep-mi.pdf>

<sup>436</sup> <https://www.ccomptes.fr/sites/default/files/2019-03/20190204-refere-S2018-3520-lutte-delinquance-economique-financiere-rep-min-justice.pdf>

<sup>437</sup> [https://www.agence-francaise-anticorruption.gouv.fr/files/files/RA%20Annuel%20AFA\\_WEB\\_0.pdf](https://www.agence-francaise-anticorruption.gouv.fr/files/files/RA%20Annuel%20AFA_WEB_0.pdf)

<sup>438</sup> <https://www.agence-francaise-anticorruption.gouv.fr/fr/lancement-plan-pluriannuel-national-lutte-contre-corruption>

<sup>439</sup> <https://www.vie-publique.fr/sites/default/files/rapport/pdf/194000532.pdf>

<sup>440</sup> <https://www.agence-francaise-anticorruption.gouv.fr/fr/rapports>

<sup>441</sup> [https://www.tribunal-de-paris.justice.fr/sites/default/files/2019-01/PNF\\_synthese%202018.pdf](https://www.tribunal-de-paris.justice.fr/sites/default/files/2019-01/PNF_synthese%202018.pdf)

<sup>442</sup> [https://www.lemonde.fr/les-decodeurs/article/2018/06/28/l-ouverture-des-donnees-judiciaires-ouvre-un-marche-ou-s-agitent-de-nouveaux-acteurs\\_5322679\\_4355770.html](https://www.lemonde.fr/les-decodeurs/article/2018/06/28/l-ouverture-des-donnees-judiciaires-ouvre-un-marche-ou-s-agitent-de-nouveaux-acteurs_5322679_4355770.html)

<sup>443</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033202746&categorieLien=id>

<sup>444</sup> [https://www.legifrance.gouv.fr/affichTexte.do?jsessionid=FFBE338A2FAC3A10FDEDEBE7A2456567.tplgfr43s\\_1?cidTexte=JORFTEXT000042055251&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000042055246](https://www.legifrance.gouv.fr/affichTexte.do?jsessionid=FFBE338A2FAC3A10FDEDEBE7A2456567.tplgfr43s_1?cidTexte=JORFTEXT000042055251&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000042055246)

<sup>445</sup> <https://www.dalloz-actualite.fr/flash/un-pas-pour-l-open-data-des-decisions-de-justice#.Xv7jnm0zbIV>

<sup>446</sup> <https://www.agence-francaise-anticorruption.gouv.fr/fr/convention-judiciaire-dinteret-public>

<sup>447</sup> <https://www.infogreffe.fr/rbe>

<sup>448</sup> <https://www.legifrance.gouv.fr/affichCodeArticle.do%3B?cidTexte=LEGITEXT000006069577&idArticle=LEGIARTI000024416683>

<sup>449</sup> <https://www.conseil-constitutionnel.fr/decision/2016/2016591QPC.htm>

<sup>450</sup> <https://transparency-france.org/wp-content/uploads/2016/12/Analyse-de-la-loi-Sapin-2-apr%C3%A8s-d%C3%A9cision-CC-V7.pdf>

<sup>451</sup> <https://transparency-france.org/actu/un-an-apres-lelection-presidentielle-lethique-et-la-transparence-de-la-vie-publique/#.Xl0SICFKJIU>

<sup>452</sup> [http://www.assemblee-nationale.fr/dyn/15/rapports/cec/115b1822\\_rapport-information.pdf](http://www.assemblee-nationale.fr/dyn/15/rapports/cec/115b1822_rapport-information.pdf)

<sup>453</sup> <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>

<sup>454</sup> <https://transparency-france.org/actu/un-an-apres-lelection-presidentielle-lethique-et-la-transparence-de-la-vie-publique/#.Xl0SICFKJIU>

<sup>455</sup> Section 30. The maximum amount for negligence was then €500,000 (US\$581,000).

- <sup>456</sup> <https://www.justiz.bayern.de/gerichte-und-behoerden/staatsanwaltschaft/muenchen-1/presse/2018/02.php>. The company also issued a press release, <https://www.airbus.com/newsroom/press-releases/en/2018/02/munich-public-prosecutor-ends-eurofighter-austria-investigation-.html>. Transparency Germany requested the text of the decision by the Prosecutor's Office, but the request was rejected. A complaint made against the Prosecutor's Office was also rejected, <https://voices.transparency.org/the-german-press-and-public-have-a-right-to-know-details-of-airbuss-81-million-foreign-bribery-24f97b98c0f0>
- <sup>457</sup> Section 266. In 2014, Mr Sharef was acquitted of charges of authorising bribe payments of US\$4.7m and 9.6 m for a contract for electronic passports in Argentina, operating a slush fund in South America between 1991 and 1996, and failing to return the balance of US\$35 million to Siemens in 2008. The highest Federal Court upheld the acquittal regarding bribery, but ordered a retrial regarding the slush fund.
- <sup>458</sup> <https://www.sueddeutsche.de/wirtschaft/korruption-ein-letzter-prozess-1.3150517>
- <sup>459</sup> <https://www.merkur.de/bayern/ruestungsmanager-olaf-landgericht-muenchen-verdacht-steuerhinterziehung-5660535.html>
- <sup>460</sup> <https://sites.tufts.edu/corruptarmsdeals/greek-land-forces-and-german-bribery/>; <https://www.sueddeutsche.de/wirtschaft/krauss-maffei-wegmann-teures-schmiergeldgeschaeft-1.3566020>
- <sup>461</sup> BGH 1 StR 265/16, <https://sites.tufts.edu/corruptarmsdeals/greek-land-forces-and-german-bribery/>
- <sup>462</sup> <https://www.transparency.de/aktuelles/detail/article/urteil-zu-korruptionsaffaere-um-panzerverkaeufe-nach-griechenland/>
- <sup>463</sup> [https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RefE\\_Staerkung\\_Integritaet\\_Wirtschaft.pdf?\\_\\_blob=publicationFile&v=1](https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RefE_Staerkung_Integritaet_Wirtschaft.pdf?__blob=publicationFile&v=1)
- <sup>464</sup> As recommended by Transparency Germany, [https://www.transparency.de/fileadmin/Redaktion/Publikationen/2019/Positionspapier\\_zur\\_strafrechtlichen\\_Verantwortung\\_von\\_Unternehmen.pdf](https://www.transparency.de/fileadmin/Redaktion/Publikationen/2019/Positionspapier_zur_strafrechtlichen_Verantwortung_von_Unternehmen.pdf)
- <sup>465</sup> <https://www.jdsupra.com/legalnews/germany-faces-drastic-increase-of-fines-10616/>
- <sup>466</sup> Joint Justice Portal of the federal government and the states, <https://justiz.de/onlinedienste/rechtsprechung/index.php>, and also other free and commercial databases.
- <sup>467</sup> Reitmaier, "Anti-bribery enforcement: The case for making court decisions freely available in Germany", <https://oecdonthellevel.com/2017/12/05/anti-bribery-enforcement-the-case-for-making-court-decisions-freely-available-in-germany/>
- <sup>468</sup> [https://www.transparenzregister.de/treg/de/start;jsessionid=DD503B126D4024A055ED87EBA777295D.app31?0](https://www.transparenzregister.de/treg/de/start;jsessionid=DD503B126D4024A055ED87EBA777295D.app31?0;); § 18 Geldwäschegesetz, [http://www.gesetze-im-internet.de/gwg\\_2017/\\_18.html](http://www.gesetze-im-internet.de/gwg_2017/_18.html)
- <sup>469</sup> Commercial Register (*Handelsregister*), [https://www.handelsregister.de/rp\\_web/welcome.do](https://www.handelsregister.de/rp_web/welcome.do), § 8 Handelsgesetzbuch
- <sup>470</sup> <https://www.taxjustice.net/2020/05/11/fatf-ante-portas-why-many-berlin-real-estate-owners-remain-anonymous-despite-new-transparency-laws/>
- <sup>471</sup> § 21 *Geldwäschegesetz*
- <sup>472</sup> § 23 para 1 no 3 *Geldwäschegesetz* and § 23 para 2 *Geldwäschegesetz*
- <sup>473</sup> Requests to the Transparency Register (*Transparenzregister*) in the first quarter of 2020 needed up to two weeks for a request to be accepted, although most were accepted within a few days.
- <sup>474</sup> Section 30, Regulatory Offences Act
- <sup>475</sup> Art. 3 (2) of the OECD Anti-Bribery Convention, See N)o. 243, 244 and Commentary, <http://www.oecd.org/corruption/anti-bribery/Germany-Phase-4-Report-ENG.pdf>
- <sup>476</sup> Section 47, Regulatory Offences Act. See <http://www.oecd.org/corruption/anti-bribery/Germany-Phase-4-Report-ENG.pdf>, No. 233-235 and Commentary.
- <sup>477</sup> Transparency International Secretariat Submission to the UN Working Group on Business and Human Rights multi-stakeholder consultation on "Connecting business and human rights and anti-corruption agendas", 14 May 2020, II; Foreign bribery, human rights impacts and victims' remedies, [https://www.ohchr.org/Documents/Issues/Business/2020Survey/Civil\\_society/Transparency\\_International.docx](https://www.ohchr.org/Documents/Issues/Business/2020Survey/Civil_society/Transparency_International.docx)
- <sup>478</sup> CM/Rec (2016) 3 # 44 <https://rm.coe.int/human-rights-and-business-recommendation-cm-rec-2016-3-of-the-committee/16806f2032>
- <sup>479</sup> This has been the subject of criticism by the OECD WGB, e.g. <http://www.oecd.org/corruption/anti-bribery/Germany-Phase-4-Report-ENG.pdf>, Recommendation 1 b), and Transparency International Germany.
- <sup>480</sup> In particular, the Federal Labour Court, *Bundesarbeitsgericht*, decision of 3 July 2003 – 2 AZR 235/02.
- <sup>481</sup> [https://www.transparency.de/fileadmin/Redaktion/Publikationen/2020/Positionspapier\\_AG\\_Hinweisgeber\\_Umsetzung\\_EU-Richtlinie\\_Hinweisgeberschutz\\_neu.pdf](https://www.transparency.de/fileadmin/Redaktion/Publikationen/2020/Positionspapier_AG_Hinweisgeber_Umsetzung_EU-Richtlinie_Hinweisgeberschutz_neu.pdf)
- <sup>482</sup> <http://www.oecd.org/corruption/anti-bribery/Germany-Phase-4-Report-ENG.pdf>, Recommendation 6 d), also recommended by Transparency International Germany.
- <sup>483</sup> <http://www.oecd.org/corruption/anti-bribery/Germany-Phase-4-Report-ENG.pdf>
- <sup>484</sup> <https://www.ekathimerini.com/222946/article/ekathimerini/news/businessman-faces-criminal-charges-over-waste-management-contract;> <http://int.ert.gr/ellaktor-ceo-leonidas-bobo-las-to-face-charges-of-bribing-cyprus-officials/>; <http://cyprus-mail.com/2016/04/28/cyprus-set-to-issue-new-warrant-for-bobolas/>
- <sup>485</sup> <https://www.ekathimerini.com/208999/article/ekathimerini/news/greek-judges-reject-cyprus-request-to-extradite-bobolas>

<sup>486</sup> <https://www.ekathimerini.com/222946/article/ekathimerini/news/businessman-faces-criminal-charges-over-waste-management-contract>

<sup>487</sup> <https://cyprus-mail.com/2020/02/07/former-larnaca-mayor-found-guilty-of-corruption/>

<sup>488</sup> [cyprus.philenews.com/nicosia-court-upholds-confiscation-orders-for-e372600-in-corruption-case/](https://cyprus.philenews.com/nicosia-court-upholds-confiscation-orders-for-e372600-in-corruption-case/).

<sup>489</sup> <https://int.ert.gr/helector-cyprus-slapped-with-five-year-ban-on-public-contracts/> ;  
[http://www.treasury.gov.cy/treasury/treasurynew.nsf/All/87DFEAEB2B80E2BC225841D00234D3D/\\$file/%CE%91%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7\\_3\\_18.pdf?OpenElement](http://www.treasury.gov.cy/treasury/treasurynew.nsf/All/87DFEAEB2B80E2BC225841D00234D3D/$file/%CE%91%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7_3_18.pdf?OpenElement)

<sup>490</sup> <https://gcaptain.com/brazil-car-wash-probe-expands-to-u-s-greek-shipping-firms/>

<sup>491</sup> <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/anti-bribery-and-corruption/greek-shipping-companies-aegean-and-tsakos-dragged-into-petrobras-corruption-probe>

<sup>492</sup> <https://www.offshore-energy.biz/maersk-targeted-in-petrobras-bribery-investigation/>

<sup>493</sup> L. 4619/2019 and L. 4620/2019

<sup>494</sup> In April 2019, prior to its adoption, Transparency International Greece sent a formal letter to the Minister of Justice expressing concerns about the compatibility of the new bribery provisions with international standards, <http://www.transparency.gr/wp-content/uploads/2019/04/%CE%94%CE%B9%CE%B5%CE%B8%CE%BD%CE%AE%CF%82-%CE%94%CE%B9%CE%B1%CF%86%CE%AC%CE%BD%CE%B5%CE%B9%CE%B1-%CE%95%CE%BB%CE%BB%CE%B1%CF%82-E%CF%80%CE%B9%CF%83%CF%84%CE%BF%CE%BB%CE%AE-%CF%80%CF%81%CE%BF%CF%82-%CE%A5%CF%80-%CE%94%CE%B9%CE%BA%CE%B1%CE%B9%CE%BF%CF%83%CF%8D%CE%BD%CE%B7%CF%82.pdf>

<sup>495</sup> The two forms of custodial sentences (sanctions that lead to deprivation of liberty) according to the Greek Law are imprisonment and incarceration. Imprisonment has a range of 10 days to five years, while incarceration has a range of 5-15 years (besides cases of life incarceration). Imprisonment is the custodial sentence provided for misdemeanours, while incarceration is provided for felonies (unless the court recognises mitigating circumstances. In that case, a person guilty of a felony may receive a sentence of imprisonment. See UNCAC First cycle review of Greece, p. 23 (par. 27) referring to the former Greek Penal Code.

<sup>496</sup> <https://www.oecd.org/greece/oecd-very-concerned-that-active-bribery-is-no-longer-a-felony-in-greece.htm>;  
[https://www.coe.int/en/web/greco/home/newsroom/-/asset\\_publisher/sCeIUhEJG5bw/content/anti-corruption-body-greco-will-carry-out-urgent-evaluations-of-greece-and-slovenia](https://www.coe.int/en/web/greco/home/newsroom/-/asset_publisher/sCeIUhEJG5bw/content/anti-corruption-body-greco-will-carry-out-urgent-evaluations-of-greece-and-slovenia). GRECO used art. 34 of its Rules of Procedure.

<sup>497</sup> Art. 236 par. 2 of the new Penal code, as amended by art. 3 par. 19 of L. 4637/2019

<sup>498</sup> <https://rm.coe.int/ad-hoc-report-on-greece-rule-34-adopted-by-greco-at-its-84th-plenary-m/1680994dc0>

<sup>499</sup> <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-greece-2019.html>

<sup>500</sup> <http://www.areiospagos.gr/>

<sup>501</sup> [https://lawdb.intrasoftnet.com/nomos/nomos\\_frame.html](https://lawdb.intrasoftnet.com/nomos/nomos_frame.html)

<sup>502</sup> <http://www.dsanet.gr/1024x768.htm>

<sup>503</sup> Specifically, art. 20, par. 6 of L. 4557/2018.

<sup>504</sup> <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-greece-2019.html>, p.125(c)

<sup>505</sup> [http://www.businessportal.gr/Page/display\\_page\\_en/41](http://www.businessportal.gr/Page/display_page_en/41); FATF (2019), Anti-money laundering and counter-terrorist financing measures – Greece, Fourth Round Mutual Evaluation Report, p.125 (a); [www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Greece-2019.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Greece-2019.pdf)

<sup>506</sup> <https://www.gsis.gr/en/citizens-businesses/businesses/real-beneficiaries-register>

<sup>507</sup> [http://www.businessportal.gr/Page/display\\_page\\_en/41](http://www.businessportal.gr/Page/display_page_en/41); <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-greece-2019.html>, p.125(a)

<sup>508</sup> <https://www.oecd.org/daf/anti-bribery/Greece-Phase-3bis-Report-EN.pdf>

<sup>509</sup> Triantafyllou, G., “Corruption offences in the public sector”, *Nova Criminalia* (magazine of the Hellenic Criminal Bar Association) No 8 – Jan. 2020, p.9. Triantafyllou argues that the new provisions are in contrast with art. 5 of the Criminal Law Convention on Corruption (CETS 173), <https://hcbg.gr/wp-content/uploads/2020/02/NC-8.pdf>

<sup>510</sup> <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-greece-2019.html>, p.39, par. 116: “Greek authorities’ implementation of anti-corruption measures has been beneficial for the purposes of AML/CFT [anti-money laundering/countering terrorism financing] and shows an alignment of the objectives and activities of anti-corruption authorities with evolving national AML/CFT policies and identified ML/TF [money laundering/terrorism financing] risks”.

<sup>511</sup> <http://www.gsac.gov.gr/attachments/article/234/National%20Anti-Corruption%20Action%20Plan%202018-2021.pdf>

<sup>512</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Hungary-Phase-4-Report-ENG.pdf>

<sup>513</sup> <https://www.ostro.si/en/stories/oiling-orbans-propaganda-machine>

<sup>514</sup> <https://www.nytimes.com/2019/03/18/world/europe/hungary-russian-bank-spy-orban-putin.html>;  
[https://index.hu/english/2019/02/20/international\\_investment\\_bank\\_russia\\_hungary\\_putin\\_orban\\_immunity/](https://index.hu/english/2019/02/20/international_investment_bank_russia_hungary_putin_orban_immunity/)

<sup>515</sup> <https://www.changeofdirection.eu/campaign-central/shortcomings-in-hungarys-whistleblower-law>

- <sup>516</sup> <https://transparency.hu/wp-content/uploads/2020/02/Korrupci%C3%B3-gazdas%C3%A1gi-teljes%C3%ADtm%C3%A9ny-%C3%A9s-jog%C3%A1llamis%C3%A1g-Magyarorsz%C3%A1gon-CPI-2019-EN-1.pdf>
- <sup>517</sup> The CJA 2018 repealed the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts 1906-2010.
- <sup>518</sup> <http://www.oecd.org/corruption/anti-bribery/Ireland-Phase-1bis-Report-ENG.pdf>
- <sup>519</sup> This also includes directors, managers, secretaries and officers of a company.
- <sup>520</sup> Section 6 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended by section 26 of the CJA 2018.
- <sup>521</sup> Section 7 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, <http://www.irishstatutebook.ie/eli/2010/act/6/enacted/en/html>
- <sup>522</sup> [http://www.justice.ie/en/JELR/Pages/mutual\\_legal\\_assistance#\\_What\\_is\\_Mutual](http://www.justice.ie/en/JELR/Pages/mutual_legal_assistance#_What_is_Mutual)
- <sup>523</sup> Judgments delivered in subsequent appeals to the Court of Appeal or the Supreme Court are published.
- <sup>524</sup> This requirement was amended and updated by the 5<sup>th</sup> EU Anti-Money Laundering Directive; S.I. No. 110/2019, <http://www.irishstatutebook.ie/eli/2019/si/110/made/en/print?q=110&years=2019>
- <sup>525</sup> <http://www.irishstatutebook.ie/eli/2020/si/233/made/en/print>
- <sup>526</sup> The Central Bank of Ireland will provide additional guidance on its website and launch a submission portal. In-scope entities formed after the regulations were introduced will have six months from coming into existence to submit the required information.
- <sup>527</sup> <https://rbo.gov.ie/faqs/registering-a-beneficial-owners/who-must-file-data-with-the-rbo.html>
- <sup>528</sup> <http://www.irishstatutebook.ie/eli/2019/si/16/made/en/print?q=beneficial+ownership>
- <sup>529</sup> <http://www.oecd.org/corruption/anti-bribery/Ireland-Phase-1bis-Report-ENG.pdf>
- <sup>530</sup> See recommendation 2(a), <http://www.oecd.org/corruption/anti-bribery/Ireland-Phase-1bis-Report-ENG.pdf>
- <sup>531</sup> Under this doctrine, liability is attributed to a corporate body by requiring that the fault and conduct elements of the offence must be identified in a natural person who operates at a high level within its management structure.
- <sup>532</sup> [https://www.lawreform.ie/\\_fileupload/Completed%20Projects/LRC%20119-2018%20Regulatory%20Powers%20and%20Corporate%20Offences%20Volume%202.pdf](https://www.lawreform.ie/_fileupload/Completed%20Projects/LRC%20119-2018%20Regulatory%20Powers%20and%20Corporate%20Offences%20Volume%202.pdf)
- <sup>533</sup> <https://www.oecd.org/daf/anti-bribery/IrelandPhase3ReportEN.pdf>
- <sup>534</sup> <https://www.oecd.org/daf/anti-bribery/OECD-WGB-Enforcement-Data-2018-ENG.pdf>; <https://www.irishtimes.com/news/crime-and-law/irish-corruption-law-not-in-compliance-with-oecd-guidelines-1.3997012>
- <sup>535</sup> <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1900570e.pdf>
- <sup>536</sup> <https://www.lawreform.ie/news/report-on-regulatory-powers-and-corporate-offences.839.html>
- <sup>537</sup> <https://transparency.ie/resources/submissions/reform-anti-fraud-corruption-structures>
- <sup>538</sup> <https://www.calcalistech.com/ctech/articles/0,7340,L-3767069,00.html>
- <sup>539</sup> Copy of notification dated 29 September 2019 received by the authors. Section 22 allows civil forfeiture of property belonging to a person other than the person suspected of committing an offence if the forfeited property was purchased or transferred to them without consideration by a suspect who is not permanently located in Israel or cannot be served with an indictment. See also, <https://www.calcalist.co.il/local/articles/0,7340,L-3777295,00.html>
- <sup>540</sup> <https://en.globes.co.il/en/article-shapir-engineering-in-romanian-bribery-probe-1001177841>
- <sup>541</sup> <https://en.globes.co.il/en/article-shapir-engineering-in-romanian-bribery-probe-1001177841>
- <sup>542</sup> <https://www.calcalistech.com/ctech/articles/0,7340,L-3829870,00.html>
- <sup>543</sup> <https://www.calcalistech.com/ctech/articles/0,7340,L-3768185,00.html>
- <sup>544</sup> <https://www.haaretz.com/israel-news/business/prosecutor-drops-probe-against-businessman-samy-katsav-and-israel-shipyards-1.8793992>
- <sup>545</sup> <https://www.reuters.com/article/uk-israel-shikun-police-idUKKCN1SW014>
- <sup>546</sup> <https://en.globes.co.il/en/article-police-recommend-indicting-shari-arison-for-bribery-1001287189> ; <https://allafrica.com/stories/201905290124.html>
- <sup>547</sup> <https://www.occrp.org/en/daily/8477-israel-s-wealthiest-woman-questioned-for-bribery> ; <https://www.reuters.com/article/us-shikun-africa-probe/israel-police-questioning-more-officials-in-shikun-bribery-probe-idUSKBN1KX07R>
- <sup>548</sup> <https://www.bbc.com/news/world-africa-49331091>
- <sup>549</sup> <https://www.reuters.com/article/us-israel-steinmetz/israeli-billionaire-steinmetz-held-in-custody-in-fraud-probe-police-idUSKCN1AU0PS>
- <sup>550</sup> <https://www.nytimes.com/2017/08/14/business/dealbook/beny-steinmetz-israeli-billionaire-detained.html>; <https://www.theguardian.com/business/2019/feb/25/beny-steinmetz-settles-dispute-guinea-iron-ore-simandou>

- <sup>551</sup> <https://www.bbc.com/news/world-africa-49331091>; <https://www.haaretz.com/israel-news/business/geneva-prosecutors-indict-israeli-billionaire-steinmetz-in-guinea-corruption-case-1.7678360>
- <sup>552</sup> <https://www.haaretz.com/israel-news/b;eny-steinmetz-s-arrest-linked-to-real-estate-deals-in-romania-1.5442979>; <https://www.ynetnews.com/articles/0,7340,L-5006758,00.html>
- <sup>553</sup> <https://www.haaretz.com/israel-news/business/.premium-congo-probing-israeli-billionaire-s-loan-to-state-firm-1.8316991>; <https://www.theguardian.com/business/2019/dec/05/serious-fraud-office-investigates-glencore-over-suspected-bribery#img-1>; <https://www.theguardian.com/business/2017/nov/05/what-is-glencore-who-is-dan-gertler-drc-mining>; <https://www.icij.org/investigations/paradise-papers/u-s-obtains-swiss-bank-records-congo-corruption-probe/>
- <sup>554</sup> <https://home.treasury.gov/news/press-releases/sm0243>; <https://home.treasury.gov/news/press-releases/sm0417>
- <sup>555</sup> <https://en.globes.co.il/en/article-hapoalim-agrees-904m-fines-us-tax-evasion-fifa-bribery-fines-1001327079>
- <sup>556</sup> However, as is the case with many countries, statistics on MLA requests were officially reported to the OECD WGB as part of its evaluations of Israel, and the relevant data appears in the reports published by the OECD WGB.
- <sup>557</sup> <https://supreme.court.gov.il/sites/en/Pages/home.aspx>
- <sup>558</sup> [https://www.gov.il/en/departments/the\\_judicial\\_authority](https://www.gov.il/en/departments/the_judicial_authority)
- <sup>559</sup> For example, <https://www.nevo.co.il/>; <http://www.takdin.co.il/>; <http://www.dinimveod.co.il/>
- <sup>560</sup> <https://www.court.gov.il/NGCS.Web.Site/Viewer/NGCSViewerPage.aspx?DocumentNumber=de3a276d41a946c6873abc71dc5fe3a9>.
- <sup>561</sup> <https://www.justice.gov.il/Units/StateAttorney/Criminal/Pages/Conditional-Order.aspx>
- <sup>562</sup> <https://www.justice.gov.il/Units/StateAttorney/Guidelines/01.14.pdf>
- <sup>563</sup> <https://www.justice.gov.il/Units/StateAttorney/Guidelines/01.14.pdf>
- <sup>564</sup> <https://www.justice.gov.il/Units/StateAttorney/Guidelines/09.15.pdf>
- <sup>565</sup> Book of Laws, number 2672, pp. 55, 7 December 2017.
- <sup>566</sup> <https://ica.justice.gov.il/GenericCorporationInfo/SearchCorporation?unit=8>
- <sup>567</sup> Israeli Penal Code Section 14(b)
- <sup>568</sup> Israeli Penal Code Section 14(b)
- <sup>569</sup> <http://www.oecd.org/corruption/anti-bribery/Israel-Phase-3-Written-Follow-Up-Report-ENG.pdf>
- <sup>570</sup> <https://www.reuters.com/article/saipem-algeria-corruption/update-1-italian-appeals-court-acquits-saipem-eni-in-algerian-graft-case-idUSL8N29K4ZN>
- <sup>571</sup> <https://www.sec.gov/enforce/34-88679-s>; The US order said that Sapiem was controlled by Eni and that its books and records were consolidated into Eni's during the relevant period.
- <sup>572</sup> <https://www.echroukonline.com/paradoxes-debates-in-sonatrach-eni-saipem-corruption-case/>
- <sup>573</sup> <http://g1.globo.com/pr/parana/noticia/2015/07/mpf-oferece-nova-denuncia-contra-duque-e-outras-quatro-pessoas.html>; <https://politica.estadao.com.br/blogs/fausto-macedo/cgu-investiga-empresa-italiana-envolvida-em-irregularidades-com-a-petrobras/>
- <sup>574</sup> <https://www.ft.com/content/d0fac854-726e-11e9-bf5c-6eeb837566c5>; <https://www.bloomberg.com/news/articles/2020-01-29/witness-in-shell-eni-trial-fails-to-back-nigerian-bribe-charges>
- <sup>575</sup> <https://www.globalwitness.org/en/press-releases/new-analysis-shows-shell-and-eni-used-nigerias-share-of-oil-to-fund-alleged-billion-dollar-bribery-scheme/>
- <sup>576</sup> <https://www.occrp.org/en/daily/9304-shell-to-face-charges-in-the-netherlands-for-nigerian-oil-deal>; <https://www.wsj.com/articles/shell-says-netherlands-plans-criminal-charges-over-nigeria-deal-11551446028>
- <sup>577</sup> <https://www.reuters.com/article/techint-brazil-corruption/italian-prosecutors-ask-for-techint-owners-to-stand-trial-in-brazil-graft-case-sources-idUSL5N26O599>; <https://ir.tenaris.com/board-directors/roberto-bonatti>
- <sup>578</sup> <https://www.reuters.com/article/techint-brazil-corruption/update-1-techint-owners-ordered-to-stand-trial-in-brazil-graft-case-idUSL8N2AD54S>; <https://brazilenergyinsight.com/2020/02/27/investigation-on-corruption-may-force-petrobras-to-take-out-techint-tenaris-from-the-favored-vendor-registration/>; <https://www.steelorbis.com/steel-news/latest-news/brazilian-prosecutors-accuse-techinttenaris-executives-of-corruption-1149341.htm>
- <sup>579</sup> <http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/executivos-ligados-ao-grupo-techint-sao-investigados-pela-lava-jato-por-participacao-no-cartel-de-empreiteiras>; <https://www.reuters.com/article/us-brazil-corruption/brazil-police-target-techint-in-car-wash-graft-probe-idUSKBN1X21JU>
- <sup>580</sup> <https://www.batimes.com.ar/news/argentina/cuadernos-probe-charges-against-paolo-rocca-lifted.phtml>
- <sup>581</sup> <https://www.bloomberg.com/news/articles/2018-11-27/tenaris-shares-plunge-after-billionaire-chairman-charged-on-case>; <https://www.batimes.com.ar/news/argentina/cuadernos-probe-charges-against-paolo-rocca-lifted.phtml>; <https://www.reuters.com/article/argentina-corruption/techint-ceo-charged-with-graft-in-notebooks-scandal-source-idUSL2N1Y21YM>

- <sup>582</sup> [https://milano.corriere.it/notizie/cronaca/17\\_marzo\\_04/microelettrica-scientifica-buccinasco-tangenti-appalto-metro-mosca-78faa70e-00cf-11e7-b3e3-afa0190eaeaf5.shtml](https://milano.corriere.it/notizie/cronaca/17_marzo_04/microelettrica-scientifica-buccinasco-tangenti-appalto-metro-mosca-78faa70e-00cf-11e7-b3e3-afa0190eaeaf5.shtml); Copy of indictment of the Prosecution Office of Milan N. 36535 /15 R.G.N.R. mod. 21
- <sup>583</sup> <https://www.echoroukonline.com/inerga-sonelgaz-is-accused-of-receiving-italian-bribes/>
- <sup>584</sup> <https://www.theguardian.com/world/2019/jul/11/matteo-salvinis-party-under-investigation-for-alleged-russian-oil-deal>;  
<https://www.bbc.com/news/world-europe-49004737>
- <sup>585</sup> <https://www.ilsole24ore.com/art/fondi-russia-lega-cosa-sappiamo-finora-caso-che-imbarazza-salvini-ACAmzeY>
- <sup>586</sup> <https://www.buzzfeednews.com/article/albertonardelli/salvini-russia-oil-deal-secret-recording>; <https://www.bbc.com/news/world-europe-49004737>; <https://www.nytimes.com/2019/07/10/world/europe/salvini-russia-audio.html>
- <sup>587</sup> <https://www.reuters.com/article/kenya-corruption/italys-cmc-di-ravenna-denies-any-wrongdoing-in-kenya-dams-scandal-idUSL8N24P21Y>
- <sup>588</sup> <https://www.sec.gov/enforce/34-88679-s>; <https://www.icij.org/investigations/panama-papers/oil-giant-eni-to-pay-millions-over-sham-contracts-in-panama-papers-bribery-case/>
- <sup>589</sup> <https://www.oecd.org/corruption/statement-of-the-oecd-working-group-on-bribery-on-italy-implementation-of-the-anti-bribery-convention.htm>
- <sup>590</sup> <https://www.gazzettaufficiale.it/eli/id/2019/01/16/18G00170/sg>
- <sup>591</sup> <https://globalinvestigationsreview.com/benchmarking/the-practitioner%E2%80%99s-guide-to-global-investigations-fourth-edition/1212703/italy>
- <sup>592</sup> <https://www.dlapiper.com/it/italy/insights/publications/2019/02/significant-changes-in-italy-on-anti-bribery-regulations/>
- <sup>593</sup> [http://www.cortedicassazione.it/cassazione-resources/resources/cms/documents/Report\\_I\\_reati\\_di\\_corruzione\\_Dott.ssa\\_Tripiccionone.pdf](http://www.cortedicassazione.it/cassazione-resources/resources/cms/documents/Report_I_reati_di_corruzione_Dott.ssa_Tripiccionone.pdf)
- <sup>594</sup> <https://www.anticorruzione.it/portal/public/classic/Attivitadocumentazione/Pubblicazioni/RelazioneParlamento>
- <sup>595</sup> <https://dejure.it/#/home>
- <sup>596</sup> <http://pluris-cedam.utetgiuridica.it/main.html>
- <sup>597</sup> <https://www.foroitaliano.it/>
- <sup>598</sup> [http://www.cortedicassazione.it/corte-di-cassazione/it/servizi\\_online.page](http://www.cortedicassazione.it/corte-di-cassazione/it/servizi_online.page)
- <sup>599</sup> [https://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2019-10-26&atto.codiceRedazionale=19G00131&elenco30giorni=true](https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2019-10-26&atto.codiceRedazionale=19G00131&elenco30giorni=true)
- <sup>600</sup> [http://www.dt.mef.gov.it/it/dipartimento/consultazioni\\_pubbliche/consultazioni\\_in\\_corso/consultazione\\_registro/index.html](http://www.dt.mef.gov.it/it/dipartimento/consultazioni_pubbliche/consultazioni_in_corso/consultazione_registro/index.html)
- <sup>601</sup> <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5aml-d-patchy-progress/>
- <sup>602</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pdf>
- <sup>603</sup> [www.registroimprese.it](http://www.registroimprese.it)
- <sup>604</sup> <https://canestrinilex.com/en/readings/the-italian-public-prosecutor/>
- <sup>605</sup> <https://www.mhps.com/news/20180720.html>; <https://asia.nikkei.com/Business/Companies/Japan-s-first-plea-deal-spare-parts-builder-in-Thailand-bribery-case>
- <sup>606</sup> <https://www.japantimes.co.jp/news/2019/03/01/national/crime-legal/ex-mitsubishi-hitachi-power-systems-execs-convicted-bribes-walk-result-japans-first-plea-bargain/#.XprUm5nTU2w>; The men said they had no option but to agree to the demand and they did not personally benefit from doing so.
- <sup>607</sup> <https://www.bangkokpost.com/thailand/general/1749469/japanese-exec-sentenced-for-bribing-thai-official>; Mr Uchida said he did not have the authority to order the other two to pay a bribe. The court found the evidence indicated otherwise.
- <sup>608</sup> <https://www.justice.gov/opa/pr/medical-equipment-company-will-pay-646-million-making-illegal-payments-doctors-and-hospitals>
- <sup>609</sup> <https://www.sec.gov/news/press-release/2018-73>
- <sup>610</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf>  
<https://www.internationallawoffice.com/Newsletters/White-Collar-Crime/Japan/Nagashima-Ohno-Tsunematsu/New-plea-bargaining-system-in-practice>
- <sup>611</sup> <https://www.nytimes.com/2019/01/11/world/europe/japan-olympics-corruption-tsunekazu-takeda.html>
- <sup>612</sup> [http://www.courts.go.jp/app/hanrei\\_jp/search1](http://www.courts.go.jp/app/hanrei_jp/search1); [http://www.courts.go.jp/app/hanrei\\_en/search?](http://www.courts.go.jp/app/hanrei_en/search?) (English translation of major cases)
- <sup>613</sup> To meet the requirements of Article 5 of the OECD Anti-Bribery Convention, which states that Parties shall not be influenced by considerations of national economic interest, the potential impact on relations with another state, or the identity of the natural or legal persons involved.
- <sup>614</sup> <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Japanphase3reportEN.pdf>; <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf>
- <sup>615</sup> <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Japanphase3reportEN.pdf>; <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf>

<sup>616</sup> Article 3 requires that bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. Where criminal responsibility does not apply to legal persons, the non-criminal sanction imposed shall be effective, proportionate and dissuasive.

<sup>617</sup> <http://www.cas.go.jp/jp/seisaku/hourei/data/WPA.pdf>

<sup>618</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf>, p.4.

<sup>619</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf>, p.4.

<sup>620</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Japan-Phase-4-Report-ENG.pdf>

<sup>621</sup> <https://www.dw.com/en/us-military-base-in-south-korea-mired-in-corruption-scandal/a-41646903>; <https://www.justice.gov/opa/pr/two-men-charged-bribery-scheme-related-korean-base-relocation-1>; <https://www.justice.gov/opa/pr/south-korean-engineering-company-pleads-guilty-defrauding-us-army-agrees-pay-684-million>

<sup>622</sup> <https://www.justice.gov/opa/pr/former-senior-us-navy-employee-charged-role-bribery-conspiracy-and-lying-investigators>; <https://www.defensenews.com/naval/2019/07/30/korean-fat-leonard-feds-probe-new-us-navy-corruption-case-in-asia/>;

<sup>623</sup> <https://www.justice.gov/opa/pr/samsung-heavy-industries-company-ltd-agrees-pay-75-million-global-penalties-resolve-foreign>

<sup>624</sup> <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-3/koreans.html>

<sup>625</sup> <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-3/koreans.html>

<sup>626</sup> [https://www.koreatimes.co.kr/www/tech/2019/12/129\\_202009.html](https://www.koreatimes.co.kr/www/tech/2019/12/129_202009.html)

<sup>627</sup> <https://newstapa.org/article/5n-jP>

<sup>628</sup> <https://news.kcij.org/83>

<sup>629</sup> <https://newstapa.org/article/5n-jP>

<sup>630</sup> <http://www.acrc.go.kr/en/board.do?command=searchDetail&method=searchDetailViewinc&menuId=020501&conflD=62&conConflD=62&conTabId=0&currPageNo=2&boardNum=77241>

<sup>631</sup> [http://law.go.kr/법령/국제상거래에있어서외국공무원에대한뇌물방지법\(15972\)](http://law.go.kr/법령/국제상거래에있어서외국공무원에대한뇌물방지법(15972)); <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/anti-bribery-and-corruption/south-korean-anti-graft-reforms-alone-wont-resolve-poor-enforcement-record>

<sup>632</sup> <https://news.joins.com/article/23681173>

<sup>633</sup> <http://www.spo.go.kr/spo/index.jsp>

<sup>634</sup> National Assembly Law Library, Legal Information Services, <http://Law.nanet.go.kr>; Supreme Court of Korea, <https://www.scourt.go.kr/supreme/supreme.jsp>

<sup>635</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Korea-2020.pdf>

<sup>636</sup> <https://dart.fss.or.kr>

<sup>637</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Korea-2020.pdf>

<sup>638</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Korea-Phase-4-Report-ENG.pdf>

<sup>639</sup> <http://www.oecd.org/newsroom/korea-must-enhance-detection-and-reinforce-sanctions-to-boost-foreign-bribery-enforcement.htm>

<sup>640</sup> <http://www.oecd.org/newsroom/korea-must-enhance-detection-and-reinforce-sanctions-to-boost-foreign-bribery-enforcement.htm>

<sup>641</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Korea-Phase-4-Report-ENG.pdf>

<sup>642</sup> <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/anti-bribery-and-corruption/south-korean-anti-graft-reforms-alone-wont-resolve-poor-enforcement-record>

<sup>643</sup> <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/anti-bribery-and-corruption/south-korean-anti-graft-reforms-alone-wont-resolve-poor-enforcement-record>

<sup>644</sup> <http://www.oecd.org/newsroom/korea-must-enhance-detection-and-reinforce-sanctions-to-boost-foreign-bribery-enforcement.htm>

<sup>645</sup> [http://www.china.org.cn/world/Off\\_the\\_Wire/2016-06/18/content\\_38691325.htm](http://www.china.org.cn/world/Off_the_Wire/2016-06/18/content_38691325.htm)

<sup>646</sup> <https://globalinvestigationsreview.com/short-cut/2020/august/11>

<sup>647</sup> [https://www.baltictimes.com/corruption\\_prevention\\_bureau\\_seeks\\_prosecution\\_of\\_latvijas\\_tilti\\_construction\\_company\\_for\\_bribery/](https://www.baltictimes.com/corruption_prevention_bureau_seeks_prosecution_of_latvijas_tilti_construction_company_for_bribery/); <https://bnn-news.com/corruption-watchdog-proposes-criminal-prosecution-of-latvijas-tilti-over-possible-bribery-215951>

<sup>648</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Latvia-Phase-3-Report-ENG.pdf>, pp 12-13

<sup>649</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Latvia-Phase-3-Report-ENG.pdf>; <https://www.heraldsotland.com/news/16190405.a-baltic-bank-a-belarussian-bribe-and-a-british-embarrassment/>; <https://www.tieto.com/en/newsroom/all-news-and-releases/other-news/2018/a-former-tieto-latvia-employee-convicted-for-bribery---corrective-action-taken/>

<sup>650</sup> <https://www.heraldsotland.com/news/16190405.a-baltic-bank-a-belarussian-bribe-and-a-british-embarrassment/>;

<sup>651</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Latvia-Phase-3-Report-ENG.pdf>

- <sup>652</sup> <https://www.occrp.org/en/daily/1992-latvia-bank-fined-for-role-in-magnitsky-money-laundering-case>
- <sup>653</sup> <https://www.nytimes.com/2019/07/17/business/latvia-money-laundering.html>
- <sup>654</sup> [https://www.washingtonpost.com/world/europe/latvian-member-of-european-central-bank-detained-in-probe/2018/02/18/325c7e28-14b3-11e8-930c-45838ad0d77a\\_story.html](https://www.washingtonpost.com/world/europe/latvian-member-of-european-central-bank-detained-in-probe/2018/02/18/325c7e28-14b3-11e8-930c-45838ad0d77a_story.html)
- <sup>655</sup> <https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/>
- <sup>656</sup> <https://eng.lsm.lv/article/politics/politics/updated-latvian-estonian-banks-named-in-council-of-europe-corruption-scandal.a221032/>
- <sup>657</sup> [https://www.transparency.org/news/pressrelease/swedbank\\_dirty\\_money\\_dealings\\_money\\_laundering\\_supervision](https://www.transparency.org/news/pressrelease/swedbank_dirty_money_dealings_money_laundering_supervision)
- <sup>658</sup> Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing, entered into force 17 July 2008, last amended 13 June 2019, <https://likumi.lv/ta/en/en/id/178987-on-the-prevention-of-money-laundering-and-terrorism-financing>
- <sup>659</sup> <https://likumi.lv/ta/en/en/id/302465> (the English translation does not include the most recent amendments of 30 January 2020); <https://www.oecd.org/corruption/anti-bribery/OECD-Latvia-Phase-3-Report-ENG.pdf>, para. 243.
- <sup>660</sup> The Criminal Law, entered into force 1 April 1999, last amended 1 July 2019, <https://likumi.lv/ta/en/en/id/88966-the-criminal-law>
- <sup>661</sup> Law on Execution and Confiscation of Criminally Acquired Property, entered into force 1 August 2017, <https://likumi.lv/ta/en/id/292019-law-on-execution-of-confiscation-of-criminally-acquired-property>
- <sup>662</sup> <https://www.tm.gov.lv/lv/nozares-politika/metodiskie-ieteikumi> (only available in Latvian)
- <sup>663</sup> <https://www.fm.gov.lv/en/s/prevention-of-money-laundering-and-terrorism-financing/plan-of-measures-for-mitigation-of-the-money-laundering-and-terrorism-financing-risks-for-2017-2019/>
- <sup>664</sup> “Progress of KNAB activities in 2019”, 23 January 2020, [https://www.knab.gov.lv/en/knab/news/548648-progress\\_of\\_knab\\_activities\\_in\\_2019.html](https://www.knab.gov.lv/en/knab/news/548648-progress_of_knab_activities_in_2019.html)
- <sup>665</sup> <https://www.knab.gov.lv/en/knab/results/>
- <sup>666</sup> <http://www.prokuratūra.gov.lv/lv/jaunumi/2020/pazinojumi-presei>
- <sup>667</sup> <http://www.manastiesas.lv>
- <sup>668</sup> Regulation No. 123 on the “Publication of Court Information on the Website and Processing of Court Decisions Before Their Issuance”, adopted by the Cabinet of Ministers on 10 February 2009.
- <sup>669</sup> The word loosely translates as “case law”. However, the Latvian civil law system does not operate on a *stare decisis* basis.
- <sup>670</sup> <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5amlid-patchy-progress/>
- <sup>671</sup> “New procedure for registration and publishing of beneficial owners of legal persons”, <https://www.financelatvia.eu/en/news/new-procedure-registration-publishing-beneficial-owners-legal-persons/>; <http://www.ur.gov.lv/?a=936&z=729&v=lv>
- <sup>672</sup> <https://likumi.lv/ta/en/en/id/178987-on-the-prevention-of-money-laundering-and-terrorism-financing>
- <sup>673</sup> <https://rm.coe.int/moneyval-2018-8-5th-round-mer-latvia/16808ce61b>, paras. 6-9.
- <sup>674</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Latvia-Phase-3-Report-ENG.pdf>, p. 41; [https://www.baltictimes.com/case\\_materials\\_in\\_\\_oligarch\\_affair\\_\\_show\\_that\\_state\\_capture\\_truly\\_exists\\_in\\_latvia/](https://www.baltictimes.com/case_materials_in__oligarch_affair__show_that_state_capture_truly_exists_in_latvia/)
- <sup>675</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Latvia-Phase-3-Report-ENG.pdf>, para. 113; [https://www.baltictimes.com/case\\_materials\\_in\\_\\_oligarch\\_affair\\_\\_show\\_that\\_state\\_capture\\_truly\\_exists\\_in\\_latvia/](https://www.baltictimes.com/case_materials_in__oligarch_affair__show_that_state_capture_truly_exists_in_latvia/)
- <sup>676</sup> GAN Business Anti-Corruption Portal, “Latvia Corruption Report”, last updated July 2018, <https://www.ganintegrity.com/portal/country-profiles/latvia/>
- <sup>677</sup> E.g. the ABLV case: ABLV, previously Latvia’s third biggest lender, self-liquidated after having been accused of money laundering by the US Treasury’s Financial Crimes Enforcement Network. Department of Treasury – Financial Crimes Enforcement Network, “Proposal of Special Measure against ABLV Bank, as a Financial Institution of Primary Money Laundering Concern”, 12 February 2018, [https://www.fincen.gov/sites/default/files/federal\\_register\\_notices/2018-02-13/ABLV%20NPRM%2020180212%20%28Final%20for%20FR%20Submission%29.pdf](https://www.fincen.gov/sites/default/files/federal_register_notices/2018-02-13/ABLV%20NPRM%2020180212%20%28Final%20for%20FR%20Submission%29.pdf); <https://www.forbes.com/sites/francescoppola/2018/02/28/why-the-u-s-treasury-killed-a-latvian-bank/#64d4136b7ad3>; <https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/>
- <sup>678</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Latvia-Phase-3-Report-ENG.pdf>, para. 41.
- <sup>679</sup> <https://voices.transparency.org/european-banks-in-money-laundering-scandals-what-lessons-for-the-eu-d743f3d7ac9b>
- <sup>680</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Latvia-Phase-3-Report-ENG.pdf>, footnote 51.
- <sup>681</sup> <https://www.lsm.lv/raksts/zinas/ekonomika/prokuratūra-par-noziedzīgi-iegutu-līdzekļu-legalizēšanu-apsūdz-11-personas-to-starpa-bijusos-swedbank-darbiniekus.a359770/>
- <sup>682</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Latvia-Phase-3-Report-ENG.pdf>, para. 19.

- <sup>683</sup> This was highlighted by the Latvian State Audit Office with regard to the State Police: State Audit Office, “Pre-trial investigations are hampered by problems in investigators’ qualification, work organisation and monitoring”, 10 October 2017, <http://www.lrvk.gov.lv/en/state-audit-office-pre-trial-investigations-hampered-problems-investigators-qualification-work-organisation-monitoring/>
- <sup>684</sup> [https://www.baltictimes.com/pm\\_karins\\_promises\\_to\\_find\\_way\\_to\\_establish\\_economic\\_affairs\\_court/](https://www.baltictimes.com/pm_karins_promises_to_find_way_to_establish_economic_affairs_court/); This court is set to start working on 1 January 2021.
- <sup>685</sup> <https://bnn-news.com/latvian-government-supports-creation-of-courts-for-economic-affairs-207042>
- <sup>686</sup> <https://en.delfi.lt/politics/prosecutors-member-of-parliament-encouraged-bribery-of-russian-officials.d?id=81402083>;  
<https://www.lrt.lt/en/news-in-english/19/1067210/lithuanian-mp-grazulis-encouraged-bribery-of-russian-officials-prosecutors-say>;  
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- <sup>687</sup> <https://www.oecd.org/corruption/anti-bribery/Lithuania-phase-2-follow-up-report-ENG.pdf>
- <sup>688</sup> <https://en.delfi.lt/politics/parliament-votes-against-stripping-mp-grazulis-of-his-legal-immunity.d?id=81546769>
- <sup>689</sup> <https://en.delfi.lt/culture/lithuanian-blood-center-corruption-investigation-expands-to-latvia.d?id=78339549>;  
<https://lithuaniantribune.com/lithuanian-blood-center-corruption-investigation-expands-to-latvia/>
- <sup>690</sup> <https://www.justice.gov/usao-ndal/pr/former-us-army-colonel-pleads-guilty-false-statements-and-conflict-interest-connection>
- <sup>691</sup> <https://www.occrp.org/en/investigations/multimillion-passport-deal-under-investigation-in-kyrgyzstan>
- <sup>692</sup> <https://www.svt.se/special/swedbank/english/yanukovich/>
- <sup>693</sup> <https://internetbank.swedbank.se/ConditionsEarchive/download?bankid=1111&id=WEBDOC-PRODE57526786>
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- <sup>695</sup> <https://www.occrp.org/en/troikalaundromat/vast-offshore-network-moved-billions-with-help-from-major-russian-bank>
- <sup>696</sup> The Law on Whistleblower Protection, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/b146ff50ed8a11e89d4ad92e8434e309?jfwid=-1deuyji1xl>
- <sup>697</sup> [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_19\\_462](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_462)
- <sup>698</sup> <https://www.ellex.lt/en/news/news/new-law-on-prevention-on-money-laundering-and-terrorist-financing-has-been-adopted/41351>;  
<https://walless.com/wp-content/uploads/2020/01/WALLESS-final.pdf>
- <sup>699</sup> During 2017-2019, more than 570 prosecutors and almost 500 law enforcement officials attended 27 training sessions on the disclosure, investigation and prosecution of corruption-related criminal offences, <https://www.oecd.org/corruption/anti-bribery/Lithuania-phase-2-follow-up-report-ENG.pdf>
- <sup>700</sup> <http://prokuraturos.lt/lt/administracine-informacija/planavimo-dokumentai-ataskaitos/ataskaitos/138>, pp.11-14.
- <sup>701</sup> <https://www.oecd.org/corruption/anti-bribery/Lithuania-phase-2-follow-up-report-ENG.pdf>, p.7.
- <sup>702</sup> <http://prokuraturos.lt/lt/administracine-informacija/planavimo-dokumentai-ataskaitos/ataskaitos/138>, p.21.
- <sup>703</sup> Special Investigation Service, <https://www.stt.lt/>
- <sup>704</sup> <http://liteko.teismai.lt/viesasprendimupaiaska/detalipaiaska.aspx?detali=2>
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- <sup>706</sup> <https://www.vz.lt/finansai-apskaita/2019/10/22/dar-yra-laiko-sleptis-ofsoruose&lowBI>  
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- <sup>707</sup> The answer to the official query, submitted to the Centre of Registers by Transparency International Lithuania in March 2020; JADIS, <https://www.registrucentras.lt/p/33>
- <sup>708</sup> <https://www.reuters.com/article/us-lithuania-moneylaundering/lithuania-steps-up-anti-money-laundering-effort-after-baltic-scandals-idUSKCN1PJ10W>
- <sup>709</sup> <https://voices.transparency.org/lithuanias-money-laundering-problem-c3b3ebba1618>
- <sup>710</sup> <https://www.oecd.org/corruption/anti-bribery/Lithuania-phase-2-follow-up-report-ENG.pdf>
- <sup>711</sup> <https://www.reuters.com/article/techint-brazil-corruption/update-1-techint-owners-ordered-to-stand-trial-in-brazil-graft-case-idUSL8N2AD54S>;  
<https://www.reuters.com/article/techint-brazil-corruption/italian-prosecutors-ask-for-techint-owners-to-stand-trial-in-brazil-graft-case-sources-idUSL5N26O599>
- <sup>712</sup> <https://www.cronista.com/economiapolitica/Investigan-a-Tenaris-en-Argentina-Italia-y-Brasil-por-supuestas-coimas-20170823-0065.html>
- <sup>713</sup> <http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/executivos-ligados-ao-grupo-techint-sao-investigados-pela-lava-jato-por-participacao-no-cartel-de-empreiteiras>
- <sup>714</sup> <https://justice.public.lu/dam-assets/fr/publications/rapport-activites-crf/rapport-crf-2016.pdf>
- <sup>715</sup> <https://justice.public.lu/dam-assets/fr/publications/rapport-activites-crf/rapport-crf-2016.pdf>
- <sup>716</sup> [https://www.cssf.lu/fileadmin/files/Publications/Communiqués/Communiqués\\_2017/C\\_sanction\\_220617\\_eng.pdf](https://www.cssf.lu/fileadmin/files/Publications/Communiqués/Communiqués_2017/C_sanction_220617_eng.pdf)

- <sup>717</sup> Decision number: 1691/2016. N°JUDOC 100028498, 2 June 2016.
- <sup>718</sup> EU Directive 2015/849
- <sup>719</sup> Among others, the Luxembourg Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended ("2004 Law").
- <sup>720</sup> <https://www.elvingerhoss.lu/publications/anti-money-laundering-amendments-legislation>
- <sup>721</sup> [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/595371/IPOL\\_STU\(2017\)595371\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/595371/IPOL_STU(2017)595371_EN.pdf)
- <sup>722</sup> <http://www.justice.public.lu/fr/publications/rapport-activites-crf/rapport-crf-2016.pdf>
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- <sup>724</sup> <https://globalcompliancenews.com/luxembourg-register-beneficial-owners-new-transparency-obligations-registered-entities-20190506/>
- <sup>725</sup> [www.lessentiel.lu/fr/news/luxembourg/story/22068220](http://www.lessentiel.lu/fr/news/luxembourg/story/22068220)
- <sup>726</sup> <https://www.riskscreen.com/kyc360/news/luxembourg-financial-crime-watchdog-bemoans-lack-of-firepower/>
- <sup>727</sup> <https://www.reuters.com/article/us-cemex-investigation/mexicos-cemex-says-under-u-s-doj-investigation-idUSKCN1GQ1WZ>
- <sup>728</sup> <http://fcpa.stanford.edu/investigation.html?id=357>
- <sup>729</sup> <https://www.elmundo.es/andalucia/2020/04/15/5e973ef421efa0955e8b460d.html>
- <sup>730</sup> *Diario Oficial de la Federación, Decreto por el que se expide la Ley Orgánica de la Fiscalía General de la República*, 2018, [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5546647&fecha=14/12/2018](https://www.dof.gob.mx/nota_detalle.php?codigo=5546647&fecha=14/12/2018)
- <sup>731</sup> Ministry of Public Administration, "Anti-Bribery Protocol", 2018, [https://funcionpublica.gob.mx/web/SNA/Protocolo\\_Anticohecho/Protocolo%20Anticohecho%20\(English\).pdf](https://funcionpublica.gob.mx/web/SNA/Protocolo_Anticohecho/Protocolo%20Anticohecho%20(English).pdf)
- <sup>732</sup> *Gaceta de la Comisión Permanente, "Informe de actividades de la Fiscalía General de la República 2019, 2020*, [https://www.senado.gob.mx/64/gaceta\\_comision\\_permanente/documento/103402](https://www.senado.gob.mx/64/gaceta_comision_permanente/documento/103402); [http://gaceta.diputados.gob.mx/Gaceta/64/2020/ene/FGR\\_CC-20200122.pdf](http://gaceta.diputados.gob.mx/Gaceta/64/2020/ene/FGR_CC-20200122.pdf)
- <sup>733</sup> <https://fcpablog.com/2018/10/03/luis-danton-martinez-corres-usmca-heralds-new-era-of-anticor/>  
[https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/27\\_Anticorruption.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/27_Anticorruption.pdf)
- <sup>734</sup> <https://datos.gob.mx/busca/dataset/cohecho-internacional-de-pgr>
- <sup>735</sup> The information appears in general terms in order to comply with the reserve of the investigation established by the federal legislation on transparency and access to public information,  
<https://transparencia.pgr.gob.mx/es/transparencia/DatosAbiertos>
- <sup>736</sup> *Gaceta de la Comisión Permanente (2020), Informe de actividades de la Fiscalía General de la República 2019*, [https://www.senado.gob.mx/64/gaceta\\_comision\\_permanente/documento/103402](https://www.senado.gob.mx/64/gaceta_comision_permanente/documento/103402)
- <sup>737</sup> <http://sise.cjf.gob.mx/consultasvp/default.aspx>
- <sup>738</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Mexico-2018.pdf>
- <sup>739</sup> <https://www.jornada.com.mx/2020/03/14/politica/008n1pol>; <https://www.eluniversal.com.mx/nacion/busca-fiscalia-anticorruption-cinco-reformas>
- <sup>740</sup> Poder Judicial de la Federación (2020), *Reforma Judicial con y para el Poder Judicial*, [https://www.scjn.gob.mx/sites/default/files/carrusel\\_transparencia/documento/2020-02/Reforma-Judicial-PJF.pdf](https://www.scjn.gob.mx/sites/default/files/carrusel_transparencia/documento/2020-02/Reforma-Judicial-PJF.pdf), p.3.
- <sup>741</sup> [https://funcionpublica.gob.mx/web/SNA/Protocolo\\_Anticohecho/Protocolo%20Anticohecho%20\(English\).pdf](https://funcionpublica.gob.mx/web/SNA/Protocolo_Anticohecho/Protocolo%20Anticohecho%20(English).pdf), annex XIV.
- <sup>742</sup> <https://www.jota.info/especiais/grand-corruption-new-data-and-documents-collated-for-the-first-time-give-a-thorough-look-into-the-activities-of-latin-american-governments-prosecutorial-agencies-for-the-odebrecht-case-29052019>
- <sup>743</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/02/06/tk-reactie-op-het-bericht-nederland-is-corrupter-dan-we-denken>
- <sup>744</sup> <https://www.shell.com/media/news-and-media-releases/2019/opl245-rds-plc-informed-of-dpp-preparing-to-prosecute.html>
- <sup>745</sup> <https://www.bbc.com/news/business-39544761>
- <sup>746</sup> <https://www.reuters.com/article/eni-shell-nigeria/update-1-italy-prosecutors-seek-jail-for-eni-shell-executives-in-nigeria-case-idUSL5N2ES68X>
- <sup>747</sup> <https://shellandenitrial.org/timeline/>
- <sup>748</sup> [https://www.nrc.nl/nieuws/2020/06/03/de-ambassadeur-verklapte-dat-de-fiod-naar-abuja-kwam-a4001715?utm\\_source=SIM&utm\\_medium=email&utm\\_campaign=nrcvandaag&utm\\_content=&utm\\_term=20200710](https://www.nrc.nl/nieuws/2020/06/03/de-ambassadeur-verklapte-dat-de-fiod-naar-abuja-kwam-a4001715?utm_source=SIM&utm_medium=email&utm_campaign=nrcvandaag&utm_content=&utm_term=20200710)
- <sup>749</sup> <https://www.nrc.nl/nieuws/2020/07/08/ontslagen-door-ministerie-na-klokkenuidersmelding-a4005389>
- <sup>750</sup> <https://www.om.nl/actueel/nieuws/2018/09/04/ing-betaalt-775-miljoen-vanwege-ernstige-nalatigheden-bij-voorkomen-witwassen>. The journalists conducted their investigation in the context of the so-called Luanda papers.

- <sup>751</sup> <https://www.moneylaundering.com/news/dutch-prosecutors-assess-record-money-laundering-penalty-against-ing/>
- <sup>752</sup> <https://www.nrc.nl/nieuws/2020/07/08/voormalig-ing-topman-hamers-voor-hof-in-witwaszaak-a4005317#/handelsblad/2020/07/09/#102>
- <sup>753</sup> <https://www.gtreview.com/news/europe/amsterdam-trade-bank-under-new-money-laundering-investigation/>
- <sup>754</sup> <https://uk.reuters.com/article/uk-netherlands-russia-bank/dutch-subsiary-of-russias-alfa-bank-raided-in-money-laundering-inquiry-idUKKBN1E7105?il=0>
- <sup>755</sup> <https://www.dutchnews.nl/news/2019/03/russian-money-laundering-machine-shifted-millions-through-the-netherlands/>
- <sup>756</sup> <https://globalinvestigationsreview.com/article/1167634/ey-to-be-prosecuted-in-the-netherlands-over-vimpelcom-transactions;>  
<https://nos.nl/artikel/2225653-accountantskantoor-ey-vervolgd-vanwege-vimpelcom-fraude.html>
- <sup>757</sup> <https://www.reuters.com/article/us-netherlands-brazil-corruption/dutch-shell-firms-used-to-pay-millions-in-brazilian-bribes-prosecutors-idUSKCN1QF24R>
- <sup>758</sup> <https://nabu.gov.ua/en/novyny/energoatoms-case-investigation-two-more-participants-corruption-scheme-was-completed;>  
<https://russiabusinesses.com/energy/russian-owned-company-wins-2-5mn-ukraine-power-plant-project/>
- <sup>759</sup> <https://news.err.ee/649406/railway-company-ceo-suspected-of-bribing-fedorenko-in-custody;> <https://www.vopak.com/newsroom/news/vopak-divested-its-ownership-vopak-eos-estonia>
- <sup>760</sup> The FIOD is part of the Tax and Customs Administration of the Netherlands Ministry of Finance.
- <sup>761</sup> <https://www.regulationtomorrow.com/the-netherlands/act-implementing-5mld-adopted-in-dutch-senate/>
- <sup>762</sup> <https://www.bloomberg.com/news/articles/2020-01-23/dutch-aim-to-rein-in-shell-company-culture-that-aided-dos-santos>
- <sup>763</sup> <https://wetten.overheid.nl/BWBR0043796/2020-07-08>
- <sup>764</sup> <https://www.nrc.nl/nieuws/2020/07/09/banken-delen-transactiedata-ter-bestrijding-van-witwassen-a4005393#/handelsblad/2020/07/09/#302>
- <sup>765</sup> <https://www.dutchnews.nl/news/2018/12/80-of-foreign-investment-in-nl-is-moved-through-shell-firms/>
- <sup>766</sup> <http://www.om.nl>
- <sup>767</sup> Judgements of all courts can be found at <https://uitspraken.rechtspraak.nl/>
- <sup>768</sup> See the Dutch Public Prosecutor, 27 February 2018, <https://www.om.nl/onderwerpen/hoge-transacties/hoofdofficier/>. Increasing amounts of information are published, e.g. the full settlement with ING Bank, <https://www.om.nl/documenten/publicaties/fp-hoge-transacties/feitenrelaas/map/tranactieovereenkomst-ing>
- <sup>769</sup> Information provided by the OECD WGB Netherlands delegation.
- <sup>770</sup> <https://www.afm.nl/nl-nl/professionals/veelgestelde-vragen/wwft-algemeen/ubo>
- <sup>771</sup> [https://www.transparency.nl/nieuws/2020/04/openbaar-ubo-register-evenwicht-transparantie-privacy?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=openbaar-ubo-register-evenwicht-transparantie-privacy](https://www.transparency.nl/nieuws/2020/04/openbaar-ubo-register-evenwicht-transparantie-privacy?utm_source=rss&utm_medium=rss&utm_campaign=openbaar-ubo-register-evenwicht-transparantie-privacy)
- <sup>772</sup> <https://www.transparency.nl/nieuws/2020/05/nederland-loopt-ver-achter-op-buurlanden-met-implementatie-ubo-register/>
- <sup>773</sup> <https://www.bloomberg.com/news/articles/2020-01-23/dutch-aim-to-rein-in-shell-company-culture-that-aided-dos-santos>
- <sup>774</sup> <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Midden-Nederland/Nieuws/Paginas/Celstraf-voor-voormalig-bestuurder-Ballast-Nedam.aspx>
- <sup>775</sup> Information provided by the OECD WGB Netherlands delegation. The Directive on Large and Special Transactions will be amended to establish the Independent Assessment Committee.
- <sup>776</sup> <https://www.huisvoorklokkenluiders.nl/actueel/nieuws/2020/02/24/huis-voor-klokkenluiders-presenteert-nieuwe-toekomstvisie-van-een-huis-voor-klokkenluiders-naar-een-autoriteit-voor-integriteit-en-klokkenluiden>
- <sup>777</sup> See letter from the Minister of the Interior concerning the prevention and enforcement of corruption, 10 March 2015, <https://www.tweedekamer.nl/downloads/document?id=d90ef694-8684-4e4b-98d8-fb4c152efb71&title=Preventie%20en%20bestrijding%20van%20corruptie.pdf>, pp. 5-6.
- <sup>778</sup> The 2020 information provided by the Serious Fraud Office (SFO) differs from that provided in 2018, which reflects an internal decision by the SFO to re-classify the basis of earlier investigations. The SFO is the lead foreign bribery investigative organisation, which decides the course of action.
- <sup>779</sup> The latest cabinet documents relating to whistleblower legislation are at <https://ssc.govt.nz/assets/SSC-Site-Assets/Proactive-Releases/Cabinet-Paper-Review-of-Protected-Disclosures-Act-2000.pdf>. The paper is entitled "Reform of the Act: Cabinet Paper – Review of the Protected Disclosures Act 2000". In terms of the Act being unfit for purpose, see, for example, Brown, A. J. and Lawrence, S. A., "Strength of Organisational Whistleblowing Processes: Analysis from Australia and New Zealand. Further results of the Whistling While They Work 2 Project", Griffith University, Brisbane, 2017.
- <sup>780</sup> "Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships", <https://www.mbie.govt.nz/assets/8a3f53e039/increasing-the-transparency-of-the-beneficial-ownership-of-new-zealand-companies-and-limited-partnerships.pdf>; The MBIE Discussion Paper proposes three options: (1) require corporate entities to hold updated information about their beneficial owners, to be released on request by authorised agencies (2) include information on beneficial ownership in the current registers with access restricted to specific law enforcement agencies and approved entities (3) provide public access to this information.

<sup>781</sup> <https://www.sfo.govt.nz/annual-report>

<sup>782</sup> These merely list the total number and average hours expended on MLA and extradition requests.

<sup>783</sup> <https://www.sfo.govt.nz/news>. Accessed 12 March 2020. The information dates back to 2009.

<sup>784</sup> District Court and Senior Courts (Access to Court Documents) Rules 2017 (via the Judicial Decisions Online database). A charitable foundation (NZLII) provides additional case decisions, [http://www.nzlii.org/databases.html#nz\\_cases](http://www.nzlii.org/databases.html#nz_cases). Both sites are free, but coverage remains incomplete.

<sup>785</sup> NZ resident trustees of a foreign trust must disclose details of all beneficiaries and persons “with a power to control” the trust. An annual financial return must be provided to the Inland Revenue Department, including details of beneficiaries. Tax Administration Act 1994, Sections 59B and 59D.

<sup>786</sup> Under the Companies Act 1993 and Limited Partnership Act 2008.

<sup>787</sup> Serious Fraud Office Act 1990, s. 5.

<sup>788</sup> Tax Administration Act 1994.

<sup>789</sup> <https://www.oecd.org/daf/anti-bribery/New-Zealand-Phase-3-Written-Follow-Up-Report-ENG.pdf>

<sup>790</sup> For example, <https://www.stuff.co.nz/business/78436709/new-zealand-shell-company-linked-to-unaoil-global-oil-industry-bribery-scandal>

<sup>791</sup> NZ Police FIU, “National Risk Assessment of Money Laundering and Terrorism Financing”, 2019, <https://www.interest.co.nz/news/102839/nz-police-anti-money-laundering-assessment-cites-trusts-among-attractive-money>; [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12288182](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12288182)

<sup>792</sup> NZ Police FIU, “National Risk Assessment of Money Laundering and Terrorism Financing”, 2019, <https://www.interest.co.nz/news/102839/nz-police-anti-money-laundering-assessment-cites-trusts-among-attractive-money>, p.52

<sup>793</sup> <https://www.sfo.govt.nz/annual-report>, p.3.

<sup>794</sup> <https://www.reuters.com/article/us-yara-intl-corruption/former-yara-ceo-acquitted-of-corruption-legal-chief-convicted-idUSKBN13R0YF>; <https://www.occrp.org/en/daily/5982-norway-american-executive-sentenced-to-seven-years-for-bribery>

<sup>795</sup> <http://www.oecd.org/corruption/anti-bribery/Norway-Phase-4-Report-ENG.pdf>; <https://www.tnp.no/norway/economy/4769-biggest-corruption-trial-in-norway-continues-india-libya-yara-bribe>; <https://www.dn.no/nyheter/naringsliv/2014/05/15/Korrupsjon/rederiet-klaveness-funnet-skyldig-i-korrupsjon>

<sup>796</sup> <https://www.nettavisen.no/na24/skjerpet-straaff-for-kongsberg-direktor/3423589094.html>

<sup>797</sup> <https://www.kongsberg.com/newsandmedia/news-archive/2016/okokrim-drops-the-corruption-case-against-kongsberg/>; <https://www.reuters.com/article/kongsberg-gruppe-fraud/update-1-norway-police-to-prosecute-former-kongsberg-executive-clears-company-idUSL8N1AX1BR>

<sup>798</sup> <https://www.newsinenglish.no/2017/08/31/trial-starts-over-corruption-at-kongsberg/>

<sup>799</sup> <https://www.bloomberg.com/news/articles/2015-11-05/norwegian-police-arrest-former-vimpelcom-ceo-jo-lunder-nrk-says>; <http://www.norwaynews.com/norway-drops-case-against-former-vimpelcom-ceo/>

<sup>800</sup> <https://www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million>

<sup>801</sup> <https://www.newsinenglish.no/2015/10/19/rig-firm-charged-with-corruption/>; <https://www.marinelink.com/news/petrobras-drilling437208>; <https://www.complianceweek.com/sevan-marine-self-reports-bribery-probe/11619.article>

<sup>802</sup> <https://www.offshore-energy.biz/sevan-drilling-off-the-hook-in-petrobras-bribery-probe/>

<sup>803</sup> <https://politica.estadao.com.br/noticias/geral,noruega-investigapropina-em-contratos-com-petrobras,70002291132>; <https://www.newsinenglish.no/2015/10/19/rig-firm-charged-with-corruption/>; <https://www.newsinenglish.no/2016/03/25/former-sevan-director-arrested-in-portugal/>

<sup>804</sup> <https://www.reuters.com/article/us-namibia-iceland-dnb/norwegian-police-probe-bank-dnb-over-namibia-fisheries-scandal-idUSKBN1Y21XA>

<sup>805</sup> <https://stundin.is/grein/9920/an-icelandic-fishing-company-transferred-70-million-dollars-through-a-tax-haven-in-norways-largest-bank/>

<sup>806</sup> <http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/forca-tarefa-do-mpf-pr-ja-ofereceu-14-denuncias-em-2019>; <https://newsbeezer.com/norwayeng/accused-of-paying-bribes-to-norwegian-companies-in-brazil-corruption-act/>

<sup>807</sup> <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1388733e.pdf>

<sup>808</sup> [www.lovdato.no](http://www.lovdato.no)

<sup>809</sup> [http://transparency.no/wp-content/uploads/Domssamling2019\\_web\\_.pdf](http://transparency.no/wp-content/uploads/Domssamling2019_web_.pdf)

<sup>810</sup> <https://www.pwc.nl/nl/assets/documents/the-ubo-register-update-december-2019.pdf>

<sup>811</sup> <http://www.oecd.org/corruption/anti-bribery/Norway-Phase-4-Report-ENG.pdf>

<sup>812</sup> <https://stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=79326>

<sup>813</sup> <http://www.oecd.org/corruption/anti-bribery/Norway-Phase-4-Report-ENG.pdf>

<sup>814</sup> <https://www.regjeringen.no/no/aktuelt/skal-se-pa-reglene-om-foretaksstraff-og-korrupsjon/id2603117/>

- <sup>815</sup> <http://www.oecd.org/corruption/anti-bribery/Norway-Phase-4-Report-ENG.pdf>
- <sup>816</sup> <http://www.oecd.org/newsroom/peru-to-join-two-major-oecd-conventions-anti-bribery-convention-and-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters.htm>
- <sup>817</sup> <https://www.oecd.org/corruption/anti-bribery/OECD-Phase-1-Report-Peru-ENG.pdf>
- <sup>818</sup> Judiciary, [https://www.pj.gob.pe/wps/wcm/connect/Estadisticas/s\\_estadistica/as\\_estadisticas/as\\_documentos/](https://www.pj.gob.pe/wps/wcm/connect/Estadisticas/s_estadistica/as_estadisticas/as_documentos/); Prosecutor's Office, [https://www.mpfm.gob.pe/publicaciones\\_estadisticas/](https://www.mpfm.gob.pe/publicaciones_estadisticas/)
- <sup>819</sup> Statistical information from the Corruption Crime Specialised Prosecutor's Office, <https://procuraduriaanticorruptcion.minjus.gob.pe/publicaciones/>
- <sup>820</sup> The regulation of beneficial owners was approved by Legislative Decree No. 1372, <https://busquedas.elperuano.pe/normaslegales/decreto-legislativo-que-regula-la-obligacion-de-las-personas-decreto-legislativo-n-1372-1676524-5/>. This was in turn approved by Supreme Decree No. 3-2019-EF, <https://busquedas.elperuano.pe/normaslegales/aprueban-reglamento-del-decreto-legislativo-n-1372-que-reg-decreto-supremo-n-003-2019-ef-1729359-1/>
- <sup>821</sup> In the case of prosecutors, according to articles 235 and 236 of the Code of Criminal Procedure, [http://spij.minjus.gob.pe/content/publicaciones\\_oficiales/img/CODIGOPROCESALPENAL.pdf](http://spij.minjus.gob.pe/content/publicaciones_oficiales/img/CODIGOPROCESALPENAL.pdf), and article 47 of the Securities Market Law, <https://www.smv.gob.pe/uploads/PeruLeyMercadoValores.pdf>; in the case of the agents of the Financial Intelligence Unit, according to Law No. 27693, [https://www.sbs.gob.pe/Portals/5/ger/NORM\\_GEN\\_LAFT/19112018\\_Version\\_Concordada\\_Ley%2027693.pdf](https://www.sbs.gob.pe/Portals/5/ger/NORM_GEN_LAFT/19112018_Version_Concordada_Ley%2027693.pdf)
- <sup>822</sup> <http://www.gafilat.org/index.php/es/biblioteca-virtual/miembros/peru/evaluaciones-mutuas-14/3287-mutual-evaluation-report-of-peru/file>
- <sup>823</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Phase-1-Report-Peru-ENG.pdf>
- <sup>824</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Phase-1-Report-Peru-ENG.pdf>
- <sup>825</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Phase-1-Report-Peru-ENG.pdf>
- <sup>826</sup> <http://www.oecd.org/corruption/anti-bribery/OECD-Phase-1-Report-Peru-ENG.pdf>
- <sup>827</sup> These numbers relate to the offences described in Article 228 § 6 and Article 229 § 5 of Polish Penal Code.
- <sup>828</sup> <https://eng.lsm.lv/article/society/crime/mayor-suspends-head-of-rigas-municipal-transport-company.a302741/>; <https://www.eurotopics.net/en/211970/polish-bus-maker-suspected-of-corruption>
- <sup>829</sup> According to a CBA statement, [https://www.baltictimes.com/eur\\_800\\_000\\_bribe\\_involved\\_in\\_rigas\\_satiksme\\_procurement\\_scandal\\_-\\_polish\\_anti\\_corruption\\_bureau/](https://www.baltictimes.com/eur_800_000_bribe_involved_in_rigas_satiksme_procurement_scandal_-_polish_anti_corruption_bureau/)
- <sup>830</sup> The case has yet to go to trial, <https://cba.gov.pl/en/news/386,International-action-of-anti-corruption-services-CBA-and-KNAB-6-persons-detained.html>; <https://eng.lsm.lv/article/society/crime/knab-czech-and-polish-companies-implicated-in-rigas-satiksme-graft-case.a302919/>; [https://www.baltictimes.com/eur\\_800\\_000\\_bribe\\_involved\\_in\\_rigas\\_satiksme\\_procurement\\_scandal\\_-\\_polish\\_anti\\_corruption\\_bureau/](https://www.baltictimes.com/eur_800_000_bribe_involved_in_rigas_satiksme_procurement_scandal_-_polish_anti_corruption_bureau/); <https://www.eurotopics.net/en/211970/polish-bus-maker-suspected-of-corruption>; <https://www.forbes.pl/wiadomosci/wiceprezes-i-dyrektor-w-solarisa-uslyszeli-zarzuty-od-prokuratora/xebtfc>
- <sup>831</sup> <https://fcpablog.com/2013/02/19/latvia-prosecuting-officials-in-daimler-bribery-case/>; <https://www.baltictimes.com/news/articles/33056/>. Solaris was acquired in 2019 by Spanish company CAF, [https://www.caf.net/upload/accionista/CAF-2018\\_english-anual.pdf](https://www.caf.net/upload/accionista/CAF-2018_english-anual.pdf)
- <sup>832</sup> <https://www.ursus.com/pl/informacja-prasowa/oswiadczenie-ursus-sa-w-odniesieniu-do-informacji-prasowych>
- <sup>833</sup> <https://www.ursus.com/en/news/the-biggest-african-contract-of-ursus>
- <sup>834</sup> <https://cba.gov.pl/en/news/160,25-million-for-influence-peddling.html?search=620556863362>; <https://www.cenyrolnicze.pl/?catid=0&id=7959>
- <sup>835</sup> <https://news.postimees.ee/3411361/polish-shipbuilder-doesn-t-agree-with-corruption-allegation>
- <sup>836</sup> <https://news.err.ee/644229/polish-shipyard-board-member-accused-of-bribing-port-of-tallinn-executives>
- <sup>837</sup> <https://biznes.trojmiasto.pl/Gdanski-watek-afery-korupcyjnej-w-Estonii-n93868.html>; <https://www.gospodarkamorska.pl/Stocznie,Offshore/afery-korupcyjna-w-tallinie-zarzad-remontowej-shipbuilding-odpiera-zarzuty.html>; <https://trojmiasto.wyborcza.pl/trojmiasto/1,35612,20466116,promy-z-remontowej-shipbuilding-w-afenze-estonskiej.html>; <https://news.err.ee/907911/port-of-tallinn-corruption-case-trial-to-begin-on-7-may>
- <sup>838</sup> <https://news.err.ee/907911/port-of-tallinn-corruption-case-trial-to-begin-on-7-may>
- <sup>839</sup> <https://news.postimees.ee/3411361/polish-shipbuilder-doesn-t-agree-with-corruption-allegation>
- <sup>840</sup> See, for example the Acts on: the Supreme Court, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU2018000005/U/D20180005Lj.pdf>; the National Council of the Judiciary, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19971210769/U/D19970769Lj.pdf>; the Central Anti-Corruption Bureau, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20061040708/U/D20060708Lj.pdf>
- <sup>841</sup> [https://ec.europa.eu/commission/presscorner/detail/hr/IP\\_19\\_1957](https://ec.europa.eu/commission/presscorner/detail/hr/IP_19_1957); [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4987](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4987); case number C-192/18, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=219725&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4349149>. See also, "The Constitutional Crisis in Poland 2015-2016", Report prepared by Helsinki Foundation for Human Rights, August 2016, <https://www.hfhr.pl/wp-content/uploads/2016/09/HFHR-The-constitutional-crisis-in-Poland-2015-2016.pdf>; "Report on the state of rule of Law in Poland in 2018" prepared by Polish Bar Council and National Bar of Attorneys-at-law, [http://obserwatoriumdemokracji.pl/wp-content/uploads/2019/03/NRA\\_file-reportpoland2019-26610.pdf](http://obserwatoriumdemokracji.pl/wp-content/uploads/2019/03/NRA_file-reportpoland2019-26610.pdf)

- <sup>842</sup> [http://orka.sejm.gov.pl/opinie8.nsf/nazwa/3451\\_u/\\$file/3451\\_u.pdf](http://orka.sejm.gov.pl/opinie8.nsf/nazwa/3451_u/$file/3451_u.pdf)
- <sup>843</sup> <https://trybunal.gov.pl/sprawy-w-trybunale/art/10715-nowelizacja-kodeksu-karnego-postepowanie-legislacyjne-dopuszczalny-zakres-poprawek-senackich>
- <sup>844</sup> <https://www.nik.gov.pl/aktualnosci/odzyskiwanie-mienia-pochodzacego-z-przestepstw.html>; <https://www.nik.gov.pl/plik/id,21745,vp,24397.pdf>
- <sup>845</sup> [https://cba.gov.pl/ftp/pdf/Zwalczanie\\_przestepczosci\\_korupcyjnej\\_w\\_Polsce\\_w\\_2018\\_r\\_.pdf](https://cba.gov.pl/ftp/pdf/Zwalczanie_przestepczosci_korupcyjnej_w_Polsce_w_2018_r_.pdf), p.13.
- <sup>846</sup> <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,40.html>
- <sup>847</sup> [http://www.sn.pl/orzecznictwo/SitePages/Baza\\_orzeczen.aspx](http://www.sn.pl/orzecznictwo/SitePages/Baza_orzeczen.aspx)
- <sup>848</sup> <http://orzeczenia.ms.gov.pl/>
- <sup>849</sup> The publishing policy is not coherent and is set by individual courts or the appellate division. If court decisions are published, they are published in redacted version (without full names of the individual and corporate entities involved).
- <sup>850</sup> The Act on Counteracting Money Laundering and Terrorist Financing, <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU2018000723/O/D20180723.pdf>. The Act implements EU Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and other EU regulations.
- <sup>851</sup> <https://crbr.podatki.gov.pl/adcrbr/#/>
- <sup>852</sup> <https://www.oecd.org/newsroom/poland-must-make-urgent-legislative-reforms-to-combat-foreign-bribery.htm>
- <sup>853</sup> <https://www.oecd.org/daf/anti-bribery/Poland-Phase-3-Written-Follow-Up-Report-ENG.pdf>, p.4
- <sup>854</sup> *Ministério Público, "Corrupção ativa com prejuízo do comércio internacional – branqueamento – falsificação de documentos"*, 14 July 2017, [http://dciap.ministeriopublico.pt/sites/default/files/documentos/pdf/ficha\\_de\\_acusacao\\_nuipc\\_121\\_13\\_0telsb.pdf](http://dciap.ministeriopublico.pt/sites/default/files/documentos/pdf/ficha_de_acusacao_nuipc_121_13_0telsb.pdf)
- <sup>855</sup> <https://www.theportugalnews.com/news/top-tap-director-accused-in-angola-money-laundering-scam/42621>; <https://www.friendsofangola.org/archives/9964>; Franco, Hugo and Rui, Gustavo, "Juiz Ivo Rosa abre guerra ao Ministério Público no caso TAP/Sonangol", *Expresso*, 23 April 2018, <http://expresso.sapo.pt/sociedade/2018-04-23-Juiz-Ivo-Rosa-abre-guerra-ao-Ministerio-Publico-no-caso-TAP-Sonangol#gs.yWu7h68>
- <sup>856</sup> Franco, Hugo and Rui, 2018: 310 (footnote 331)
- <sup>857</sup> <https://observador.pt/2020/01/31/ivo-rosa-perde-pela-12-a-vez-na-relacao-num-caso-que-envolve-a-sonangol/>
- <sup>858</sup> <https://www.justice.gov/opa/press-release/file/1148951/download>
- <sup>859</sup> <https://www.justice.gov/opa/press-release/file/1148951/download>; <https://www.sec.gov/litigation/admin/2019/34-85468.pdf>
- <sup>860</sup> <https://www.justice.gov/opa/press-release/file/1148951/download>; <https://www.sec.gov/litigation/admin/2019/34-85468.pdf>
- <sup>861</sup> <https://www.occrp.org/en/investigations/how-angolan-elites-built-a-private-banking-network-to-move-their-riches-into-the-european-union>
- <sup>862</sup> <https://qz.com/africa/1787255/how-isabel-dos-santos-sidestepped-a-crackdown-by-western-banks/>
- <sup>863</sup> <https://www.icij.org/investigations/luanda-leaks/portugal-likely-to-freeze-proceeds-from-isabel-dos-santos-bank-sale/>
- <sup>864</sup> <https://www.lusa.pt/article/HhapT3HFk91xFSwiWWWkizMSZM5iuSI1/portugal-government-finalising-anti-money-laundering-directive>
- <sup>865</sup> <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=44542>
- <sup>866</sup> <http://www.cpc.tcontas.pt/documentos/analises.html>
- <sup>867</sup> <http://www.dgsi.pt/>
- <sup>868</sup> <http://www.dgsi.pt/>, <https://jurisprudencia.csm.org.pt/>
- <sup>869</sup> <https://de.reuters.com/article/us-portugal-corruption-utilities/ceo-of-portugals-edp-a-suspect-in-corruption-inquiry-idUSKBN18T2Q9>
- <sup>870</sup> <https://justica.gov.pt/Servicos/Registo-de-Beneficiario-Efetivo>
- <sup>871</sup> <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5aml-d-patchy-progress/>
- <sup>872</sup> <https://www.oecd.org/daf/anti-bribery/Portugalphase3reportEN.pdf>, pp.46-47.
- <sup>873</sup> <https://www.oecd.org/daf/anti-bribery/Portugalphase3reportEN.pdf>
- <sup>874</sup> <https://www.oecd.org/daf/anti-bribery/Portugal-Phase-3-Written-Follow-Up-Report-ENG.pdf>
- <sup>875</sup> See, for example, the OECD's Economic Surveys: Portugal 2019, which has a chapter on "Enhancing judicial efficiency to enhance economic activity". This discusses a range of problems, including insufficient resources of the Public Prosecutor's Office and Criminal Investigation Police, and reinforcement of specialised training.
- <sup>876</sup> <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-portugal-2017.html>
- <sup>877</sup> <https://econews.pt/2020/06/03/portugal-non-compliance-with-grecos-anti-corruption-recommendations/>
- <sup>878</sup> <https://www.oecd.org/russia/russia-is-ready-for-its-phase-3-evaluation-once-it-fulfills-high-priority-recommendation.htm>
- <sup>879</sup> <https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/>

- <sup>880</sup> <https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/>; <https://www.occrp.org/en/investigations/7698-report-russia-laundred-billions-via-danske-bank-estonia>
- <sup>881</sup> <https://www.occrp.org/en/troikalaundromat/vast-offshore-network-moved-billions-with-help-from-major-russian-bank>
- <sup>882</sup> <https://www.justice.gov/opa/pr/mobile-telesystems-pjsc-and-its-uzbek-subsiary-enter-resolutions-850-million-department>; <https://www.sec.gov/news/press-release/2019-27> <https://www.reuters.com/article/us-mts-uzbekistan/russias-mts-to-pay-850-million-to-end-u-s-probe-into-uzbek-business-idUSKCN1Q00TO>
- <sup>883</sup> <https://www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million>; <https://www.theguardian.com/world/2016/feb/19/vimpelcom-pays-835m-to-us-and-dutch-over-uzbekistan-telecoms-bribes>
- <sup>884</sup> <https://uk.reuters.com/article/uk-netherlands-russia-bank/dutch-subsiary-of-russias-alfa-bank-raided-in-money-laundering-inquiry-idUKKBN1E7105?il=0>; VimpelCom Ltd was created out of two companies, including the Russian OJSC VimpelCom by agreement of the Norwegian company Telenor and Altimo Holdings, a member of the Russian Alfa Group consortium founded by Israeli-Russian magnate Mikhail Fridman, <https://www.sec.gov/Archives/edgar/data/1468091/000119312513122015/d505862d20f.htm>
- <sup>885</sup> <https://www.reuters.com/article/netherlands-russia-bank/dutch-subsiary-of-russias-alfa-bank-raided-in-money-laundering-investigation-idUSL8N1OC4SM>
- <sup>886</sup> <https://uk.reuters.com/article/uk-netherlands-russia-bank/dutch-subsiary-of-russias-alfa-bank-raided-in-money-laundering-inquiry-idUKKBN1E7105?il=0>
- <sup>887</sup> <https://www.buzzfeednews.com/article/albertonardelli/salvini-russia-oil-deal-secret-recording> <https://www.theguardian.com/world/2019/jul/11/matteo-salvinis-party-under-investigation-for-alleged-russian-oil-deal>
- <sup>888</sup> <https://www.euractiv.com/section/med-south/news/putin-and-berlusconi-seal-south-stream-pipeline-deal/>
- <sup>889</sup> <https://www.ekathimerini.com/230551/article/ekathimerini/news/greece-decides-to-expel-russian-diplomats>; <https://www.dw.com/en/greece-to-expel-two-russian-diplomats-ban-two-others-newspaper/a-44628127>
- <sup>890</sup> <https://www.oecd.org/russia/russia-is-ready-for-its-phase-3-evaluation-once-it-fulfills-high-priority-recommendation.htm>
- <sup>891</sup> <https://www.oecd.org/daf/anti-bribery/RussianFederationPhase2ReportEN.pdf>, p.27
- <sup>892</sup> <https://minjust.ru/ru/novosti/sostoyalis-vstrechi-s-missiey-vysokogo-urovnya-rabochey-gruppy-po-borbe-s-podkupom>
- <sup>893</sup> <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-russian-federation-2019.html>
- <sup>894</sup> Online court decisions, <https://sudrf.ru/> (general courts) and <https://kad.arbitr.ru/> (commercial courts)
- <sup>895</sup> Federal Law N 262-FZ of 22 December 2008 (amended on 28 December 2017), "On providing access to information on the activities of courts in the Russian Federation".
- <sup>896</sup> [https://star.worldbank.org/sites/star/files/accountability\\_report\\_questionnaire\\_2014\\_russia.pdf](https://star.worldbank.org/sites/star/files/accountability_report_questionnaire_2014_russia.pdf), para. 29.
- <sup>897</sup> Art. 6.1, Federal Law N 115-FZ of 7 August 2001, "On Combating the Legalisation (Laundering) of Criminally Obtained Incomes and the Financing of Terrorism" (115-FZ).
- <sup>898</sup> <https://www.legislationline.org/documents/id/4294>
- <sup>899</sup> [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_7519/7367463b83418fbb4a8e0a259864c246fb9b365a/](http://www.consultant.ru/document/cons_doc_LAW_7519/7367463b83418fbb4a8e0a259864c246fb9b365a/)
- <sup>900</sup> [https://one.oecd.org/document/DAF/WGB\(2018\)48/en/pdf](https://one.oecd.org/document/DAF/WGB(2018)48/en/pdf), p.5
- <sup>901</sup> Note to Art. 291, Criminal Code of Russian Federation
- <sup>902</sup> <http://www.oecd.org/russia/russia-is-ready-for-its-phase-3-evaluation-once-it-fulfills-high-priority-recommendation.htm>
- <sup>903</sup> <https://sozd.duma.gov.ru/bill/232807-7>
- <sup>904</sup> Art. 13.3, Federal Law N 273-FZ of 25 December 2008, "On Combating Corruption".
- <sup>905</sup> <https://sozd.duma.gov.ru/bill/286313-7>
- <sup>906</sup> Transparency International Russia sent a letter to the Ministry of Justice in this regard. For 2012 justification, [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_134717/](https://www.consultant.ru/document/cons_doc_LAW_134717/); for 2019 justification stated in the letter of the Ministry of Finance to Transparency International Russia
- <sup>907</sup> <https://meduza.io/en/feature/2018/11/16/european-court-of-human-rights-acknowledges-that-russia-persecuted-alexey-navalny-for-political-reasons-rulings-like-this-one-are-very-rare>; <https://www.bbc.com/russian/news-42327194>
- <sup>908</sup> [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_82959/c4bc9f9100ce9a56419aa09a6531a416dc3f5dc5/](https://www.consultant.ru/document/cons_doc_LAW_82959/c4bc9f9100ce9a56419aa09a6531a416dc3f5dc5/)
- <sup>909</sup> Act no. 54/2019 coll., on the protection of whistleblowers. The Whistleblowing Act replaced the former act no. 307/2014 coll., on some measures related to the reporting of anti-social activities. As it was implemented prior to the EU Whistleblower Protection Directive, it does not meet all the directive's requirements.
- <sup>910</sup> As of August 2020, the Chairman had not yet been elected by the National Council.
- <sup>911</sup> Formerly, a higher threshold of €50,000 (US\$59,000) was applicable.
- <sup>912</sup> [https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status\\_en](https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status_en)

- <sup>913</sup> As of April 2020, the latest annual report published relate to 2016, [https://www.minv.sk/swift\\_data/source/policia/naka\\_opr/opr/inf\\_o\\_cinnosti\\_naka/Informacia%20o%20cinnosti%20NAKA%20P%20PZ%20za%20rok%202016%20public.pdf](https://www.minv.sk/swift_data/source/policia/naka_opr/opr/inf_o_cinnosti_naka/Informacia%20o%20cinnosti%20NAKA%20P%20PZ%20za%20rok%202016%20public.pdf)
- <sup>914</sup> <https://www.minv.sk/?statistika-kriminality-v-slovenskej-republike-csv>
- <sup>915</sup> <https://www.genpro.gov.sk/statistiky-12c1.html>. These statistics should cover all crimes. Various distinctions are available, e.g. nature of the crime by reference to the chapter of criminal code, composition of the offenders (e.g. sex, age, foreigners), information about the outcome of the prosecution (e.g. cancellation, postponement, conviction).
- <sup>916</sup> As per Section 82a, para 3 of the Act No. 757/2004 Coll. on Courts as amended, <https://obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie>
- <sup>917</sup> Act No. 272/2015 Coll., on Register of Legal Entities, Entrepreneurs and Public Authorities as amended; Act No. 147/1997 Coll., on Non-Investment Funds as amended; Act No. 213/1997 Coll., on Non-Profit Organisations as amended; Act No. 34/2002 Coll., on Foundations as amended, and Act No. 530/2003 Coll., on Commercial Register as amended, <https://rpo.statistics.sk/rpo/#search>. Legal entities established prior to 31 October 2018 were obliged to submit applications for registrations of their beneficial owners (including the respective source register) by 31 December 2019. Legal entities established after 1 November 2018 are obliged to register their beneficial owners as part of their initial application for registration.
- <sup>918</sup> Act No. 315/2016 Coll., Act on Register of Public Sector Partners, as amended, <https://rpvs.gov.sk/rpvs>
- <sup>919</sup> Act No. 272/2015 Coll., on register of legal entities, entrepreneurs and public authorities, as amended. A draft bill prepared by the former government in 2019 intended to make beneficial ownership information publicly available. The change in government after the 2020 election means this proposed amendment has not been submitted.
- <sup>920</sup> <https://www.lusa.pt/article/HhapT3HFk91xFSwiWWWkizMSZM5iuS11/portugal-government-finalising-anti-money-laundering-directive>
- <sup>921</sup> <https://globalcompliance.com/slovakia-criminal-liability-of-legal-persons-introduced/>
- <sup>922</sup> [https://ec.europa.eu/info/sites/info/files/2020-european\\_semester\\_country-report-slovakia\\_en.pdf?fbclid=IwAR2pRappbHcsBfV9q9lfqNCJDni\\_j\\_PoXFRDQenOV3iEjIHocqq5-JsSWQ](https://ec.europa.eu/info/sites/info/files/2020-european_semester_country-report-slovakia_en.pdf?fbclid=IwAR2pRappbHcsBfV9q9lfqNCJDni_j_PoXFRDQenOV3iEjIHocqq5-JsSWQ). No specific actions have been taken since then and only limited progress (e.g. prosecution of legal entities) has been reported.
- <sup>923</sup> <https://www.genpro.gov.sk/extdoc/54764/sprava>
- <sup>924</sup> Reply from the Office of the State Prosecutor General Expert Information Centre to Transparency International Slovenia (nr. VDT Tu 15 2/19/2020), 1 June 2020.
- <sup>925</sup> <https://www.oecd.org/slovenia/the-oecd-working-group-on-bribery-is-concerned-about-potential-political-interference-by-the-legislative-branch-in-the-independence-of-the-judiciary-in-slovenia.htm>
- <sup>926</sup> The Programme of Government of the Republic of Slovenia to enhance Integrity and Transparency 2017-2019, [http://www.gov.si/assets/ministrstva/MJU/STIPS/Integriteta/Program-Vlade-2017-2019/7520264ce8/Programme\\_Integrity\\_Transparency\\_2017-2019.pdf](http://www.gov.si/assets/ministrstva/MJU/STIPS/Integriteta/Program-Vlade-2017-2019/7520264ce8/Programme_Integrity_Transparency_2017-2019.pdf). However, the current programme is based on the 2015-2016 Anti-Corruption Programme and intermediary reports on its implementation, which do mention foreign bribery. Details of that programme are set out in the *Exporting Corruption* Report 2018.
- <sup>927</sup> <https://rm.coe.int/anti-money-laundering-and-counter-terrorist-financing-measures-sloveni/1680998aa9>
- <sup>928</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MONEYVAL-Slovenia-MER-2017.pdf>; [www.fatf-gafi.org/media/fatf/documents/reports/fur/MONEYVAL-FUR-Slovenia.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/fur/MONEYVAL-FUR-Slovenia.pdf)
- <sup>929</sup> <https://www.policija.si/o-slovenski-policiji/statistika> <https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2016.pdf> ; <https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2017.pdf> ; <https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2018.pdf> [https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2019\\_popr.pdf](https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2019_popr.pdf); <https://www.dt-rs.si/letna-porocila> ; <https://www.dt-rs.si/files/documents/POROCILO-2016-koncno-min.pdf> ; <https://www.dt-rs.si/files/documents/Skupno%20letno%20poro%C4%8Dilo%202017.pdf> ; [https://www.dt-rs.si/files/documents/Porocilo\\_2018.pdf](https://www.dt-rs.si/files/documents/Porocilo_2018.pdf) ; <https://www.dt-rs.si/files/documents/Letno%20poroc%C4%8Cilo%20DT%20za%20leto%202019.pdf>
- <sup>930</sup> Requests for data for this report (statistics and/or narrative replies) were sent to different institutions: Ministry of Justice, Office of the State Prosecutor General, Slovenian Police, Commission for the Prevention of Corruption and the Supreme Court. At the date of these requests, most of these institutions were operating with limited capacity, due to COVID-19 restrictions.
- <sup>931</sup> <http://www.oecd.org/daf/anti-bribery/Slovenia-Phase-3-Written-Follow-Up-Report-ENG.pdf>, p.62.
- <sup>932</sup> State Prosecutors' Annual Reports 2016, p.83; 2017, p.95, and 2018, p.116.
- <sup>933</sup> <http://www.sodnapraksa.si/>
- <sup>934</sup> Court rules, Official Gazette of the Republic of Slovenia, nr. 87/16, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=DRUG4076>
- <sup>935</sup> Amendments to the Court Rules, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=DRUG4629>; <https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=10251>
- <sup>936</sup> <https://www.ajpes.si/eRDL/Iskalnik/Javni>
- <sup>937</sup> Rules on the establishment, maintenance and management of the Register of Beneficial Owners, Official Gazette of the Republic of Slovenia nr. 66/17), <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV13022>

- <sup>938</sup> Prevention of Money Laundering and Terrorist Financing Act, Official Gazette of the Republic of Slovenia nr. 68/16 and 81/19, Articles 37 and 41, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7132>; [www.ajpes.si/eRDL/Iskalnik/Javni](http://www.ajpes.si/eRDL/Iskalnik/Javni)
- <sup>939</sup> Prevention of Money Laundering and Terrorist Financing Act, Articles 45 and 46: 14
- <sup>940</sup> Article 46 of the Prevention of Money Laundering and Terrorist Financing Act prescribes who can access data.
- <sup>941</sup> <https://www.oecd.org/daf/anti-bribery/Slovenia-Phase-3-Written-Follow-Up-Report-ENG.pdf>
- <sup>942</sup> <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/16807912a8>
- <sup>943</sup> Some whistleblower protection provisions also can be found in other acts, such as the Criminal Procedure Act, the Mass Media Act and the Public Employees Act.
- <sup>944</sup> EU Member States need to transpose the Directive by December 2021.
- <sup>945</sup> <https://www.gov.si/novice/2020-04-24-ministrice-kozlovic-s-predsednikom-kpk-sumijem-o-krepitvi-protikorupcijske-komisije/>
- <sup>946</sup> Filed for the first time during the mandate of the 12th Government of the Republic of Slovenia in the National Assembly system under EPA 2551-VII on 19 January 2018. Filed for the second time during mandate of the 13th Government of the Republic of Slovenia in the National Assembly system under EPA 0703 – VIII on 5 July 2019. Proposed amendments, [http://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=657A1386BBA62760C125842E00348501&db=pre\\_zak&mandat=VIII](http://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=657A1386BBA62760C125842E00348501&db=pre_zak&mandat=VIII)
- <sup>947</sup> Respectively, <http://www.coe.int/en/web/greco/evaluations/slovenia>; <http://www.oecd.org/daf/anti-bribery/slovenia-oecdanti-briberyconvention.htm>
- <sup>948</sup> <http://www.delo.si/novice/slovenija/dokler-bodo-politiki-zavracali-ugotovitve-kpk-ne-bo-napredka-271745.html>
- <sup>949</sup> There is only one mention of prosecutors attending training on foreign bribery in the Prosecutors' Annual Reports 2016-2018. The reply from the Office of the State Prosecutor General to Transparency International Slovenia dated 1 June 2020 does not mention any training on the OECD Foreign Bribery Convention in 2018 and 2019.
- <sup>950</sup> <http://www.oecd.org/corruption/anti-bribery/the-oecd-working-group-on-bribery-is-concerned-about-potential-political-interference-by-the-legislative-branch-in-the-independence-of-the-judiciary-in-slovenia.htm>; The European Commission expressed a similar concern in its 2019 EU Justice Scoreboard.
- <sup>951</sup> <http://www.oecd.org/corruption/anti-bribery/the-oecd-working-group-on-bribery-is-concerned-about-potential-political-interference-by-the-legislative-branch-in-the-independence-of-the-judiciary-in-slovenia.htm>; The European Commission expressed a similar concern in its 2019 EU Justice Scoreboard.
- <sup>952</sup> [https://files.dorsey.com/files/Upload/Anti\\_Corruption\\_Digest\\_August2012.pdf](https://files.dorsey.com/files/Upload/Anti_Corruption_Digest_August2012.pdf); <https://www.wsj.com/articles/SB10001424052702303740704577522560497930748>
- <sup>953</sup> <https://www.bloomberg.com/news/articles/2019-02-15/south-african-police-arrest-country-s-former-ambassador-to-iran>; <https://www.dailysabah.com/business/2018/06/06/elite-south-african-police-raid-mobile-operator-mtn-over-iran-dispute-with-turkcell>; <https://www.wsj.com/articles/SB10001424052702303740704577522560497930748>
- <sup>954</sup> <https://www.reuters.com/article/us-mtn-turkcell-idUSKBN18S4LG>
- <sup>955</sup> <https://www.bloomberg.com/press-releases/2019-04-19/turkcell-expects-a-conclusion-on-the-4-2-billion-dollar-lawsuit-against-mtn-this-year>
- <sup>956</sup> <https://mg.co.za/article/2020-03-06-training-the-npas-next-prosecutors/>
- <sup>957</sup> <http://www.treasury.gov.za/documents/national%20budget/2020/speech/speech.pdf>
- <sup>958</sup> [https://www.justice.gov.za/legislation/notices/2018/20180914-gg41904\\_rg10867\\_gon949-PDAregulations.pdf](https://www.justice.gov.za/legislation/notices/2018/20180914-gg41904_rg10867_gon949-PDAregulations.pdf)
- <sup>959</sup> <https://www.saflii.org/>
- <sup>960</sup> LexisNexis (<https://www.lexisnexis.co.za/>) and Juta (<https://juta.co.za/law/>)
- <sup>961</sup> [https://www.transparency.org/whatwedo/publication/g20\\_leaders\\_or\\_laggards](https://www.transparency.org/whatwedo/publication/g20_leaders_or_laggards)
- <sup>962</sup> <https://www.oecd.org/corruption/anti-bribery/South-Africa-Phase-3-Written-Follow-Up-Report-ENG.pdf>
- <sup>963</sup> <https://www.elcomercio.es/economia/expresidente-duro-felguera-20180216140108-nt.html>
- <sup>964</sup> <http://www.poderjudicial.es/cgpj/en/Judiciary/National-High-Court/Judicial-News/El-juez-imputa-a-FCC-por-el-pago-de-82-millones-de-euros-de-comisiones-por-las-obras-del-metro-de-Panama> <https://www.newsroompanama.com/business/spanish-company-indicted-for-91-million-bribes-to-martinelli-frontman>
- <sup>965</sup> [https://elpais.com/economia/2019/10/30/actualidad/1572438853\\_383908.html](https://elpais.com/economia/2019/10/30/actualidad/1572438853_383908.html)
- <sup>966</sup> [https://elpais.com/economia/2019/06/13/actualidad/1560437231\\_378056.html](https://elpais.com/economia/2019/06/13/actualidad/1560437231_378056.html)
- <sup>967</sup> [https://english.elpais.com/elpais/2018/10/24/inenglish/1540364892\\_173612.html](https://english.elpais.com/elpais/2018/10/24/inenglish/1540364892_173612.html)
- <sup>968</sup> <https://www.occrp.org/en/daily/9326-spanish-magistrate-accuses-state-owned-agency-of-corruption>; <https://www.lainformacion.com/empresas/la-justicia-acorrala-ahora-a-defex-en-el-flanco-de-la-venta-de-armas-a-arabia-saudi/6494212/>
- <sup>969</sup> [https://english.elpais.com/elpais/2018/10/24/inenglish/1540364892\\_173612.html](https://english.elpais.com/elpais/2018/10/24/inenglish/1540364892_173612.html)
- <sup>970</sup> [https://elpais.com/politica/2018/03/27/actualidad/1522159729\\_243293.html](https://elpais.com/politica/2018/03/27/actualidad/1522159729_243293.html)

- <sup>971</sup> <https://www.tellerreport.com/news/2019-09-12---anti-corruption-calls-for-59-years-in-jail-for-corrupt-businesses-of-the-public-company-defex-in-cameroon-.SyWESguLB.html>; <https://diario16.com/el-caso-defex-de-la-venta-de-armas-a-camerun-deja-a-espana-como-un-pais-amigo-de-satrapas-y-corrutos/>
- <sup>972</sup> [https://elpais.com/politica/2018/10/23/actualidad/1540317811\\_490814.html](https://elpais.com/politica/2018/10/23/actualidad/1540317811_490814.html)
- <sup>973</sup> <https://www.occrp.org/en/daily/11415-spain-hefty-sentences-sought-for-graft-in-saudi-arms-deals>; <https://www.tellerreport.com/news/2020-01-09---anticorruption-reveals-that-spain-has-been-paying-bribes-in-saudi-arabia-for-25-years-.rkBhSZNx8.html>
- <sup>974</sup> [https://elpais.com/politica/2018/10/28/actualidad/1540750783\\_414398.html](https://elpais.com/politica/2018/10/28/actualidad/1540750783_414398.html); <https://www.occrp.org/en/daily/11415-spain-hefty-sentences-sought-for-graft-in-saudi-arms-deals>; <https://www.euroweeklynews.com/2020/01/14/arms-to-saudis-corruption-scheme-in-spain-netted-100-million/>
- <sup>975</sup> [https://english.elpais.com/elpais/2018/10/24/inenglish/1540364892\\_173612.html](https://english.elpais.com/elpais/2018/10/24/inenglish/1540364892_173612.html)
- <sup>976</sup> [https://elpais.com/politica/2019/11/18/actualidad/1574073319\\_460889.html](https://elpais.com/politica/2019/11/18/actualidad/1574073319_460889.html)
- <sup>977</sup> <https://elcierredigital.com/investigacion/913174220/fiscalia-busca-empresas-espanolas-pagaron-comisiones-AVE-meca.html>. The consortium is made up of 12 Spanish companies: Adif, Cobra, Consultrans, Copasa, Dimetric, Imathia, Inabensa, Ineco, Indra, OHL, Renfe and Talgo, <https://elcierredigital.com/investigacion/913174220/fiscalia-busca-empresas-espanolas-pagaron-comisiones-AVE-meca.html>
- <sup>978</sup> <https://www.thelocal.es/20190913/prosecutors-question-ex-mistress-of-spains-former-king-over-saudi-train-scandal>; <https://www.thetimes.co.uk/article/lover-of-spain-s-former-king-juan-carlos-set-to-face-fraud-office-questioning-jkr9xv5v>
- <sup>979</sup> <https://elpais.com/espana/2020-06-08/la-fiscalia-del-supremo-investiga-el-papel-del-rey-juan-carlos-en-el-ave-de-la-meca.html>; <https://www.voanews.com/europe/spaniards-protest-against-former-king-amid-corruption-allegations>
- <sup>980</sup> <https://english.elpais.com/politics/2020-03-11/spanish-congress-refuses-to-investigate-former-king-juan-carlos-for-alleged-irregular-donation.html>
- <sup>981</sup> <https://www.tellerreport.com/news/2020-03-08---spain--former-king-juan-carlos-suspected-of-corruption-by-swiss-justice-.HJeXM0DMSL.html>
- <sup>982</sup> <https://english.elpais.com/international/2020-04-05/adel-al-jubeir-the-saudi-diplomat-who-endorsed-the-100m-donation-to-spains-king-juan-carlos.html>; <http://www.rfi.fr/en/wires/20200316-spanish-king-distances-himself-scandal-hit-father>
- <sup>983</sup> <https://www.insightcrime.org/news/brief/guatemala-ex-president-received-millions-in-bribes-from-spanish-company/>; <https://spectrumnews1.com/ca/la-east/ap-top-news/2019/05/08/spain-arrests-5-in-guatemala-corruption-investigation>; <http://elmercantil.com/2019/05/08/detienen-a-angel-perez-maura-por-supuestos-pagos-para-eludir-su-extradicion/>
- <sup>984</sup> <https://www.elmundo.es/cronica/2018/10/02/5bb0a8c9e2704ed97c8b4667.html>
- <sup>985</sup> <https://www.elmostrador.cl/noticias/pais/2016/09/16/cohecho-endesa-chile-es-investigado-por-fiscalia-de-espana/>
- <sup>986</sup> <https://www.reuters.com/article/us-enel-m-a-ceo/enel-actively-eying-ma-in-regulated-sphere-ceo-idUSKBN1HJ1V8>
- <sup>987</sup> <https://www.reuters.com/article/us-norway-moneylaunderingsanctions/norway-fsa-fines-santander-bank-1-million-for-anti-money-laundering-breach-idUSKCN1TX29B>; <https://riotimesonline.com/brazil-news/rio-politics/lava-jato-links-five-major-brazilian-banks-to-r1-3-billion-laundry-scheme>
- <sup>988</sup> [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2019-2363](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2019-2363)
- <sup>989</sup> <https://globalcompliancenews.com/spain-amendments-criminal-code-increase-corporate-criminal-liability-exposure-20190506/>
- <sup>990</sup> LO 5/2010, which was later amended in 2015 - LO 1/2015
- <sup>991</sup> STS 514/2015, de 2 de septiembre. STS 154/2016, de 29 de febrero (Pleno / Votos Particulares). STS 221/2016, de 16 de marzo. STS 516/2016, de 13 de junio. Auto 516/2016, de 28 de junio. STS 780/2016, de 19 de octubre. STS 827/2016, de 3 de noviembre. STS 31/2017, de 26 de enero. STS 121/2017, de 23 de febrero. STS 252/2017, de 6 de abril. STS 455/2017, de 21 de junio. STS 583/2017, de 19 de julio. STS 639/2017, de 28 de septiembre. STS 668/2017, de 11 de octubre. Auto 1521/2017, de 23 de noviembre. STS 7/2018, de 11 de enero. STS 279/2018, de 12 de junio. STS 316/2018, de 28 de junio. STS 365/2018, de 18 de julio. STS 506/2018, de 25 de octubre. STS 614/2018, de 30 de noviembre. STS 737/2019, de 5 de febrero. STS 742/2018, de 7 de febrero. STS. 746/2018, de 13 de febrero. STS 123/2018, de 8 de marzo. Auto 711/2018, de 19 de abril. STS 234/2019, de 8 de mayo; <https://navarrollimaabogados.com/en/news/first-sentences-of-the-supreme-court-on-the-criminal-liability-of-companies/>
- <sup>992</sup> [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_20\\_202](https://ec.europa.eu/commission/presscorner/detail/en/inf_20_202); [https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status\\_en](https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status_en)
- <sup>993</sup> <http://www.poderjudicial.es/cgpj/es/Temas/Transparencia/Repositorio-de-datos-sobre-procesos-por-corrupcion/Consulta-de-datos/>
- <sup>994</sup> <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Aspectos-internacionales/Cooperacion-con-organos-judiciales-extranjeros/Solicitudes-de-cooperacion-tramitadas-a-traves-de-la-Fiscalia/>
- <sup>995</sup> <http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Aspectos-internacionales/Cooperacion-con-organos-judiciales-extranjeros/Solicitudes-de-cooperacion-tramitadas-a-traves-del-Ministerio-de-Justicia/>
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- <sup>997</sup> <https://www.mjusticia.gob.es/cs/Satellite/Portal/es/areas-tematicas/oficina-recuperacion-gestion>
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- <sup>999</sup> <http://www.poderjudicial.es/search/indexAN.jsp>
- <sup>1000</sup> The *Registro de Titularidades Reales* (RETIR)
- <sup>1001</sup> <https://globalcompliance.com/spain-disclose-beneficial-owner-20180418/>
- <sup>1002</sup> <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5amlid-patchy-progress/>
- <sup>1003</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Spain-2014.pdf> p. 46
- <sup>1004</sup> [https://www.fiscal.es/documents/20142/183863/memoria2019\\_fiscalia\\_anticorrupcion.pdf/bf933261-3bfc-249f-6b14-9eee30469b30](https://www.fiscal.es/documents/20142/183863/memoria2019_fiscalia_anticorrupcion.pdf/bf933261-3bfc-249f-6b14-9eee30469b30)
- <sup>1005</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2019-5563>
- <sup>1006</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562062740889&uri=CELEX:52019DC0198>
- <sup>1007</sup> <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680779c4d>
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- <sup>1009</sup> <https://www.reuters.com/article/telia-verdict/update-2-swedish-court-acquits-former-telia-ceo-in-uzbekistan-bribery-probe-idUSL5N20A2VF?il=0>
- <sup>1010</sup> <https://www.occrp.org/en/daily/9260-swedish-telecom-boss-acquitted-in-uzbekistan-bribery-probe>
- <sup>1011</sup> <https://www.reuters.com/article/telia-verdict/update-1-swedish-court-acquits-former-telia-ceo-in-uzbekistan-bribery-probe-idUSL5N20A2VF>
- <sup>1012</sup> <https://www.bnnbloomberg.ca/bombardier-worker-in-sweden-charged-with-aggravated-bribery-1.833302>
- <sup>1013</sup> <https://www.reuters.com/article/telia-appeal/swedish-prosecutor-appeals-ex-telia-ceos-acquittal-in-uzbekistan-bribery-case-idUSL5N20V176;>  
<https://de.reuters.com/article/bombardier-appeal/swedish-prosecutor-appeals-bombardier-employee-acquittal-idUKFWN1N00FY>
- <sup>1014</sup> <https://www.reuters.com/article/bc-finreg-canada-corruption-concerns-idUSKCN1T62JG>
- <sup>1015</sup> <http://www.oecd.org/corruption/anti-bribery/The-Detection-of-Foreign-Bribery-ENG.pdf> page 139 Some information also provided by Swedish authorities.
- <sup>1016</sup> The Swedish authorities are understood to have assisted the US when the investigation was opened, <https://www.justice.gov/opa/pr/ericsson-agrees-pay-over-1-billion-resolve-fcpa-case>; <https://uk.reuters.com/article/uk-usa-ericsson-sweden/sweden-opens-ericsson-bribery-probe-after-u-s-settlement-paper-idUKKBN1YG246?il=0>
- <https://www.svt.se/nyheter/ekonomi/svensk-forundersokning-mot-ericsson-1>
- <https://globalinvestigationsreview.com/article/1212130/sweden-investigates-ericsson-over-bribery>
- <sup>1017</sup> <https://www.ekobrottsmyndigheten.se/press/nyheter/2019/4/ekobrottsmyndigheten-inleder-inte-forundersokning-efter-anmalan-om-penningtvatt-i-swedbank/>
- <sup>1018</sup> <https://www.fi.se/en/published/sanctions/financial-firms/2020/swedbank-receives-a-warning-and-an-administrative-fine-of-sek-four-billion/>
- <sup>1019</sup> “Decision – Stricter Criminal Penalties Against Companies”, with effect as of 1 January 2020, [https://www.riksdagen.se/sv/dokument-lagar/arende/betankande/skarpta-strafrattsliga-sanktioner-mot-foretag\\_H701JuU10](https://www.riksdagen.se/sv/dokument-lagar/arende/betankande/skarpta-strafrattsliga-sanktioner-mot-foretag_H701JuU10),  
<https://globalinvestigationsreview.com/article/1212289/swedish-companies-to-face-larger-penalties-for-foreign-bribery> and  
<https://www.regeringen.se/4adaff/contentassets/f8880c89e0a34aa5abe49d37e9f59608/skarpta-strafrattsliga-sanktioner-mot-foretag-prop.-201819164>
- <sup>1020</sup> This is allegedly because the government did not consider it clear that to do so would improve the efficiency of the system, and thought it could disrupt the fundamental principles of Swedish criminal law.
- <sup>1021</sup> <https://www.oecd.org/corruption/sweden-must-urgently-implement-reforms-to-boost-fight-against-foreign-bribery.htm>
- <sup>1022</sup> *Lag (2016:749)*, In 2017, this was added to by the Act on the Protection of Whistleblowers in Certain Specific Sectors, *Lag (2017:151)*, which addresses whistleblower protection in privately run institutions in the health care, education and elderly care sectors, that are partially or fully publicly funded.
- <sup>1023</sup> <https://www.government.se/government-policy/labour-law-and-work-environment/2016749-act-on-special-protection-for-workers-against-reprisals-for-whistleblowing-concerning-serious-irregularities/>  
<https://www.regeringen.se/rattsliga-dokument/kommittedirektiv/2019/06/dir.-201924/>  
<https://www.dataguidance.com/sweden-establishing-corporate-criminal-activity-may-prove-difficult-whistleblowing-act/>  
<https://www.aklagare.se/om-oss/organisation/visselblasarfunktion-pa-aklagarmyndigheten/>
- <sup>1024</sup> <https://www.regeringen.se/49f2d1/contentassets/8da2073fda1645ec946ca4eca8bd6b6a/okad-trygghet-for-visselblasare-sou-2020-38.pdf>
- <sup>1025</sup> *Lag (2017:630)*
- <sup>1026</sup> *Brottsmisstankestatistiken för brottskod 1708 givande av muta*
- <sup>1027</sup> <https://www.institutetmotmutor.se/english/> ; <https://www.institutetmotmutor.se/rattsfallsbank/>
- <sup>1028</sup> *Lag (2017:631)*

- <sup>1029</sup> *Bolagsverket*. <https://bolagsverket.se/en>
- <sup>1030</sup> <https://bolagsverket.se/om/oss/fler/verklig-huvudman>  
<https://bolagsverket.se/en/us/about/beneficial-ownership-register>  
[https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2017631-om-registrering-av-verkliga\\_sfs-2017-631](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2017631-om-registrering-av-verkliga_sfs-2017-631)
- <sup>1031</sup> <https://bolagsverket.se/en/us/about/beneficial-ownership-register>
- <sup>1032</sup> <https://bolagsverket.se/pb/etjanster/verklig-huvudman/sok>; <https://bolagsverket.se/en/us/about/beneficial-ownership-register>
- <sup>1033</sup> <https://www.dataguidance.com/sweden-establishing-corporate-criminal-activity-may-prove-difficult-whistleblowing-act/>
- <sup>1034</sup> <https://www.anti-moneylaundering.org/europe/sweden.aspx>  
<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32018L0843>  
<http://rkrattsbaser.gov.se/sfsr?bet=2017:630>
- <sup>1035</sup> Swedish Penal Code
- <sup>1036</sup> There is an ongoing Commission of Inquiry on this point <https://www.regeringen.se/rattsliga-dokument/kommittedirektiv/2019/11/dir.-201985/>
- <sup>1037</sup> <https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>
- <sup>1038</sup> <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-65077.html>
- <sup>1039</sup> <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-65077.html>
- <sup>1040</sup> “Accelerated proceedings (Art. 358 ff. Swiss Criminal Procedure Code) make it possible, subject to certain requirements, to conclude a case more quickly. The accused must admit his or her guilt and accept the civil claims, at least in principle. The accepted facts of the case serve as the basis for the indictment, which must be approved by both the accused and the complainants. The indictment is then submitted to the court in the form of a proposed judgment [...]. If the court decides that the requirements for accelerated proceedings have been met, the indictment is transformed into its judgment. If not, the file is forwarded to the Public Prosecutor's Office to initiate ordinary proceedings.”  
<https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-76765.html>
- <sup>1041</sup> <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-76765.html>
- <sup>1042</sup> <https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/news-seite.msg-id-76725.html>; The Swiss prosecutor said Gunvor had no code of conduct, compliance system or sufficient oversight at the time. They also found that at the time of the events, warning signs had been ignored and other irregularities had occurred, including authorisation being given for a substantial number of payments to third-party offshore companies unrelated to oil activities, and the backdating of supporting letters to banks.  
<https://www.reuters.com/article/us-gunvor-grp-congo-corruption/gunvor-must-pay-95-million-for-congo-oil-corruption-swiss-prosecutors-idUSKBN1WW0Z9>
- <sup>1043</sup> <https://www.bloomberg.com/news/articles/2019-10-17/gunvor-strikes-95-million-deal-with-swiss-to-end-congo-probe>;  
<https://www.reuters.com/article/us-gunvor-grp-congo-corruption/gunvor-must-pay-95-million-for-congo-oil-corruption-swiss-prosecutors-idUSKBN1WW0Z9>
- <sup>1044</sup> <https://www.reuters.com/article/us-gunvor-grp-congo-corruption/gunvor-must-pay-95-million-for-congo-oil-corruption-swiss-prosecutors-idUSKBN1WW0Z9>
- <sup>1045</sup> [https://entscheide.weblaw.ch/cache.php?link=28.08.2018\\_sk.2018.38&sel\\_lang=de](https://entscheide.weblaw.ch/cache.php?link=28.08.2018_sk.2018.38&sel_lang=de); The employee reportedly claimed senior management was fully aware and approved the transactions, according to a Swiss prosecution document, <https://www.reuters.com/article/us-gunvor-grp-congo-corruption/gunvor-must-pay-95-million-for-congo-oil-corruption-swiss-prosecutors-idUSKBN1WW0Z9>
- <sup>1046</sup> [https://www.swissinfo.ch/eng/ignored-warning-signs\\_commodities-trader-gunvor-held-criminally-liable-for-corruption/45304836](https://www.swissinfo.ch/eng/ignored-warning-signs_commodities-trader-gunvor-held-criminally-liable-for-corruption/45304836)
- <sup>1047</sup> <https://www.spglobal.com/marketintelligence/en/news-insights/trending/uxgq28xsui7wurgk3hjqig2>
- <sup>1048</sup> <http://ge.ch/justice/licences-minieres-en-guinee-beny-steinmetz-renvoye-en-jugement>
- <sup>1049</sup> <https://www.globalwitness.org/en/blog/guineas-bribery-saga-reaches-new-peaks/>
- <sup>1050</sup> [https://www.swissinfo.ch/eng/business/venezuelan-ties\\_geneva-probe-opened-into-alleged-oil-trade-corruption/43968468](https://www.swissinfo.ch/eng/business/venezuelan-ties_geneva-probe-opened-into-alleged-oil-trade-corruption/43968468) ;  
<https://www.letemps.ch/economie/deux-arrestations-geneve-une-affaire-corruption-venezuela>
- <sup>1051</sup> <https://dlbjbjzgnk95t.cloudfront.net/1020000/1020500/pdvs%20complaint.pdf>; <https://apnews.com/9d6a1d796422464da09b176f22189e0f>;  
<https://www.reuters.com/article/us-venezuela-oil/venezuelas-pdvs-sues-oil-traders-over-corruption-scheme-lawyer-idUSKCN1GL04U>;  
<https://www.bloomberg.com/news/articles/2018-03-10/oil-trading-giants-glencore-vitol-targeted-in-pdvs-bribe-suit>
- <sup>1052</sup> <https://www.courthousenews.com/venezuela-linked-trust-sues-foreign-oil-traders-for-bribes/>; <https://www.clearygottlieb.com/-/media/files/pdvs-us-litigation-trust-what-creditors-should-know-about-the-trust-its-claims-3-16-18-pdf.pdf>
- <sup>1053</sup> <https://www.letemps.ch/economie/deux-arrestations-geneve-une-affaire-corruption-venezuela>; <https://juricaf.org/arret/SUISSE-TRIBUNALFEDERALSUISSE-20190911-1B1802019>
- <sup>1054</sup> <https://www.glencore.com/media-and-insights/news/investigation-by-the-office-of-the-attorney-general-of-switzerland>
- <sup>1055</sup> <https://www.publiceye.ch/en/media-corner/press-releases/detail/glencore-in-the-drc-public-eye-calls-upon-swiss-justice-to-take-action>

- <sup>1056</sup> <https://www.theguardian.com/business/2019/dec/05/serious-fraud-office-investigates-glencore-over-suspected-bribery>;  
<https://www.theguardian.com/world/2018/dec/05/brazil-car-wash-scandal-drags-in-glencore-trafigura-vitol>
- <sup>1057</sup> <https://www.reuters.com/article/us-brazil-corruption-petrobras-trader-ex/u-s-opens-probe-into-brazilian-oil-bribery-scheme-sources-idUSKCN1PW2LT>; <https://www.theguardian.com/world/2018/dec/05/brazil-car-wash-scandal-drags-in-glencore-trafigura-vitol>
- <sup>1058</sup> <https://www.nzz.ch/wirtschaft/credit-suisse-mocambique-affaere-erreicht-die-schweiz-ld.1559372>
- <sup>1059</sup> <https://www.law360.com/articles/1197839/3rd-ex-credit-suisse-banker-cops-to-2b-mozambique-fraud>;  
<https://allafrica.com/stories/202001300928.html> ; <https://allafrica.com/stories/201909130748.html>
- <sup>1060</sup> <https://www.law360.com/articles/1197839/3rd-ex-credit-suisse-banker-cops-to-2b-mozambique-fraud>;  
<https://allafrica.com/stories/202001300928.html> ; <https://allafrica.com/stories/201909130748.html>
- <sup>1061</sup> <https://www.thetimes.co.uk/article/credit-suisse-banker-took-45m-bribe-9f8bx203n>
- <sup>1062</sup> <https://www.bbc.com/news/business-47405071>; <https://www.bloomberg.com/news/articles/2019-08-09/mozambique-indicts-20-people-over-2-billion-hidden-debt-scandal>
- <sup>1063</sup> <https://www.reuters.com/article/us-credit-suisse-gp-mozambique-exclusive/exclusive-u-s-prosecutors-believe-credit-suisse-is-culpable-in-mozambique-scandal-sources-idUSKBN2130E3>; <https://allafrica.com/stories/202001300928.html>
- <sup>1064</sup> <https://www.justice.gov/opa/pr/mozambique-s-former-finance-minister-indicted-alongside-other-former-mozambican-officials>
- <sup>1065</sup> <https://www.reuters.com/article/mozambique-usa-trial/lebanese-salesman-acquitted-in-case-over-2-bln-mozambique-loans-idUSL2N2821LZ>;  
<https://www.reuters.com/article/mozambique-usa-trial/lebanese-salesman-acquitted-in-case-over-2-bln-mozambique-loans-idUSL2N2821LZ>;  
Prosecutors had alleged that the sales representative of the UAE company had paid kickbacks to bankers and Mozambican officials, which some news reports say he did not deny, <https://www.reuters.com/article/mozambique-usa-trial/lebanese-salesman-acquitted-in-case-over-2-bln-mozambique-loans-idUSL2N2821LZ>. Three Mozambique companies – Proindicus, Ematum and MAM – were the alleged recipients of the loans, <https://allafrica.com/stories/202001300928.html>
- <sup>1066</sup> <https://www.sec.gov/news/press-release/2018-128>; <https://www.justice.gov/opa/pr/credit-suisse-s-investment-bank-hong-kong-agrees-pay-47-million-criminal-penalty-corrupt>
- <sup>1067</sup> <https://eu-ocs.com/credit-suisse-accused-of-laundering-money-for-bulgarian-drug-trafficker/>
- <sup>1068</sup> [https://www.swissinfo.ch/eng/business/kba-notasys\\_chf35-million-corruption-fine-for-printing-press-firm/42986930](https://www.swissinfo.ch/eng/business/kba-notasys_chf35-million-corruption-fine-for-printing-press-firm/42986930) ;  
<https://www.printweek.com/news/article/kba-notasys-settles-bribery-case>
- <sup>1069</sup> <https://notasys.koenig-bauer.com/en/company/corporate-responsibility>
- <sup>1070</sup> <https://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>
- <sup>1071</sup> <https://www.gov.br/cgu/pt-br/assuntos/noticias/2019/07/cgu-investiga-multinacional-suica-envolvida-em-irregularidades-com-a-casa-da-moedac>
- <sup>1072</sup> <https://www.bundesanwaltshaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>
- <sup>1073</sup> <https://www.bj.admin.ch/dam/data/bj/sicherheit/rechtshilfe/strafsachen/taetigkeitsberichte/jb-irh-2017-d.pdf>  
<https://www.bj.admin.ch/dam/data/bj/sicherheit/rechtshilfe/strafsachen/taetigkeitsberichte/jb-irh-2018-d.pdf>
- <sup>1074</sup> <https://bstger.weblaw.ch/index.php>
- <sup>1075</sup> <https://www.bundesanwaltshaft.ch/mpc/en/home/zugang-zu-amtlichen-dokumenten/strafbefehle--einstellungs--und-nichtanhandnahmeverfuegungen.html>
- <sup>1076</sup> <https://www.bundesanwaltshaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/news-seite.msg-id-76725.html>
- <sup>1077</sup> <http://www.fatf-gafi.org/media/fatf/content/images/mer-switzerland-2016.pdf>
- <sup>1078</sup> <https://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>, p.9
- <sup>1079</sup> <http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>
- <sup>1080</sup> Swiss Federal Gazette <https://www.admin.ch/opc/fr/federal-gazette/2019/5237.pdf>
- <sup>1081</sup> [https://www.parlament.ch/fr/services/news/Pages/2020/20200305085645310194158159041\\_bsf038.aspx](https://www.parlament.ch/fr/services/news/Pages/2020/20200305085645310194158159041_bsf038.aspx)
- <sup>1082</sup> <https://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>
- <sup>1083</sup> <https://globalcompliance.com/anti-corruption/handbook/anti-corruption-in-switzerland/>
- <sup>1084</sup> <https://www.bundesanwaltshaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>, Section 4.10
- The Summary Penalty Order against the company did not prevent the separate prosecution of the officers personally involved in the corrupt practices, <https://www.24heures.ch/suisse/deux-excadres-kba-notasys-juges/story/24763619>
- <sup>1085</sup> Art. 102 of the Swiss Criminal Code, <https://www.admin.ch/opc/en/classified-compilation/19370083/index.html>
- <sup>1086</sup> <http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>
- <sup>1087</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Report-Switzerland-2020.pdf>

- <sup>1088</sup> <https://www.admin.ch/opc/fr/federal-gazette/2019/5237.pdf>
- <sup>1089</sup> <https://www.sec.gov/news/press-release/2020-88>
- <sup>1090</sup> <https://www.sec.gov/litigation/complaints/2020/comp-pr2020-88.pdf>; <https://ethixbase.com/turkey-turkish-energy-producer-caught-up-in-ghana-bribery-claims/>; <https://energynewsafrika.com/index.php/2020/04/23/ghana-ex-tor-md-bribery-allegation-well-cooperate-with-us-authorities-aksa-energy/>;
- <sup>1091</sup> <https://news.err.ee/907911/port-of-tallinn-corruption-case-trial-to-begin-on-7-may>
- <sup>1092</sup> <https://www.oecd.org/daf/anti-bribery/TurkeyPhase3ReportEN.pdf>
- <sup>1093</sup> <https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf>
- <sup>1094</sup> <https://www.oecd.org/corruption/turkey-s-foreign-bribery-enforcement-framework-needs-to-be-urgently-strengthened-and-corporate-liability-legislation-reformed.htm>
- <sup>1095</sup> [https://one.oecd.org/document/DAF/WGB\(2019\)38/en/pdf](https://one.oecd.org/document/DAF/WGB(2019)38/en/pdf)
- <sup>1096</sup> <https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf>
- <sup>1097</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>
- <sup>1098</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>
- <sup>1099</sup> <https://www.kap.org.tr/en/menu-content/About-PDP/General-Information>
- <sup>1100</sup> [https://ms.hmb.gov.tr/uploads/sites/2/2019/04/R\\_RoM-1.pdf](https://ms.hmb.gov.tr/uploads/sites/2/2019/04/R_RoM-1.pdf)
- <sup>1101</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>
- <sup>1102</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>, p.203.
- <sup>1103</sup> See, for example, OECD WGB statement in 2019, <https://www.oecd.org/corruption/turkey-s-foreign-bribery-enforcement-framework-needs-to-be-urgently-strengthened-and-corporate-liability-legislation-reformed.htm>
- <sup>1104</sup> <https://www.oecd.org/corruption/turkey-s-foreign-bribery-enforcement-framework-needs-to-be-urgently-strengthened-and-corporate-liability-legislation-reformed.htm>
- <sup>1105</sup> Judicial independence was rated 3 out of 7 by participants in the Global Competitiveness Report 2019, [http://www3.weforum.org/docs/WEF\\_TheGlobalCompetitivenessReport2019.pdf](http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf)
- <sup>1106</sup> <https://www.reuters.com/article/us-turkey-corruption-prosecutors/turkeys-top-judicial-body-suspends-graft-probe-prosecutors-agency-idUSKBN0K80WC20141230>
- <sup>1107</sup> <https://www.reuters.com/article/us-turkey-security/turkey-has-removed-more-than-4000-judges-prosecutors-after-coup-minister-says-idUSKBN18M0Q9>
- <sup>1108</sup> <https://www.nytimes.com/2019/06/21/world/asia/erdogan-turkey-courts-judiciary-justice.html>
- <sup>1109</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9d29>
- <sup>1110</sup> <https://www.sfo.gov.uk/2019/02/07/former-senior-executive-convicted-in-petrofac-investigation/>; The SFO's wider case against Petrofac Limited is ongoing.
- <sup>1111</sup> <https://www.sfo.gov.uk/2018/12/19/five-convictions-in-sfos-alstom-investigation-into-bribery-and-corruption-to-secure-e325-million-of-contracts/>
- <sup>1112</sup> <https://www.sfo.gov.uk/2019/11/25/sfos-alstom-case-concludes-with-sentencing-of-alstom-network-uk-ltd/>
- <sup>1113</sup> <https://www.sfo.gov.uk/2019/07/19/former-unaoil-executive-pleads-guilty-to-conspiracy-to-give-corrupt-payments/>; <https://www.sfo.gov.uk/cases/unaoil/>
- <sup>1114</sup> <https://www.sfo.gov.uk/cases/unaoil/>; The SFO has also summonsed Unaoil Monaco SAM and Unaoil Ltd.
- <sup>1115</sup> [http://files.transparency.org/content/download/2318/14294/file/2018\\_Report\\_ExportingCorruption\\_English.pdf](http://files.transparency.org/content/download/2318/14294/file/2018_Report_ExportingCorruption_English.pdf), p.88. In the 2018 report, Sarclad Limited was referred to as "XYZ Limited", <https://uk.reuters.com/article/uk-britain-sarclad-acquittal/london-jury-acquits-three-sarclad-staff-despite-corporate-plea-deal-idUKKCN1UB279>
- <sup>1116</sup> <https://www.sfo.gov.uk/2019/12/20/three-individuals-acquitted-as-sfo-confirms-dpa-with-guralp-systems-ltd/>
- <sup>1117</sup> The investigation into ENRC Ltd is subject to numerous legal disputes. In November 2019, ENRC Ltd lost an application for judicial review of the SFO's investigation into the company's acquisition of mineral assets in Africa, <https://www.reuters.com/article/us-britain-enrc-lawsuit/london-court-rejects-enrcs-attempt-to-challenge-uk-fraud-office-idUSKBN1XG2N5>. In 2018, it had won a separate appeal to withhold information from the SFO on the basis it was privileged information (Director of the Serious Fraud Office v Eurasian Natural Resources Corpn Ltd (Law Society intervening) - [2019] 1 WLR 791). The daughter of one of its founders, Anna Machkevitch, failed to overturn a criminal charge brought against her by the SFO for failing to produce documents that would support its investigation into ENRC Ltd, <https://www.ft.com/content/84e73aa4-111c-11ea-a225-db2f231cfeae>
- <sup>1118</sup> <https://www.sfo.gov.uk/cases/de-la-rue-plc/>; <https://www.sfo.gov.uk/2019/12/05/sfo-confirms-investigation-into-suspected-bribery-at-glencore-group-of-companies/>

- <sup>1119</sup> <https://www.sfo.gov.uk/2019/02/22/sfo-closes-glaxosmithkline-investigation-and-investigation-into-rolls-royce-individuals/>
- <sup>1120</sup> <https://publications.parliament.uk/pa/ld201719/ldselect/ldbriact/303/303.pdf>
- <sup>1121</sup> <https://publications.parliament.uk/pa/ld201719/ldselect/ldbriact/303/303.pdf>, p.44 para 146 and p.32 para 109.
- <sup>1122</sup> <https://www.parliament.uk/documents/lords-committees/Bribery-Act-2010/govt-response-hol-select-committee-bribery-act-2010.pdf>
- <sup>1123</sup> The National Crime Agency, Serious Fraud Office, Financial Conduct Authority, City of London Police, HM Revenue and Customs, Crown Prosecution Service and the Home Office.
- <sup>1124</sup> It is not yet clear how many of these cases relate to the scope of this report, <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/bribery-corruption-and-sanctions-evasion/international-anti-corruption-centre>
- <sup>1125</sup> The Financial Conduct Authority can help with investigations, but not prosecute. The City of London Police are winding up legacy cases.
- <sup>1126</sup> <https://www.sfo.gov.uk/publications/corporate-information/annual-reports-accounts/>
- <sup>1127</sup> <https://www.copfs.gov.uk/publications/bribery-act>; For 2018 data for Scotland and Northern Ireland, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/713454/bribery-act-2010-post-legislative-scrutiny-memorandum-print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/713454/bribery-act-2010-post-legislative-scrutiny-memorandum-print.pdf)
- <sup>1128</sup> Such data is only released when it would not breach the confidentiality of any individual request. The most recent dataset available is for MLA requests between January 2012 and December 2013, published subject to a May 2014 Freedom of Information request, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/302347/FOI\\_30607\\_-\\_Annex\\_A.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302347/FOI_30607_-_Annex_A.pdf)
- <sup>1129</sup> <https://www.oecd.org/corruption/United-Kingdom-phase-4-follow-up-report-ENG.pdf>, p.9. This has yet to occur and as at 26 May 2020, the reasons for the delay are unknown.
- <sup>1130</sup> <http://www.oecd.org/corruption/anti-bribery/UKPhase-4-Report-ENG.pdf>, p.59, para 156. In such cases, the data released covers all MLA requests, not only those regarding foreign bribery.
- <sup>1131</sup> <https://www.oecd.org/corruption/United-Kingdom-phase-4-follow-up-report-ENG.pdf>, p.8.
- <sup>1132</sup> <https://beta.companieshouse.gov.uk/>; <https://www.gov.uk/guidance/companies-house-data-products>; and <https://developer.companieshouse.gov.uk/api/docs/>
- <sup>1133</sup> <https://register.openownership.org/>
- <sup>1134</sup> <http://www.legislation.gov.uk/uksi/2017/692/regulation/45/made>, Regulation 45
- <sup>1135</sup> <http://www.legislation.gov.uk/uksi/2017/692/regulation/45/made>, Regulation 45(12)
- <sup>1136</sup> The consultation was conducted between January and February 2020, <https://www.gov.uk/government/consultations/technical-consultation-fifth-money-laundering-directive-and-trust-registration-service>
- <sup>1137</sup> <https://www.gov.gg/CHttpHandler.ashx?id=119716&p=0>. Under the Sanctions and Anti-Money Laundering Act 2018, the UK government is required to provide all reasonable assistance to help the UK's Overseas Territories introduce public beneficial ownership registers by the end of 2021, and to legislate via Order in Council if they fail to do so voluntarily by this date, <http://www.legislation.gov.uk/ukpga/2018/13/section/51/enacted>, Section 51.
- <sup>1138</sup> <https://ubosearch.egov.gi/Login?ReturnUrl=%252f>
- <sup>1139</sup> <https://www.gov.uk/government/publications/statutory-review-of-the-exchange-of-notes-arrangements/statutory-review-of-the-implementation-of-the-exchange-of-notes-on-beneficial-ownership-between-the-united-kingdom-crown-dependencies-and-overseas-te>
- <sup>1140</sup> <http://www.oecd.org/corruption/anti-bribery/UKPhase-4-Report-ENG.pdf>, page 26, paragraph 57
- <sup>1141</sup> The "identification doctrine", defined by case law, holds that for a company to be guilty of bribery it must be established that someone who can be described as its "directing mind and will" was involved in committing the bribery. It is very difficult to prosecute large companies for substantive bribery offences (as opposed to the lesser crime of failure to prevent bribery), as it requires evidence that a very senior person was complicit in the illegal activity. The principle can incentivise senior members of a corporation to turn a blind eye to criminal acts committed by its representatives, insulating the company (and themselves) from liability. The result is an unfair situation in which the "low-hanging fruit" of small companies, with simpler corporate structures, are more easily targeted.
- <sup>1142</sup> <https://www.transparency.org.uk/wp-content/plugins/download-attachments/includes/download.php?id=7701>, p.13, para 5.1.
- <sup>1143</sup> <https://www.judiciary.uk/wp-content/uploads/2020/01/Director-of-the-Serious-Fraud-Office-v-Airbus-SE.pdf>, para 68. While technically outside the reporting period for this report, this decision provides guidance as to future uses of DPAs.
- <sup>1144</sup> <http://www.legislation.gov.uk/ukpga/2013/22/schedule/17> Crime and Courts Act 2013, Schedule 17 Paragraph 5(3)(b)
- <sup>1145</sup> <https://www.sfo.gov.uk/download/deferred-prosecution-agreement-sfo-v-icbc-sb-plc/?wpdmdl=7600&refresh=5ecd7a2fba1a11590524463>
- <sup>1146</sup> <https://www.judiciary.uk/wp-content/uploads/2017/01/sfo-v-rolls-royce.pdf>
- <sup>1147</sup> <https://www.sfo.gov.uk/cases/rolls-royce-plc/> ; <https://www.sfo.gov.uk/2020/01/31/sfo-enters-into-e991m-deferred-prosecution-agreement-with-airbus-as-part-of-a-e3-6bn-global-resolution/> ; <https://www.judiciary.uk/wp-content/uploads/2020/01/Director-of-the-Serious-Fraud-Office-v-Airbus-SE.pdf>
- <sup>1148</sup> <https://www.cps.gov.uk/sites/default/files/documents/publications/General-Principles-to-compensate-overseas-victims-December-2017.pdf>

- <sup>1149</sup> <https://beta.companieshouse.gov.uk/company/02984211/filing-history/MzlzNzAwMzM2OWFkaXF6a2N4/document?format=pdf&download=0> page 1
- <sup>1150</sup> <https://www.theguardian.com/business/2019/jun/23/airbus-shuts-down-subsi-dary-at-centre-of-bribery-investigation>
- <sup>1151</sup> <https://publications.parliament.uk/pa/ld201719/ldselect/ldbriact/303/303.pdf>, page 107 paragraphs 5, 6 and 13.
- <sup>1152</sup> The actual number of foreign bribery investigations opened during this period is likely higher, as data is not reported consistently and not published in a central location. See “Transparency of Enforcement Data” for more information.
- <sup>1153</sup> Annual totals as reported by *FCPA Blog*, 2016, <https://fc-pablog.com/2017/1/3/the-2016-fcpa-enforcement-index/>; 2017, <https://fc-pablog.com/2018/1/2/2017-fcpa-enforcement-index/>; 2018, <https://fc-pablog.com/2019/1/2/2018-fcpa-enforcement-index/>; 2019, <https://fc-pablog.com/2020/01/02/2019-fcpa-enforcement-index/>
- <sup>1154</sup> [https://www.cov.com/-/media/files/corporate/publications/2020/01/2019\\_year\\_in\\_review\\_top\\_anticorruption\\_enforcement\\_trends\\_and\\_developments.pdf](https://www.cov.com/-/media/files/corporate/publications/2020/01/2019_year_in_review_top_anticorruption_enforcement_trends_and_developments.pdf), p. 4.
- <sup>1155</sup> <https://www.velaw.com/insights/five-less-predictable-predictions-for-fcpa-enforcement-in-2020/>
- <sup>1156</sup> <https://news.bloomberglaw.com/white-collar-and-criminal-law/insight-fcpa-penalties-on-track-for-potential-record-in-2019>
- <sup>1157</sup> <https://www.justice.gov/opa/pr/samsung-heavy-industries-company-ltd-agrees-pay-75-million-global-penalties-resolve-foreign>; <https://www.justice.gov/opa/pr/walmart-inc-and-brazil-based-subsi-dary-agree-pay-137-million-resolve-foreign-corrup-t>; [http://s3.amazonaws.com/fcmd/documents/documents/000/004/518/original/Rolls\\_Royce\\_-\\_Bribery\\_and\\_Corruption\\_Global\\_Set\\_t\\_DOJPR.pdf](http://s3.amazonaws.com/fcmd/documents/documents/000/004/518/original/Rolls_Royce_-_Bribery_and_Corruption_Global_Set_t_DOJPR.pdf)
- <sup>1158</sup> <https://www.justice.gov/opa/pr/ericsson-agrees-pay-over-1-billion-resolve-fcpa-case>; <https://www.sec.gov/enforce/34-86740-s>; For specific reference to China, <https://www.sec.gov/litigation/admin/2019/34-86740.pdf>, p.6; <https://www.justice.gov/opa/pr/walmart-inc-and-brazil-based-subsi-dary-agree-pay-137-million-resolve-foreign-corrup-t>; [http://s3.amazonaws.com/fcmd/documents/documents/000/004/410/original/GlaxoSmithKline\\_-\\_China\\_Bribery\\_SECPR.pdf?1475603031](http://s3.amazonaws.com/fcmd/documents/documents/000/004/410/original/GlaxoSmithKline_-_China_Bribery_SECPR.pdf?1475603031)
- <sup>1159</sup> <https://www.justice.gov/opa/pr/texas-businessman-sentenced-70-months-prison-role-venezuela-bribery-scheme-and-obstruction>
- <sup>1160</sup> <https://www.justice.gov/opa/pr/petr-leo-brasileiro-sa-petrobras-agrees-pay-more-850-million-fcpa-violations>; <https://fc-pablog.com/2018/9/28/petrobras-smashes-the-top-ten-list-and-we-explain-why/>
- <sup>1161</sup> <https://www.justice.gov/opa/pr/ericsson-agrees-pay-over-1-billion-resolve-fcpa-case>
- <sup>1162</sup> <https://www.justice.gov/usao-sdny/press-release/file/1224266/download>
- <sup>1163</sup> <https://www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsi-dary-enter-global-foreign-bribery-resolution-more-965>; <https://www.sec.gov/news/press-release/2017-171>
- <sup>1164</sup> <https://www.justice.gov/opa/pr/mobile-telesystems-pjsc-and-its-uzbek-subsi-dary-enter-resolutions-850-million-department>
- <sup>1165</sup> <https://www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million>
- <sup>1166</sup> Plea agreements in *U.S. v. Kolorit Dizayn Ink LLC*, <https://www.justice.gov/opa/press-release/file/1141621/download> and *U.S. v. Unitel LLC*, <https://www.justice.gov/opa/file/827181/download>
- <sup>1167</sup> <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1087&context=mbelr>, pp.355-356; <http://fc-paprofessor.com/fcpa-enforcement-actions-foreign-companies-oecd-convention-peer-countries-4/>
- <sup>1168</sup> US Department of Justice, “Policy on Coordination of Corporate Resolution Penalties,” 9 May 2018. <https://www.justice.gov/opa/speech/file/1061186/download>
- <sup>1169</sup> <https://www.justice.gov/opa/pr/technipfmc-plc-and-us-based-subsi-dary-agree-pay-over-296-million-global-penalties-resolve>
- <sup>1170</sup> <https://www.justice.gov/criminal-fraud/file/838416/download> (updated March 2019); US Department of Justice, “The Fraud Section’s Foreign Corrupt Practices Act Enforcement Plan and Guidance,” 5 April 2016, <https://www.justice.gov/archives/opa/blog-entry/file/838386/download>, p.2.
- <sup>1171</sup> <https://www.justice.gov/criminal-fraud/corporate-enforcement-policy/declinations>
- <sup>1172</sup> Covington, “2019 Year in Review: Top Anti-Corruption Enforcement Trends and Developments,” Winter 2020, p.4. [https://www.cov.com/-/media/files/corporate/publications/2020/01/2019\\_year\\_in\\_review\\_top\\_anticorruption\\_enforcement\\_trends\\_and\\_developments.pdf](https://www.cov.com/-/media/files/corporate/publications/2020/01/2019_year_in_review_top_anticorruption_enforcement_trends_and_developments.pdf)
- <sup>1173</sup> Sidley Austin LLP, “CFTC Announces Enforcement Advisory for Commodity Exchange Act Violations Involving Foreign Corrupt Practices,” 11 March 2019, <https://tinyurl.com/v4kpau6>
- <sup>1174</sup> <https://www.gibsondunn.com/2019-year-end-fcpa-update/>
- <sup>1175</sup> <https://www.gibsondunn.com/2019-year-end-fcpa-update/>
- <sup>1176</sup> H.R. 4140. <https://www.congress.gov/bill/116th-congress/house-bill/4140>
- <sup>1177</sup> H.R. 2513. <https://www.congress.gov/bill/116th-congress/house-bill/2513>
- <sup>1178</sup> *Kokesh v. SEC*, 137 S.Ct. 1635 (2017), [https://www.supremecourt.gov/opinions/16pdf/16-529\\_i426.pdf](https://www.supremecourt.gov/opinions/16pdf/16-529_i426.pdf)
- <sup>1179</sup> *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767, 2018, [https://www.supremecourt.gov/opinions/17pdf/16-1276\\_b0nd.pdf](https://www.supremecourt.gov/opinions/17pdf/16-1276_b0nd.pdf)
- <sup>1180</sup> *U.S. v. Hoskins*, No. 16-1010 (2nd Cir. 2018), <https://cases.justia.com/federal/appellate-courts/ca2/16-1010/16-1010-2018-08-24.pdf>

- <sup>1181</sup> <https://www.velaw.com/insights/new-ruling-in-och-ziff-case-could-lead-to-a-billion-dollar-restitution-award-and-throws-doubt-on-benefits-of-settling-fcpa-cases/>
- <sup>1182</sup> <https://www.justice.gov/criminal-fraud/file/1245236/download>; <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>
- <sup>1183</sup> The DOJ and the SEC do not disclose the number of closed and ongoing FCPA investigations, when investigations commenced or concluded, and whether, when or why agencies decline to pursue enforcement action. Publicly traded companies sometimes disclose information about commenced and closed investigations and pending cases in public financial filings required by US securities law. These filings are posted on the SEC's Electronic Data Gathering, Analysis and Retrieval (EDGAR) website. US Securities and Exchange Commission, "EDGAR - Search and Access", <https://www.sec.gov/edgar/search-and-access>
- <sup>1184</sup> <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>
- <sup>1185</sup> For example, <https://www.justice.gov/opa/pr/samsung-heavy-industries-company-ltd-agrees-pay-75-million-global-penalties-resolve-foreign>
- <sup>1186</sup> <https://www.justice.gov/criminal-fraud/enforcement-actions>; <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>; <https://www.sec.gov/spotlight/foreign-corrupt-practices-act.shtml>
- <sup>1187</sup> <https://www.justice.gov/news>; <https://www.sec.gov/news/pressreleases>
- <sup>1188</sup> <https://www.justice.gov/criminal-fraud/statutes-regulations>
- <sup>1189</sup> Currently 10 cents per page. Administrative Office of the US Courts, "PACER – Public Access to Court Electronic Records", <https://www.pacer.gov/>
- <sup>1190</sup> <https://www.gao.gov/assets/710/702890.pdf>, pp.6-7. Most states do not collect, verify or update beneficial ownership information; <https://fas.org/sgp/crs/misc/R45798.pdf>, p.4.
- <sup>1191</sup> <https://sam.gov/SAM/>
- <sup>1192</sup> <https://www.gao.gov/assets/710/702890.pdf>, p.35.
- <sup>1193</sup> 48 CFR § 52.204-17 – Ownership or Control of Offeror, <https://www.law.cornell.edu/cfr/text/48/52.204-17>
- <sup>1194</sup> <https://www.gao.gov/assets/710/702890.pdf>, p.35.
- <sup>1195</sup> <https://fas.org/sgp/crs/misc/R45798.pdf>, p.15; [https://www.transparency.org/files/content/publication/2015\\_BOCountryReport\\_US.pdf](https://www.transparency.org/files/content/publication/2015_BOCountryReport_US.pdf), p.2.
- <sup>1196</sup> <https://www.velaw.com/insights/five-less-predictable-predictions-for-fcpa-enforcement-in-2020/>
- <sup>1197</sup> Those cases were in 1979, 1989, 1990, 2009 and 2010. Richard Messick, Legal Remedies for Victims under US Law, 2016, [https://www.justiceinitiative.org/uploads/58dc15ea-f2c9-4bfa-894f-0d007145b230/legal-remedies-5-messick-20160601\\_1.pdf](https://www.justiceinitiative.org/uploads/58dc15ea-f2c9-4bfa-894f-0d007145b230/legal-remedies-5-messick-20160601_1.pdf)
- <sup>1198</sup> <https://www.velaw.com/insights/new-ruling-in-och-ziff-case-could-lead-to-a-billion-dollar-restitution-award-and-throws-doubt-on-benefits-of-settling-fcpa-cases/>
- <sup>1199</sup> <https://www.gao.gov/assets/710/702890.pdf>, p.7.
- <sup>1200</sup> <https://www.pogo.org/analysis/2019/03/caught-between-conscience-and-career/>
- <sup>1201</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111-203, § 922. <https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>
- <sup>1202</sup> <https://www.wsj.com/articles/whistleblower-challenges-sec-over-delay-on-award-decision-11556668694>
- <sup>1203</sup> <https://fcpcablog.com/2019/04/15/uber-grease-payments-and-charitable-giving-gone-wrong/>
- <sup>1204</sup> [https://www.transparency.org/whatwedo/publication/progress\\_report\\_2010\\_enforcement\\_of\\_the\\_oecd\\_anti\\_bribery\\_convention](https://www.transparency.org/whatwedo/publication/progress_report_2010_enforcement_of_the_oecd_anti_bribery_convention), pp.66 -67.
- <sup>1205</sup> This is based on searches in major Chinese legal databases and related databases, including <http://caseshare.cn> (maintained by the Peking University Research Center); <http://law.wkinfo.com.cn/>; <http://wenshu.court.gov.cn/>; <https://splcgk.court.gov.cn/gzfwww/>; <http://zhixing.court.gov.cn/>; the websites of relevant Chinese government or party agencies, and search engines (Google, Baidu and Lexis Advance News).
- <sup>1206</sup> Article 7 of the amended Anti-Unfair Competition Law (AUCL). If a business operator is able to provide evidence that the act of the employee is irrelevant to seeking a transaction opportunity or competitive edge for the business, the business will not be found liable. The business operator bears the burden to provide such evidence, <https://www.wipo.int/edocs/lexdocs/laws/en/cn/cn011en.pdf>
- <sup>1207</sup> Article 19 of the amended AUCL.
- <sup>1208</sup> Article 19 of the amended AUCL.
- <sup>1209</sup> Article 26 of the amended AUCL.
- <sup>1210</sup> National Supervision Commission Governing Rules of Jurisdiction, [www.scmp.com/news/china/policies-politics/article/2136757/china-sets-new-super-agency-fight-corruption?\\_escaped\\_fragment\\_=&edition=hong-kong](http://www.scmp.com/news/china/policies-politics/article/2136757/china-sets-new-super-agency-fight-corruption?_escaped_fragment_=&edition=hong-kong)
- <sup>1211</sup> [http://www.xinhuanet.com/english/2019-12/30/c\\_138667313.htm](http://www.xinhuanet.com/english/2019-12/30/c_138667313.htm); It is unknown whether the NSC and CCDI propose to publish this information annually.
- <sup>1212</sup> These include <http://wenshu.court.gov.cn/> (reflecting court cases), <https://splcgk.court.gov.cn/gzfwww/> (reflecting case status and procedural matters) and <http://zhixing.court.gov.cn/> (reflecting enforcement of judgments).

- <sup>1213</sup> Formerly the China Banking Regulatory Commission and China Insurance Regulatory Commission.
- <sup>1214</sup> [www.simmons-simmons.com/en/publications/ck6g8w6lh1u2g0961gx88d34a/cbirc---the-interim-measures-for-equity-management-of-trust-companies](http://www.simmons-simmons.com/en/publications/ck6g8w6lh1u2g0961gx88d34a/cbirc---the-interim-measures-for-equity-management-of-trust-companies)
- <sup>1215</sup> Article 9 of the Interim Measures for the Equity Management of Trust Companies, <http://en.pkulaw.cn/display.aspx?cgid=497b41b7f3793843bdfb&lib=law>
- <sup>1216</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-China-2019.pdf>
- <sup>1217</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-China-2019.pdf>
- <sup>1218</sup> <http://www.gsxt.gov.cn/index.html>
- <sup>1219</sup> <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1609720e.pdf>
- <sup>1220</sup> As discussed in the Recent Developments section, an act of bribery by an employee may be deemed an act of bribery by a business operator unless the business operator can show that the employee's action is irrelevant to seeking business opportunities or competitive advantages for the employer. In practice, regulators are likely to take into consideration the adequacy of a business operator's compliance procedures when assessing evidence, <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/china>
- <sup>1221</sup> For example, <https://www.oecd.org/cleangovbiz/Integrity-Forum-2017-Lang-China-transnational-bribery.pdf>; <https://globalanticorruptionblog.com/2018/05/14/its-time-for-china-to-show-its-foreign-bribery-law-is-not-a-paper-tiger/>
- <sup>1222</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-China-2019.pdf>
- <sup>1223</sup> Patrick Ho's conviction was for his role in money laundering and a multimillion-dollar scheme to bribe state leaders and officials of Chad and Uganda in exchange for business advantages for CEFC China Energy Company Limited, a Shanghai-based conglomerate. He was convicted on seven out of eight counts of bribery and money-laundering, sentenced to three years in prison and fined HK\$3.1 million (US\$400,000), [www.justice.gov/usao-sdny/pr/patrick-ho-former-head-organization-backed-chinese-energy-conglomerate-sentenced-3](http://www.justice.gov/usao-sdny/pr/patrick-ho-former-head-organization-backed-chinese-energy-conglomerate-sentenced-3)
- <sup>1224</sup> <https://www.sec.gov/litigation/admin/2019/34-87750.pdf>
- <sup>1225</sup> <https://www.justice.gov/opa/pr/malaysian-financier-low-taek-jho-also-known-jho-low-and-former-banker-ng-chong-hwa-also-known>; <https://www.justice.gov/opa/press-release/file/1106936/download>. The holding company was a shell company incorporated in the British Virgin Islands, owned by Tim Leissner's co-conspirator and controlled by both the co-conspirator and Tim Leissner.
- <sup>1226</sup> <https://www.sec.gov/litigation/admin/2019/34-87750.pdf>
- <sup>1227</sup> <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=19PR60>; <https://de.reuters.com/article-us-goldman-sachs-1mdb-sfc/hong-kong-regulator-bans-former-goldman-banker-leissner-for-life-over-1mdb-idUSKCN1TY12B>
- <sup>1228</sup> <https://www.justice.gov/opa/pr/credit-suisse-s-investment-bank-hong-kong-agrees-pay-47-million-criminal-penalty-corrupt>
- <sup>1229</sup> Consultations on Legislative Proposals to Enhance Anti-Money Laundering and Counter-Terrorist Financing Regulation in Hong Kong, April 2017, [www.fstb.gov.hk/fsb/ppr/consult/doc/conclu\\_eamI\\_etbo\\_e.pdf](http://www.fstb.gov.hk/fsb/ppr/consult/doc/conclu_eamI_etbo_e.pdf) Anti-money laundering and counter-terrorist financing measures (Hong Kong, China) Mutual Evaluation Report, September 2019, <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Hong-Kong-2019.pdf>
- <sup>1230</sup> The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance (the AML Law), <https://www.cr.gov.hk/en/publications/docs/es1201822053-e.pdf>. The Companies (Amendment) Ordinance 2018 adds a New Division 2A in Part 12 of the Companies Ordinance (Cap. 622) and new Schedules 5A, 5B and 5C. See also the Section on Beneficial Ownership Transparency about the Companies (Amendment) Ordinance of 2018.
- <sup>1231</sup> <http://www.conventuslaw.com/report/hong-kong-whistleblower-protection-high-time-for-a/>
- <sup>1232</sup> [https://www.skadden.com/insights/publications/2019/08/hkexs-latest-rule-amendments?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=LinkedIn-integration](https://www.skadden.com/insights/publications/2019/08/hkexs-latest-rule-amendments?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration)
- <sup>1233</sup> <https://www.legco.gov.hk/yr18-19/english/bills/b201903291.htm>
- <sup>1234</sup> The ICAC is Hong Kong's independent government agency responsible for investigating bribery-related cases and common law misconduct, <http://www.icac.org.hk/en/rc/figure/prosecute/index.html>; <http://www.icac.org.hk/en/law/case/index.html>
- <sup>1235</sup> [https://www.judiciary.hk/en/judgments\\_legal\\_reference/index.html](https://www.judiciary.hk/en/judgments_legal_reference/index.html)
- <sup>1236</sup> [https://www.cr.gov.hk/en/publications/docs/GN20170623\\_2405-e.pdf](https://www.cr.gov.hk/en/publications/docs/GN20170623_2405-e.pdf); The Companies (Amendment) Bill 2017 came into force on 1 March 2018. Hong Kong was rated largely compliant with FATF recommendation 24 with regards to the transparency and beneficial ownership of legal persons, <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Hong-Kong-2019.pdf>. Section 653H, Companies (Amendment) Ordinance 2018. Part 1 of Schedule 5A to the Companies (Amendment) Ordinance 2018 has definitions of person with significant control.
- <sup>1237</sup> Sections 653X, 653Y and 653Z, Companies (Amendment) Ordinance 2018. A law enforcement officer is one whose functions relate to the prevention, detection or investigation of money laundering or terrorist financing. A law enforcement officer includes an officer of the following government departments or statutory bodies: Companies Registry; Customs and Excise Department; Hong Kong Monetary Authority; Hong Kong Police Force; Immigration Department; Inland Revenue Department; Insurance Authority; Independent Commission against Corruption, and the Securities and Futures Commission. Section 653B, Companies (Amendment) Ordinance 2018.
- <sup>1238</sup> Section 653M, Companies (Amendment) Ordinance 2018, <https://www.cr.gov.hk/en/publications/docs/es1201822053-e.pdf>; Companies must notify the Registrar of Companies of the place where their SCRs are kept, and of any change (section 654N).
- <sup>1239</sup> Section 1(e) Part 1 Schedule 5A, Companies (Amendment) Ordinance 2018

<sup>1240</sup> Listed corporations must keep a register of individuals or entities owning 5 per cent or more interests in any voting shares (including any beneficial owner of such shares). Such register is open for inspection by the public. Section 336(1) of the Securities and Futures Ordinance (Cap.571).

<sup>1241</sup> Section 9, POBO. B v. Commissioner of the Independent Commission against Corruption [2010] 3 HKC 118-129, Court of Final Appeal. This held that where an advantage is offered in Hong Kong, section 9(2) of the Prevention of Bribery Ordinance applies, even if the recipient is a public official of a place outside Hong Kong, and the actual forbearance concerned is in relation to his public duties in that place.

<sup>1242</sup> In a landmark decision in 2012, the Court of Appeal held that POBO section 9 does not apply extraterritorially to an offer of a bribe made outside Hong Kong aimed at inducing acts of a foreign official, and any agreement made in Hong Kong to make such an offer is not triable in Hong Kong as a conspiracy. CACC 99/2012. The decision was confirmed by the Court of Final Appeal on 1 August 2014 (FAMC 1/2014), [www.corporatecomplianceinsights.com/a-safe-haven-from-which-to-plan-foreign-bribes-the-lack-of-extra-territoriality-of-hong-kongs-anti-bribery-laws/](http://www.corporatecomplianceinsights.com/a-safe-haven-from-which-to-plan-foreign-bribes-the-lack-of-extra-territoriality-of-hong-kongs-anti-bribery-laws/)

<sup>1243</sup> <https://nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre>

<sup>1244</sup> <https://thelawreviews.co.uk/edition/the-anti-bribery-and-anti-corruption-review-edition-6/1151853/hong-kong>. Also elaborated on in the *Exporting Corruption* Report 2018.

<sup>1245</sup> Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report, April 2018, [https://www.fstb.gov.hk/fsb/aml/en/doc/hk-risk-assessment-report\\_e.pdf](https://www.fstb.gov.hk/fsb/aml/en/doc/hk-risk-assessment-report_e.pdf)

<sup>1246</sup> <http://www.oecd.org/site/adboecdanti-corruptioninitiative/39984764.pdf>; See Articles 46 and 57 of the UN Convention against Corruption.

<sup>1247</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Hong-Kong-China-2019.pdf>

<sup>1248</sup> <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1577175>

<sup>1249</sup> [http://lokpal.gov.in/?about\\_us?about\\_lokpal?0101](http://lokpal.gov.in/?about_us?about_lokpal?0101)

<sup>1250</sup> <https://www.reedsmith.com/en/perspectives/2018/10/significant-updates-to-indias-anti-corruption-law>

<sup>1251</sup> [www.cbi.gov.in/pressreleases/pressrelease.php](http://www.cbi.gov.in/pressreleases/pressrelease.php)

<sup>1252</sup> [http://cbi.gov.in/view\\_firs.php](http://cbi.gov.in/view_firs.php); <http://cbi.gov.in/pressreleases/pressrelease.php>. The office of *Lokpal*, the office of Chief Vigilance Officers of Central Public-Sector Undertakings (including banks), the State Anti-Corruption Bureau, the Serious Fraud Investigation Office, and, in some states, the office of the *Lokayukta* (Ombudsman) are also involved in the investigation of cases related to corruption.

<sup>1253</sup> <https://cvc.gov.in/reports/monthly-performance-reports>; <https://cvc.gov.in/reports/annual-report>

<sup>1254</sup> <https://main.sci.gov.in/judgments>

<sup>1255</sup> [www.mondaq.com/india/corporate-and-company-law/804156/mca-introduces-amended-rules-for-significant-beneficial-ownership](http://www.mondaq.com/india/corporate-and-company-law/804156/mca-introduces-amended-rules-for-significant-beneficial-ownership); [taxguru.in/company-law/form-no-ben-1-ben-2-ben-3-ben-4.html?amp](http://taxguru.in/company-law/form-no-ben-1-ben-2-ben-3-ben-4.html?amp)

<sup>1256</sup> [http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/NDA%20In%20The%20Media/News%20Articles/180911\\_A\\_MCA-notifies-beneficial-ownership-rules.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/NDA%20In%20The%20Media/News%20Articles/180911_A_MCA-notifies-beneficial-ownership-rules.pdf)

<sup>1257</sup> [https://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules\\_08020219.pdf](https://www.mca.gov.in/Ministry/pdf/CompaniesOwnersAmendmentRules_08020219.pdf)

<sup>1258</sup> <https://www.mondaq.com/india/corporate-and-company-law/804156/mca-introduces-amended-rules-for-significant-beneficial-ownership>

<sup>1259</sup> In addition to India, a further three G20 countries (China, Indonesia and Saudi Arabia) have also yet to ratify the OECD Convention and criminalise foreign bribery. OECD Convention Ratification Status as of 21 May 2014, [www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf](http://www.oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf).

<sup>1260</sup> Section 177(9) of the Companies Act, 2013 and Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 [http://ebook.mca.gov.in/Actpagedisplay.aspx?PAGE\\_NAME=17561](http://ebook.mca.gov.in/Actpagedisplay.aspx?PAGE_NAME=17561); [http://ebook.mca.gov.in/Actpagedisplay.aspx?PAGE\\_NAME=18097](http://ebook.mca.gov.in/Actpagedisplay.aspx?PAGE_NAME=18097)

<sup>1261</sup> Section 11, Whistleblowers Protection Act 2014, <http://legislative.gov.in/sites/default/files/A2014-17.pdf>

<sup>1262</sup> Section 3(i), Whistleblowers Protection Act 2014, <http://legislative.gov.in/sites/default/files/A2014-17.pdf>

<sup>1263</sup> <https://economictimes.indiatimes.com/news/company/corporate-trends/where-the-law-stands-on-whistleblowers-in-india/infosys-episode/slideshow/71770940.cms>

<sup>1264</sup> Response of the Singapore Prime Minister to a question in Parliament in January 2019, <https://sprs.parl.gov.sg/search/sprs3topic?reportid=written-answer-4399&fbclid=IwAR2tULf06FbPW6Ok9zgf32ShA8D87JfnMBI6jbz4eNB3jUbOZ6DfbLFw9qY>

<sup>1265</sup> <https://www.justice.gov/opa/pr/keppel-offshore-marine-ltd-and-us-based-subsidiary-agree-pay-422-million-global-penalties>

<sup>1266</sup> <https://www.cpi.gov.sg/press-room/press-releases/conditional-warning-issued-keppel-offshore-marine-ltd>

<sup>1267</sup> <https://www.straitstimes.com/asia/se-asia/singapore-returning-503-million-linked-to-1mdb-scandal>

<sup>1268</sup> See the *Exporting Corruption* Report 2018, entry on Singapore, p.101, for details.

<sup>1269</sup> <https://www.agc.gov.sg/docs/default-source/publications/agc-annual-report-2019.pdf>

<sup>1270</sup> <https://www.sfo.gov.uk/cases/unaoil/>; <https://www.sfo.gov.uk/2018/06/26/unaoil-group-companies-summonsed-as-part-of-sfos-ongoing-corruption-investigation/>; <https://www.afr.com/companies/cimic-signs-investigation-agreement-with-uss-doj-on-alleged-leighton-bribes->

20190301-h1bw3u. The SFO subsequently dropped its investigation into three of the executives, for which it was criticised, <https://www.theguardian.com/uk-news/2019/jun/30/serious-office-faces-questions-over-decision-to-drop-bribery-investigation>

<sup>1271</sup> [http://www.cbi.gov.in/pressreleases/pr\\_2018-05-29-1.php](http://www.cbi.gov.in/pressreleases/pr_2018-05-29-1.php)

<sup>1272</sup> <https://www.cnbctv18.com/aviation/cnbctv18-com-investigation-singapore-company-a-logistics-provider-linked-to-airasia-india-for-lobbying-by-cbi-was-engaged-soon-after-board-meet-79433.htm>; <https://www.channelnewsasia.com/news/asia/airasia-group-denies-allegations-of-aviation-corruption-by-india-10446878>; <https://economictimes.indiatimes.com/industry/transportation/airlines/-/aviation/more-individuals-under-cbi-lens-for-airasia-lobbying/articleshow/64626271.cms?from=mdr>

<sup>1273</sup> <https://insights.namescan.io/singapores-mas-focuses-on-shell-firms-to-fight-money-laundering/>; <https://www.channelnewsasia.com/news/singapore/shell-firms-money-laundering-monetary-authority-mas-1mdb-11804128>

<sup>1274</sup> <https://sbr.com.sg/financial-services/commentary/further-tightening-financial-regulation-in-singapore>

<sup>1275</sup> <https://www.fatf-gafi.org/publications/mutualevaluations/documents/fur-singapore-2019.html>; <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Singapore-2016.pdf>

<sup>1276</sup> <https://www.police.gov.sg/media-room/statistics>; <https://data.gov.sg/dataset?organization=ministry-of-home-affairs-singapore-police-force>

<sup>1277</sup> <https://www.agc.gov.sg/docs/default-source/publications/agc-annual-report-2019.pdf>

<sup>1278</sup> From 2000, <https://www.supremecourt.gov.sg/news/supreme-court-judgments>

<sup>1279</sup> <https://www.statecourts.gov.sg/cws/Resources/Pages/Latest-Judgments.aspx>; There is no explanation as to how judgments are selected for posting. It is assumed that selection is based on the legal significance of the case.

<sup>1280</sup> <https://www.lawnet.sg/lawnet/web/lawnet/home>; LawNet is a service of the Singapore Academy of Law, which is a Singapore statutory body and Singapore's official law-reporting agency.

<sup>1281</sup> <https://www.acra.gov.sg/corporate-service-providers/register-of-controllers>

<sup>1282</sup> <https://www.acra.gov.sg/legislation/legislative-reform/companies-act-reform/companies-amendment-act-2017/register-of-registrable-controllers>

<sup>1283</sup> Lucas,B., "Comment: Singapore's foreign-bribery enforcement hindered by legal hurdles and hard-to-reach overseas evidence", 2 July 2020.

<sup>1284</sup> Lucas,B., "Comment: Singapore's foreign-bribery enforcement hindered by legal hurdles and hard-to-reach overseas evidence", 2 July 2020.

<sup>1285</sup> [https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016\\_07\\_06\\_Singapore\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_07_06_Singapore_Final_Country_Report.pdf)

<sup>1286</sup> [www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016\\_07\\_06\\_Singapore\\_Final\\_Country\\_Report.pdf](http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_07_06_Singapore_Final_Country_Report.pdf)

<sup>1287</sup> Lucas,B., "Comment: Singapore's foreign-bribery enforcement hindered by legal hurdles and hard-to-reach overseas evidence", 2 July 2020.

<sup>1288</sup> The definition of "major case" includes the bribing of senior public officials by major companies, including state-owned enterprises. In determining whether a case is "major", additional factors to be considered include whether the defendant is a large multinational corporation or an individual acting for a major company; whether the allegations involve bribery of a senior public official; whether the amount of the contract and of the alleged payment(s) is large (regardless of whether it was paid in a single transaction or in a scheme involving multiple payments, even if only to lower-level officials) and whether the case and sanctions constitute a major precedent and deterrent. Several indicative guidelines can also be used to help decide whether a case is major. A company could be considered major if its revenue represents more than 0.01 per cent of a country's GDP. The seniority of public officials could be defined in terms of their remoteness from the highest public official (prime minister, for example). If they are less than five steps removed from the prime minister, they can be considered senior. Seniority of public officials would depend, inter alia, on their ability to influence decisions. For a case to be defined as "major", its details would have to be available in the public domain or published in an official legal journal. Where relevant, the Global Investigations Review's Enforcement Scorecard can be used as a barometer for defining a major case. If a case appears in the global top 100 according to the scorecard, it should be classified as major regardless of jurisdiction, <https://globalinvestigationsreview.com/edition/1000012/the-enforcement-scorecard>. The characterisation as "major" should be exercised narrowly. In case of doubt, a case is not characterised "major".

<sup>1289</sup> "Substantial" sanctions include deterrent prison sentences, large fines and disgorgement of profits, appointment of a compliance monitor, and disqualification from future business. The ratio between the maximum sentence for a crime in question and the actual sentence in each given case could be used as an indicator of the severity of the sanctions imposed. Disgorgement of profits alone should not count as a substantial sanction, but should only be considered in combination with other sanctions.

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Transparency International  
International Secretariat  
Alt-Moabit 96, 10559 Berlin, Germany

Phone: +49 30 34 38 200

Fax: +49 30 34 70 39 12

[ti@transparency.org](mailto:ti@transparency.org)

[www.transparency.org](http://www.transparency.org)

Blog: [transparency.org/en/blog](http://transparency.org/en/blog)

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