



G20 ANTI-CORRUPTION WORKING GROUP

Responses to the 2021 Accountability Report questionnaire

SUMMARY

The present document contains an overview of verbatim country responses received to the 2021 Accountability Report Questionnaire circulated by the Italian Presidency.

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General foreword

Although very important steps have been taken in the fight against corruption, its negative consequences on economies, trade and development, corruption continues to represent a threat to global growth and financial stability, undermining the rule of law, destroying public trust, hampering cross-border investment and trade, and distorting fair competition and resource allocation.

Continuing the path started during the 2019 G20 Presidency and recognizing that the Accountability Report represents a key element for the Anti-Corruption Working Group (ACWG) to analyse and evaluate the progress made to implement the G20 anti-corruption commitments, the 2021 G20 ACWG will also base the Accountability Report on a more detailed overview of progress made and challenges faced by G20 countries in selected areas addressed by the ACWG , instead of pursuing a general and broader overview across all the topics covered by the Group .

This approach is in line with the request from the Group to focus on the effectiveness of the measures taken by G20 countries in meeting their commitments as reflected in the High-Level Principles (HLPs) endorsed by G20 Leaders, with the aim of being as compliant as possible with the agreed Principles.

The selection of specific topics is consistent with the principles established in the ACWG Action Plan 2019-2021, i.e., to adapt its working methods and mechanisms to facilitate as much as possible the implementation of past G20 commitments and increase the impact of the anti-corruption agenda, as well as developing further targeted actions where the G20 can offer significant added value, ideally without duplicating work already done by other institutions and with a view to further strengthening a fruitful, engaging cooperation with partner organizations, institutions and bodies (UNODC, OECD, IMF, World Bank and FATF), and supporting and encouraging them, as well as others, in their outstanding efforts to prevent and fight corruption.

In this regard and keeping in mind the need to accelerate the process of implementation of past G20 commitments as one of the top priorities of the afore-mentioned Action Plan, this year the Accountability Report will focus on the topics of beneficial ownership transparency , private sector transparency and integrity and liability of legal persons .

In line with the suggestions listed in the HLPs of the last G20 Presidency and the recommendations of the United Nations Development Programme (UNDP) and bearing in mind the importance of achieving of the 2030 Agenda for Sustainable Development, including its Sustainable Development Goals (SDGs), the present Questionnaire seeks to identify specific, relevant parameters which can demonstrate the effectiveness of the achievements in implementing the G20 anti-corruption plans.

The focus on beneficial ownership transparency, liability of legal persons and private sector integrity could also help assess the preparedness of G20 countries to prevent and counter corruption in emergency situations.

Approach for the 2021 anti-corruption accountability report questionnaire

BENEFICIAL OWNERSHIP TRANSPARENCY

Despite increased international efforts and achievements, the lack of transparency in beneficial ownership information for legal persons and arrangements remains a critical issue in the global fight against corruption. When criminals can hide their involvement in legal entities, they make the detection of criminal activity such as money laundering and tax evasion, and asset recovery more difficult

Ongoing beneficial ownership issues undermine the vast and significant efforts of the G20 to reach its goals of fostering the rule of law, promoting growth and protecting the global economic and financial system, as well as maintaining integrity and trust in tax administration systems.

G20 members are strongly committed to promoting greater transparency through compliance with of their 2014 G20 High Level Principles on Beneficial Ownership Transparency, as well as the international standards concerning the beneficial ownership of legal persons and arrangements set by the Financial Action Task Force (FATF)¹.

In line with international standards, key points for the benchmarking on beneficial ownership transparency are a uniform definition of “*beneficial owner*”, such as that of the FATF, the existence of mechanisms to ensure (i) adequate sharing of beneficial ownership information, particularly with reference to high-risk sectors, (ii) the ability of financial institutions, companies and other arrangements, and company registries to obtain and hold accurate and up-to-date information on beneficial ownership and (iii) accessibility of this information by competent authorities. Another key point to be considered is the level of cooperation and information sharing on beneficial ownership at the international levels, and the effective supervision and sanctions with regard to the above-mentioned procedures.

PRIVATE SECTOR TRANSPARENCY AND INTEGRITY

The G20 commitment to ensure that a broad range of stakeholders may contribute to the development and implementation process of the HLPs to tackle corruption worldwide targets not only public-sector entities and institutions, including governmental bodies, but also groups and individuals from the private sector and civil society in a wider sense.

Such an inclusive approach helps to ensure the broadest possible reach in the efforts to bolster private sector transparency and integrity. G20 countries are keen on continuing to work with the private sector and civil society to counter corruption by developing anti-corruption education and training for businesses, and identifying good practices in the implementation of robust anti-corruption ethics and compliance programs and measures for self-reporting. One example of such a practice is the proactive disclosure of relevant information and evidence of actual or possible violations to authorities before the authorities detect these issues through investigations, examinations, or other means.

¹ It is also useful to recall in this framework the commitments taken in the current Anti-Corruption Action Plan:

This questionnaire intends to focus on benchmarking the implementation of commitments in the 2015 G20 High Level Principles on Private Sector Transparency and Integrity, providing an in-depth overview of the steps taken on the path to promoting private sector anti-corruption initiatives, with a specific emphasis on the ones taken for small- and medium-sized enterprises (SMEs).

LIABILITY OF LEGAL PERSONS FOR CORRUPTION

In a world where our economy is mainly led, both at the national and international level, by commercial entities (legal persons), the fight against corruption would be hampered if only natural persons involved were punished, while sparing the legal persons from sanctions. On the other hand, the ever-growing complexity of the global economy can impede the identification and prosecution of individuals who control or direct a legal person engaged in criminal activity. G 20 members have already committed to the implementation of legal person liability for corruption offences, including bribery, and related offences established in accordance with the main international conventions.

This part of the questionnaire is intended to augment the general assessment of state-of-art practices in this area, ideally without duplicating work already undertaken by other institutions, with a view to further strengthening a fruitful and engaging cooperation with partner organizations. The implementation review and monitoring mechanisms carried out under the United Nations Convention against Corruption (UNCAC) and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments already assess the compliance with obligations in relation to liability of legal persons.

This section will therefore carry out a benchmarking survey on the 2017 G20 High Level Principles on the Liability of Legal Persons for Corruption.

The ACWG will also explore ways, including on capacity building and technical assistance, as appropriate, to support other countries to implement beneficial ownership standards and promote the utilization of beneficial ownership information to tackle corruption and related money laundering.

Country responses to the questionnaire

ARGENTINA

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

Financial Information Unit (UIF):

The Financial Information Unit and our country in general, has been carrying out important regulatory reforms regarding the prevention of money laundering and financing of terrorism in accordance with the standards of the Financial Action Task Force (FATF). In 2011 through Law 26.683 and in 2018 through Decree 27/2018 important amendments were made to Law 25.246. In 2012, the FATF recommendations were modified to include the risk-based approach. In 2017, local regulations began to be adapted to the new recommendations for the financial sector, capital markets, insurance and credit cards (Resolutions 30/2017, 21/2018, 28/2018 and 76/2019). Currently, it remains to follow with the other obliged subjects.

Resolution 30 E/2017 establishes the obligations that Financial Entities must comply with to manage ML/TF risks, in accordance with the standards, good practices, guidelines and international guidelines currently in force, according to the Recommendations issued by the FATF. The Resolution establishes that the ML/FT Prevention System must consider compliance policies and procedures for Clients and Owners/Beneficiaries, including rules for the periodic updating and consequent filtering of the Client base as well as policies and procedures for the acceptance, identification and continuous knowledge of the final Owners/Beneficiaries of their operations (art. 7).

In establishing the due diligence policy, art. 24 stipulates that clients who are legal entities must be identified through the documents proving the incorporation and

validity of said legal entity, and all registration and registration data must be obtained from the authorities.

The regulation defines "Owner/Beneficiary" as any human person who controls or may control, directly or indirectly, a legal person or legal structure without legal personality, and/or who owns, at least, TWENTY PERCENT (20%) of the capital or voting rights, or who by other means exercises its final control, directly or indirectly. When it is not possible to identify a human person, the identity of the President or the highest authority that corresponds must be identified and verified.

Fiduciaries are Obligated Subjects before the UIF in the terms defined by Resolution 140/2012 and Resolution 21/2018, the latter is applicable to financial fiduciaries. Its provisions are similar to those of Financial Entities, thus in the customer due diligence measures (CDD) the identification of the BF is included and they apply to the trustee as the underwriter (in the cases of financial trustees), to the holders of trust securities underwriters, to human persons, legal entities or legal structures without legal personality, those who operate directly with Settlement and Clearing Agents and Trading Agents, those who are in charge of advising on investments in the Capital Market, the management of trading orders and/or the administration of investment portfolios of Global Investment Advisors. Finally, the regulation includes in the Collective Financing systems, the legal entities or affectation patrimonies that are financed by means of these systems, the investors whatever their class and regardless of whether the contribution was effectively integrated, and the individuals, legal entities or affectation patrimonies that are in charge of the administration of the funds included in the operation. For the rest of the trusts, Resolution 140/2012 is still in force with characteristics similar to those detailed below.

Resolution UIF 21/2018 regulates the ML/FT prevention obligations of notaries public, this regulation has not yet received the FATF R1 Risk Based Approach, although it contemplates a definition of BF similar to the aforementioned Resolution 30 E/2017 it does not provide for the third step of the cascade that provides that when it is impossible to verify who is the human person behind the entity, the person who exercises the highest authority of the legal person is identified. Resolution 21/2018 defines a BF as the natural persons who hold at least TWENTY PERCENT (20%) of the capital or voting rights of a legal person or who by other means exercise ultimate, direct or indirect control over a legal person. However, it provides for a reinforced CDD for notaries to know the structure of the company, determine the origin of its funds and identify the owners, beneficiaries and those who exercise actual control over the legal person.

By means of Resolution UIF No. 76/2019, payment platforms were incorporated as subjects obliged to report and comply with certain requirements, (money laundering prevention system, with procedures on alerts, compliance manual, designation of compliance officer, perform customer due diligence, among others), although limited to those that are credit card operators.

Federal Agency of Public Revenues (AFIP)

In the year 2020, the Federal Agency of Public Revenues (AFIP) through General Resolution No. 4697/2020 established a new regime for the payment of taxes. 4697/2020 established a new reporting regime through which companies, civil associations, foundations and mutual funds must report must identify the beneficial owner, understood as the human person owning the capital stock or voting rights of a company, legal entity or other contractual entity or legal structure -regardless of the percentage of participation-, or who by any other means, exercises direct or indirect control of such legal entity, entity or structure; with respect to the

information on the beneficial owner, when the latter does not directly participate in the capital, voting rights or control of the regulated entities, they must keep the documentation proving the legal structures up to the beneficial owner, identifying the chain of intermediate participations between the two entities. And whenever the person who is the beneficial owner according to the above definition is not identified, the president, managing partner, administrator or highest authority of such person must be informed as the beneficial owner.

AFIP reserves the right to verify and supervise the causes that led to the noncompliance with the identification of the beneficial owner in the established terms. This information must be submitted annually, which guarantees that it is up to date.

It is extremely valuable that the information can be collected in the terms established throughout the country. The different commercial registries or the IGJ have territorial jurisdiction in each of the 24 jurisdictions, which, being autonomous, do not always contemplate homogeneous regulations; in fact, there are more registries than provinces, since some of them are divided. This is settled by the federal competence of the AFIP.

As a sanction, it is provided that compliance with the regime will be a requirement for the processing of requests made by taxpayers and/or responsible parties regarding the incorporation and/or permanence in the different registries implemented by the AFIP, the obtaining of tax credit certificates and/or tax or social security status certificates, among others. It is also stated that non-compliance will give rise to the application of the penalties provided for in Law No. 11,683.

AFIP General Resolution No. 4912/2021 amends AFIP General Resolution No. 3312/2012 and establishes in its article 1 that for the purposes of such regime, the beneficial owner shall be considered as the human person who holds a participation or who, by any means, exercises direct or indirect control of the trust. The trustees, fiduciaries, trustees, beneficiaries, protectors and similar persons acting in trusts in the country and abroad, when these are human persons, shall also be considered as beneficial owners.

When the beneficial owner does not participate directly in the trust assets or in the control of the trust, the first level that conforms the chain of participations in the country between the beneficial owner and the trust must be reported, being mandatory to attach the whole chain of participations in the case of entities based or located abroad.

The obligation to report the chain of participations must also be complied within the event that the trustors, trustees, beneficiaries, protectors and similar are legal entities or other contractual entities or legal structures. In this case, the beneficial owner must also be informed.

When the human person who is the beneficial owner as defined in this article is not identified, the human person who is the trustee of the trust or the highest authority of the company that manages it must be informed as the beneficial owner, without prejudice to the powers of this Federal Administration to verify and supervise the causes that led to the failure to identify the beneficial owner in the terms set forth in the fifth paragraph.

In those cases in which the reported entity makes a public offering of its securities, it shall be obliged to report as beneficial owners or holders of shares who own - directly or indirectly-, at least TWO PERCENT (2%) of participation or when such participation is greater than the equivalent of PESOS 50. 000,000.-), valued as of December 31 of the year reported, whichever is lower between both parameters;

or, failing that, it shall report those who by other means exercise final control, directly or indirectly."

Law 26.683, year 2011

(<http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=183497>) and decree n° 27/2018 (<http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/305736/norma.htm>)

RESOLUTION UIF N° 30/2017

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/275000-279999/275996/texact.htm>

Art. 2º, Resolution UIF N° 21/2018

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/307435/norma.htm>

Art. 2º inc r), Resolución UIF N° 28/2018 disponible en

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/308385/texact.htm>

General Resolution AFIP 4697/2020

<https://www.boletinoficial.gob.ar/detalleAviso/primera/227833/20200415>

General Resolution AFIP 4912/2021

http://biblioteca.afip.gob.ar/dcp/REAG01004912_2021_01_25

A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement².

Required information can be provided in the form of links to other reviews or published work.

In Argentina, there are different agencies that keep records of information on beneficial owners. As a milestone, we can highlight that the Federal Agency of Public Revenues in 2020 established a new information regime through General Resolution No. 4697/2020 on beneficial owners.

Another issue to highlight at this point is that, currently, Law 25246 -as amended by Laws 26683 and 27446- provides that in all cases, the Entities subject to the Financial Information Unit must adopt reasonable measures from a risk-based approach to identify the owners, beneficial owners and those who exercise the real control of the legal entity, assets or legal structure, together with its ownership and control structure. They must pay special attention to prevent human persons from using legal structures, such as shell companies or affectation estates, to carry out their operations. Therefore, they must make reasonable efforts to identify the

² Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

beneficial owner. When this is not possible, they must identify those who are part of the management and control bodies of the legal person; or, failing that, those human persons who have management and/or disposition powers, or who exercise control over the person, legal structure or affectation patrimony, even if such control is indirect (section 21 bis of Law 25246).

Our country has different agencies collaborating with the UIF in what is called the system for the Prevention of Money Laundering and Financing of Terrorism (ML/FT) that allows it to obtain information quickly, such as the Central Bank of Argentina (BCRA), the National Stock Exchange Commission (CNV), the National Institute of Associativism and Social Economy (INAES), the National Superintendence of Insurance (SSN), where companies are registered according to their activity, they have information on beneficial owners and any change in their board and management, as well as the Federal Administration of Public Revenues (AFIP). Through this information network the UIF can also organize supervisions together with any of these state agencies and share the necessary information to know the BF. In Argentina, the UIF also works together with these agencies to share information and decide what measures are necessary to improve the system to prevent misuse or unusual activity by legal entities, which is duly regulated. There is also the possibility of applying dissuasive sanctions when the other agencies or the FIU find non-compliance.

A noteworthy case is the regulation of the General Inspection of Justice that requires that at the moment of registering a company, registration of associative contracts or trust contracts, a report of professional prequalification must be submitted, this report must indicate whether the DDJJ of the beneficial owner was complied with. The regulation requires the filing of an Affidavit of Beneficial Ownership in the registration procedures carried out by national or binational companies, companies incorporated abroad and/or registration or modification of contracts. In the case of companies incorporated abroad and already registered, it is also required when complying with the information system established by sections 237, 251, 254 and concordant sections of Annex "A" of RG No. 07/2015. Said agency understands as beneficial owner those human persons who hold at least twenty percent (20%) of the capital or voting rights of a legal entity or who by other means exercise the final, direct or indirect control over a legal entity or other legal structure (section 510 paragraph 6 of RG 07/15).

All of the above, is complemented with the obligation set forth in Article 32 inc. g) of Law 27,275 by means of which it is established that:

- (a) The national public administration, made up of the central administration and decentralized agencies, the latter including social security institutions;
- b) The Legislative Branch and the bodies operating within its scope;
- c) The Judicial Branch of the Nation;
- d) The Public Prosecutor's Office of the Nation;
- e) The Public Prosecutor's Office of the Defense;
- f) The Council of the Magistrature;
- g) State enterprises and corporations which include State enterprises, State corporations, corporations with majority State participation, mixed economy corporations and all other business organizations in which the National State has a majority participation in the capital or in the formation of corporate decisions;
- h) Companies and corporations in which the national State has a minority shareholding, but only with respect to the State's shareholding;

- i) Concessionaires, permit holders and licensees of public services or concessionaires of the use of the public domain, to the extent that they perform public services and in all that corresponds to the exercise of the delegated administrative function; and contractors, providers and service providers under any other contractual form or modality;
- j) Business organizations, political parties, trade unions, universities and any private entity to which public funds have been granted, insofar as it refers only to information produced totally or partially or related to the public funds received;
- k) Institutions or funds whose administration, custody or conservation is the responsibility of the national State;
- l) Non-State public legal entities in all matters governed by public law, and with respect to information produced or related to public funds received;
- m) Trusts constituted totally or partially with resources or assets of the National State;
- n) Cooperating entities with which the national public administration has entered into or enters into agreements for the purpose of technical or financial cooperation with state agencies;
- o) The Central Bank of the Argentine Republic;
- p) The inter-jurisdictional entities in which the national State has participation or representation;
- q) Concessionaires, exploiters, administrators and operators of games of chance, skill and betting, duly authorized by the competent authority.

They must publish the list of public contracts, bids, tenders, public works and acquisitions of goods and services, specifying objectives, characteristics, amounts and suppliers, as well as the partners and main shareholders of the supplier companies or enterprises.

A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

CORPORATE INTEGRITY AND TRANSPARENCY REGISTRY - ANTI-CORRUPTION OFFICE (RITE)

Through [RESOLUTION-2021-3-APN-OA#PTE \(https://www.boletinoficial.gob.ar/detalleAviso/primera/243450/20210423\)](https://www.boletinoficial.gob.ar/detalleAviso/primera/243450/20210423) the head of the Anticorruption Office entrusted the DIRECTORATE OF TRANSPARENCY POLICY PLANNING with the design of an integrity and transparency registry for companies and entities to contribute to the development, improvement and maturity of their integrity programs, the exchange of good

practices and the generation of interactions among private parties and between them and the public sector with greater transparency.

This initiative seeks to improve the synergy between the government and the business sector by providing large, small and medium-sized companies with clear tools for the development of integrity programs and other mechanisms to improve the business environment.

The registry, carried out through a digital platform, will seek to join efforts to foster a suitable environment for the development of ethical business and a public-private relationship based on trust and common interest. At the same time, it will collaborate with the effective implementation of Law 27,401 on Criminal Liability of Legal Entities, allowing to improve compliance with the requirements established in the law for contracting with the State, as well as the knowledge and evaluation by public offices of integrity programs.

For the construction of the registry, the articulation with public agencies and companies, chambers, business actors and intermediate organizations is foreseen in order to carry out a collective work, as well as the generation of incentives that allow the effective implementation of the public policy.

INTEGRITY TOOLS FROM THE PUBLIC SECTOR THAT IMPACT THE PRIVATE SECTOR.

FROM THE ANTI-CORRUPTION PLAN TO THE NATIONAL INTEGRITY STRATEGY.

The National Anti-Corruption Plan (PNA) 2019-2023, jointly promoted by the OA and the Undersecretariat of Institutional Strengthening of the Office of the Chief of Cabinet of Ministers -SsFI- and formally created in April 2019 through Decree 258/2019, initially consisted of a set of 260 initiatives in transparency, integrity and the fight against corruption in the centralized and decentralized Public Administration, monitored by an Advisory Council composed of representatives of civil society organizations, the private sector and specialists in the field.

The NAP included measures and actions aimed at generating transparent environments and circuits, as well as increasing the flow of public information. However, the NAP had some limitations, fundamentally lacking proper strategic planning, a fundamental aspect, as emphasized by the OECD (2019), in any preventive approach that seeks to establish a culture of integrity. In its original formulation, in fact, the NAP was the disjointed sum of proposals suggested by the various public administration agencies, without a comprehensive and strategic design to give them direction and meaning.

The initiatives, considered individually, were another weak point. They did not stand out for their transformative nature and, in no small number, lacked precise and measurable goals and objectives, which made it impossible to evaluate their effective fulfilment. The execution deadlines were in some cases overestimated. Finally, some initiatives were mere replicas of organizational missions or regulatory objectives of the corresponding agencies, generating unproductive duplication.

These shortcomings emerged after a rigorous diagnostic and review process that this Office carried out as of December 2019, in conjunction with the ASFI. Thus, in the course of 2020, a novel analysis methodology was developed in order to make the Plan's design and replicability transparent, which allowed us to order and rank the initiatives according to their strategic relevance and to be in a position to develop

indicators and new compliance deadlines to facilitate monitoring and follow-up by the public.

The purpose of this revision was not only to make the NAP more coherent and systematic, but also to rethink it in a strategic way and adapt it to the guidelines of the new administration. To this end, the National Integrity Strategy was conceived, which includes the Plan but at the same time transcends and redefines it in a broader, holistic vision, with a view to mainstreaming integrity throughout the public administration and adopting a comprehensive, federal and plural perspective, in line with the International Conventions against corruption of the UN, the OAS and the OECD.

Within this framework, it was decided to work on two key aspects: the expansion and strengthening of the Advisory Council, and the creation of a digital platform that allows its monitoring by citizens.

Renewal of the Advisory Council

As part of the design of the National Integrity Strategy, the Advisory Council was expanded and strengthened, ensuring a federal, plural and balanced representation in its composition with diverse social and academic sectors and with a gender perspective.

Through Resolution OA No. 20/2020, it was established that the Council will be made up of representatives of civil society organizations, the private sector, academic entities, international and multilateral agencies, and experts in their personal capacity with interest and/or recognized experience in the subject.

Digital platform for citizen monitoring

The construction of a culture of integrity must be linked to the task of improving the quality of our democracy through genuine citizen participation in all instances of public policies, from their design and formulation, to their implementation and subsequent monitoring and evaluation.

With this understanding, a digital platform will be available that will allow social control of the State and civic monitoring of the level of compliance by the agencies in charge of the initiatives of the National Integrity Strategy. Thus, within the information system "Map of State Action", there will be a specific module for the follow-up and evaluation of the initiatives that make up the National Integrity Strategy.

This digital platform will also make it possible to analyze different public actions in order to identify opportunities to integrate the ethical dimension of public management and its integrity and transparency mechanisms in a cross-cutting manner.

From the Plan to a National Integrity Strategy.

The NIP, formulated two years ago, was adapted and redefined in some central aspects after a thorough evaluation process. Purely technical considerations, deficiencies in its general design and in the structuring of some of its initiatives, and the need to adapt it to the new OA guidelines were decisive factors for its revision.

The result of this process will be the elaboration of a National Integrity Strategy which, far from being a mere discarding of what has been done before, implies giving continuity to the planning and prioritization of transparency and integrity policies, but within the framework of a comprehensive strategy focused on the

prevention of acts of corruption, and whose fundamental vectors are transversality, federalism, strengthening of the State and citizen participation. The report on the review of the National Anticorruption Plan and the guidelines for the creation of the National Integrity Strategy are available at <https://www.argentina.gob.ar/noticias/se-realizo-laevaluacion-del-plan-nacional-anticorrupcion-0>

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

As we have explained, in Argentina we do not have a law on public registries of beneficial owners, but the matter is mainly regulated by the Federal Agency of Public Revenues and the Financial Information Unit in compliance with various obligations. It is necessary to advance in a legal definition that has a national vocation and unifies the criteria throughout the country. On the other hand, taking into account that in Argentina the agencies collect the information but they are closed registries, another challenge is related to the publicity of such information. Finally, the challenges in this area revolve around the interconnection of the registries, the validation and permanent updating of the information reported in them and the subsequent controls carried out on such declarations.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY³

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

As indicated in the question A.3. the RITE (Integrity and Transparency Registry for Entities) is an initiative of the Anticorruption Office (OA) that promotes the construction of a platform for the voluntary registration of companies and entities

³ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

interested in advancing in the development of integrity actions to improve the transparency of their operations.

The RITE platform will consist of two main sections:

- The registration itself.
- The training material to support and accompany companies and entities: toolbox with documents, models and online training, among others.

The registry will allow companies and entities to carry out a self-diagnosis based on the gradual, dynamic and updated provision of information, so that each company will be able to identify which areas need to be improved. The training platform will provide tools and mechanisms for continuous improvement in the areas of transparency, human rights and sustainable development, assessing not only results but also efforts and progress.

In this sense, RITE will be a platform for the development of integrity.

The RITE platform will be available so that its scope is federal and can be adopted by provinces and municipalities within their jurisdictions.

The objective will be for the RITE platform to have a positive impact on companies and entities in order to:

- Constitute itself as a necessary consultation tool within the framework of the procurements carried out by the public sector.
- Improve opportunities, collaborate in the fulfilment of the requirements established for contracting with the public sector and be part of the RITE platform.
- Complement Third Party Due Diligence tasks carried out within the framework of prevention policies established by private sector organizations.
- Contribute to the effective implementation of Law 27.401.
- Provide tools, materials and free training to help implement and improve integrity programs.
- To generate added value through the elimination of risks and the generation of trust, both within the company itself and for third parties (clients, suppliers, consumers, the State).

The design of RITE will be carried out through a co-construction process. All stakeholders are relevant and will be taken into account to collaborate in the different stages of the project. First, the RITE work plan will focus on the design of the registry.

To this end, several actions are foreseen:

- The development of a matrix of actors-counterparts-stakeholders that will contribute to the development, validation and enrichment of the tool, and to the positioning of the initiative.
- The development of key information gathering instruments based on the survey and analysis of national and international obligations and standards on corporate transparency, as well as the compilation of international best practices focused on IP. This will allow the generation of self-diagnosis modules for the scaling and design of the platform.
- The identification of key aspects for the development of training activities, based on the survey of national and international experiences. This will allow the development of the platform's training modules.

Secondly, and simultaneously, we will work on the generation of consensus and key articulations around the initiative. Following the collaborative format of RITE, a series of virtual interviews will be structured with an initial selection of stakeholders to validate the development of the tool and the elaboration of the forms. In order to build consensus, we will continue to listen to proposals, receive suggestions and schedule meetings with the rest of the stakeholders, in order to generate greater

trust and articulate between agencies so that incentives can be offered to those who are willing to show their commitment to integrity. Ultimately, the web platform will be developed. To this end, a new consultancy with the IDB will be undertaken to advance in the layout of the tool with all the necessary functionalities.

B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

Argentina has a Witness Protection Program (Law 25.764) and the Repentance Law (Law 27.304). The latter reduces the penal scale to that of the attempt for participants or perpetrators who provide, within the framework of the proceedings in which they are a party, accurate, verifiable or credible information or data. Law 25.764 is aimed at witnesses and defendants who are in a situation of danger to their life or physical integrity, who have collaborated in a significant and efficient manner in a judicial investigation of federal competence related to the crimes of coercion, kidnapping for ransom, possession and trafficking of narcotics and terrorism. It will also be applicable to the crime of organized crime (including acts of corruption) upon judicial request to the Minister of Justice and Human Rights of the Nation. Currently, the Agency in charge of the Program is carrying out an internal audit to evaluate the administrative procedure in order to improve its operation. In addition, a reform of the legal framework governing the subject is being developed in order to strengthen the Program by optimizing its resources and operation. These tools have been implemented to eradicate the imposition of pressure and retaliations on those who provide useful information for the investigation of acts of corruption.

Within the orbit of the Ministry of Security of the Nation, the "Administrative Protection System for Security Forces Personnel" (Resolution 561 - E/2016) was created, a system of administrative protection for witnesses or victims of acts of corruption and/or disciplinary offenses, aimed at those who suffer any well-founded fear for having refused to participate in an illegal act and/or corruption, or provide information about them.

In addition, the Ministry of Security set up a hotline "134", free of charge and available 24 hours a day, 365 days a year. In addition to other institutional channels for the entry of complaints such as a web form (<https://denunciasweb.minseg.gob.ar/>) and two e-mail addresses (denuncias@minseg.gob.ar and juntoavos@minseg.gob.ar). The personal data provided by the whistleblower are protected through different administrative and technical measures that allow maintaining confidentiality and thus safeguarding the whistleblower's security. Likewise, campaigns were carried out to disseminate the

Administrative Protection System for Security Forces by means of posters, websites of the forces and any other means that contribute to a wider scope of its characteristics.

On the other hand, within the framework of the implementation of policies and strategies related to the prevention and control of acts of corruption, the Federal Penitentiary Service set up a hotline for the investigation of irregularities in the actions of penitentiary agents. The new communication channel, developed on the basis of suggestions from the National Anticorruption Office and staffed by personnel from the Internal Affairs Department, is intended to improve the procedures established for the purpose of permanent institutional change.

These kinds of initiatives are part of a management plan on the matter that began in 2014 with the creation of the Corruption Prevention Service. Within these strategic axes -in line with international and national standards-, a processing protocol was developed with the premise of ensuring the confidentiality of the whistleblower, setting pre-established categories for the classification of complaints through an objective and transparent procedure.

The hotline will deal with complaints about conduct by active or retired officers of the Federal Penitentiary Service, related to their activity in the institution, whenever these may be presumably contrary to ethics, public order or constitute administrative offenses or possible acts of corruption.

In this regard, prison officials -as established in the Personnel Code of Ethics- must report acts of which they become aware by virtue of their functions that constitute irregularities or crimes presumably committed by agents of said institution to the competent administrative or judicial authority. Consequently, those who choose to do so will receive protection in order to avoid reprisals against them, as well as their family members or persons with whom they are directly related.

The National Roads Department has included a legend in the forms for requesting weight and dimension permits for cargo transportation, indicating the safe channels for reporting irregularities or requests for undue payments.

The National Institute of Associativism and Social Economy has a Complaint Center as a channel for receiving claims and complaints from individuals regarding cooperatives and mutuels, with a Procedures Manual approved by Board Resolution.

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and

extortion? Are those areas applicable also to SMEs and, if yes, how extensively⁴?

Where applicable, this can be provided in the form of links to other reviews or published work.

Law 27,401 establishes penalties for private legal entities -whether domestic or foreign capital, with or without state participation- for crimes associated with corruption committed for their benefit, representation or interest. The purpose of the law is to make corruption prevention and fight against corruption policies more effective by creating incentives for legal entities to prevent the commission of crimes against public administration through the implementation of integrity programs, and to cooperate with the authorities, in order to contribute to a more effective enforcement of criminal law.

The Law provides strong incentives for companies to develop ethical compliance and cooperate with the prosecution authorities. Articles 8 (graduation of sentence), 9 (exemption from sentence), 18 (content of the Agreement), 22 (Integrity Program), 23 (Content of the Integrity Program) and 24 (Contracting with the National State) of the Law follow the line of the aforementioned recommendation.

The Compliance Program is a mitigating factor and may be, together with other conditions, exempt from punishment. The accreditation of an integrity program adopted prior to criminal events may significantly reduce the economic sanctions applied by judges (art. 8):

Art. 8^o. - Graduation of the penalty. In order to calibrate the sanctions provided in article 7^o of the this law, the Court will take into account the failure to comply with internal rules and procedures; the number and hierarchy of officials, employees and collaborators involved in the offense; the omission of vigilance over the activity of the authors and participants; the extent of the damage caused, the amount of money involved in the commission of the offense, the size, nature and economic capacity of the legal person; the self-reporting to the authorities by the legal person as a result of an internal detection or investigation activity; its subsequent behaviour; the disposition to mitigate or repair the damage, and the second offence. It will be understood that there is a second offence when the legal person is sanctioned for an offense committed within three (3) years following the date of the final judgment of a previous conviction.

In the cases in which it is essential to maintain the operational continuity of the entity, or of a work, or of a particular service, the sanctions provided in articles 7 (2) and (4), hereof shall not apply.

The Judge may order the payment of the fine in a fractioned form for a period of up to five (5) years when its amount and single-payment compliance jeopardize the survival of the legal person or the maintenance of jobs.

The criteria for the application of the sanction and the concrete determination of the value of the fine shape the incentives necessary to promote in legal persons a culture, policies and organizational procedures aimed at crime prevention.

⁴ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

Combined with spontaneous self-reporting and the return of the benefit obtained, it may even exclude its application (art. 9):

Art. 9º. - Exemption from sanctions. The legal person will be exempt from punishment and administrative responsibility when the following circumstances concur simultaneously:

- a) Spontaneously has denounced an offense provided for in this law as a result of an internal detection and investigation activity;
- b) Would have implemented an adequate control and supervision system under the terms of articles 22 and 23 of this law, prior to the fact of the process, the violation of which would have required an effort from the parties involved in the commission of the offense; and
- c) Would have returned the undue benefit obtained.

En las grandes contrataciones con el Estado Federal, además, la previa acreditación de un programa de integridad es condición necesaria para presentar ofertas (art. 24):

Art. 24º.- Contracting with the National State. The existence of an adequate integrity programme in accordance with articles 22 and 23 will be a requirement to contract with the National State, within the framework of the contracts that:

- a) According to the regulations in force, because of their amount, must be approved by a competent authority with a rank not inferior to Minister; and
- b) Are included in article 4 of Delegated Decree No. 1023/01 and/or governed by laws 13.064, 17.520, 27.328 and public service concession or license contracts.

In order to guide the behaviour of the private sector and provide predictability to the legal regime, Article 18 defines that the collaboration agreement shall contain, and must be provided by the legal entity to the Public Prosecutor's Office, the implementation of an integrity program under the terms of Articles 22 and 23 of this law or make improvements or modifications to a pre-existing program:

Art. 18º.- Content of the agreement. The agreement shall identify the type of information, data or evidence to be provided by the legal person to the PUBLIC PROSECUTOR'S OFFICE, under the following conditions:

- a) Payment of a fine equivalent to half of the minimum established in article 7 (1) of this law;
- b) Restitution of the things or profits that are the product or the benefit of the crime; and
- c) Surrender in favour of the State the property that would presumably be confiscated in the event of a conviction;

The following conditions may also apply, without prejudice to others which may be agreed upon according to the circumstances of the case:

- d) Performing the necessary actions to repair the damage caused;
- e) Rendering a specific service to the community;
- f) Applying disciplinary measures against those who have participated in the crime;
- g) Implementing an integrity programme in the terms of articles 22 and 23 of this law or make improvements or modifications to a pre-existing programme.

In this way, the Law seeks to promote that, through the implementation of internal policies and procedures, legal entities align their social, commercial and/or economic objectives with a culture of integrity and prevention of crimes against public administration.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

Over the last few years, a large community of private actors dedicated to corporate transparency.

This includes compliance areas, associations compliance, associations that bring together business professionals and study centres or university postgraduate programs.

In order to create a space for permanent dialogue (for collective action) with the private sector and to with the private sector and form a community to debate and produce transparency policies, the OA has carried out different actions during 2020:

- May 20th: Co-Organization between A.O. and the World Compliance Association (WCA) Webinar, an international association of professionals and organizations interested in the world of compliance that promotes compliance activities and the development of tools for proper protection against certain crimes.
- July 31, the OA participated in the meeting "Gender and Transparency: two attributes for fair and equal management", organized jointly with the World Compliance Association and developed virtually.
- August 6, 2020, the OA participated in the first meeting of 2020 of the Commission on Compliance in the Public Sector of the Argentine Association of Ethics and Compliance (AAEC), presenting the implementation of integrity policies within public agencies.
- On August 28, the OA made a presentation at the IV Conference "Transparency and Compliance Programs in the Public Sector" organized with the World Compliance Association, Argentine Chapter.
- September 16, the OA participated in the web event "Compliance Culture: alliances for sustainable development, compliance and SMEs and sustainable compliance", organized by the Argentine-German Chamber of Industry and Commerce.
- On September 24, the OA participated in a webinar organized by the U.S. Chamber of Commerce in Argentina called "Anti-corruption processes in the face of the emergency".

- On October 16, the head of the OA made a presentation at the meeting on "Compliance in times of COVID", organized by Enel Argentina, at the closing of the "Ethics Week".
- December 9, International Anti-Corruption Day, the OA participated in the virtual meeting "Passport to Integrity", jointly with the Alliance for Integrity, in order to stimulate the strengthening of integrity and compliance practices in Small and Medium Enterprises (SMEs) and State-Owned Enterprises (SOEs).

Transparency policies require thinking about the problems of democracy with more democracy, reversing the very logic on which the policies have been based. The Anti-Corruption Office intends to contribute with the formulation of transparency policies process through the deepening of democracy and the promotion of social participation.

To this end, it will be key to identify and develop tools that facilitate citizen participation in accountability, oversight and government control processes. Thus, unions and social organizations were incorporated into the Advisory Council for the "PNA" and gender and human rights and articulation with private sector are priority topics of the agenda in order to promote the creation of what we call an "integrity ecosystem".

- On Friday, August 7, the OA held a meeting with the Network of Organizations against Corruption, a civil society organization with members of different provinces of the country. The purpose of the Network is to work in a coordinated manner in the fight against corruption.
- On August 14, the OA, together with the Follow-up Committee of the Inter-American Convention against Corruption, held a webinar where representatives of different institutions and organizations made presentations on transparency in the links between the public and private sectors.

In this context, it is essential to design and implement public prevention policies at Federal level, to open transparency areas throughout the public administration, and to consolidate the management control system, as the OA has been developing together with the different state agencies and departments.

C. LIABILITY OF LEGAL PERSONS⁵

C.1 Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

⁵ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

Law 27,401 on Criminal Liability of Legal Entities calls for policies for the prevention and prevention of corruption through the generation of incentives for legal entities to implement Integrity Programs. In order to promote collaboration between the private and public sectors in the prevention and investigation of corruption, the "Integrity Guidelines for the Better Compliance with the provisions of Articles 22 and 23 of Law No. 27,401 on Criminal Liability of Legal Entities" :

https://www.argentina.gob.ar/sites/default/files/lineamientos_para_la_implementacion.pdf (approved by Resolution No. 27/2018).

A complementary Guide for the implementation of integrity programs in Small and Medium Enterprises (SMEs) was also developed.

https://www.argentina.gob.ar/sites/default/files/guia_pymes.pdf, which constitutes a toolkit that seeks to provide these companies with advice and practical instruments so that they can analyze to what extent they have adequate integrity programs in relation to their risks, size and economic capacity; or to incorporate new programs or improve existing ones.

The RITE, described in inquestions A.3 and B.1 also provides progress on the legislation about Legal Persons.

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

Due to Article 6 of the Criminal Liability of Legal Persons for Corruption Offenses Law N° 27.401 the legal person may be sentenced even where it is not possible to identify or prosecute the individuals involved, provided that the circumstances of the case allow the establishment that the offense could not be committed without the tolerance of the bodies of the legal person. In the same way, the second paragraph of Article 2 provides that the termination of the criminal action against the

individuals who committed or participated in the commission of an offense shall not affect the validity of the criminal action against the legal person.

The Procurator's Office for Administrative Investigations (PIA), an agency of the Public Prosecutor's Office of the Argentine Republic, specialized in corruption cases, has applied Law 27,401 in the following case:

File PIA 631/18: A complaint was filed for the crime of incompatible negotiations with the public function (art. 265 of the Criminal Code) in relation to different contracting carried out by the Office of the Chief of Cabinet of Ministers in the period 2016-2019, which were awarded without competition to the legal entities "Aura Advertising SA", "La Comunidad SA", "Circus BA SA" and "Power República SA".

The hypothesis of such investigation points out that, from the Secretariat of Public Communication (under the Office of the Chief of Cabinet of Ministers), a scheme of contracting advertising companies related to the government of the day would have been developed, in flagrant violation of the principles of public procurement.

The companies benefited would be the same ones that participated in the development of the advertising campaigns of the political coalition Cambiemos within the framework of the electoral contest that led Mr. Mauricio Macri to the Presidency of the Nation in 2015. Likewise, they would have been in charge of developing the official advertising of other districts governed by the same political sign, such as the Autonomous City of Buenos Aires, the Province of Buenos Aires and the Municipality of Vicente López.

In order to obtain the direct awarding of millionaire contracts to advertising companies linked to the party, a legal device foreseen in matters of public contracts that would not be applicable to the files would have been used. In this way, the contracts would have been awarded directly, that is, without a price contest and without allowing the competition of other companies that could be interested and -eventually- offer the performance of the services for a more beneficial amount for the State. The existence of payments made by the State to these same companies prior to such contracts was also observed, without the execution of a contract and in clear violation of the regulations.

Regarding what is of interest here, the PIA pointed out the application of Law 27,401 (on Criminal Liability applicable to Private Legal Entities) to the contracted corporations. It is clarified, however, that the company "Circus BA SA" was excluded from the application of such regime, since its involvement in the manoeuvre would have ceased prior to the entry into force of the law (March 2018).

The case is currently under investigation, and several evidentiary measures have been ordered. The PIA is assisting the Federal Criminal and Correctional Prosecutor's Office No. 1, which has been delegated the investigation of the case.

- C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?**

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

Article 2 of the Criminal Liability of Legal Persons for Corruption Offenses Law N° 27.401 provides that legal persons are liable for the offenses established in article 1, which have been directly or indirectly committed with its intervention or in its behalf, interest or benefit.

They are also responsible if the person acting in the benefit or interest of the legal person is a third party lacking attributions to act on its behalf, provided that the legal entity had ratified the act, even if the ratification was tacit.

The legal person will be exempt from liability only if the physical person who committed the offense was acting in its own benefit and its act did not generate any advantage to the legal person.

Due to article 3, in case of conversion, merger, acquisition, split or any other corporate transformation, the liability of the legal person shall be transferred to the resulting or absorbent legal person. The legal person remains liable also when, in a concealed or merely apparent manner, it continues its economic activity and maintains the substantial identity of its customers, suppliers and employees, or of the most relevant part of all of them.

Argentina has effective jurisdiction over legal persons with a view to corruption offences committed abroad in case of foreign bribery as a criminal offence. In that sense, article 1. 3. of Argentine Criminal Code says that it shall apply to the offence provided in article 258 bis that is committed abroad by Argentine citizens residing or legal entities with registered offices in the Argentine Republic, including both the address established in their Articles of Incorporation and that of their establishments or branches in the Argentine territory. On the other hand, article 258 bis states that it shall be punished with a prison term from one to six years and perpetual special debarment for the exercise of public functions the person who, directly or indirectly, offers, promise or gives, unlawfully, to a public official of a foreign State or of a public international organization, whether in their own benefit or that of a third party, a monetary sum or any other object of monetary value or other compensations such as gratuities, favors, promises or advantages, in exchange for the public official to

do or abstain from doing an act related to the exercise of their public functions, or to assert the influence derived from their position, in a matter related to a transaction of an economic, financial or commercial nature. A public official of a foreign State, or of any territorial entity recognized by the Argentine Republic, shall be defined as any person who has been designated or elected to exercise public functions, at any level or territorial division of the Government, or within any kind of body, agency or state-owned enterprise where that State exerts a direct or indirect influence.

In order to the incentives to encourage the private sector to have integrity programs, we can mention that, according to article 24, the existence of an adequate integrity program in accordance with articles 22 and 23 will be a necessary condition to contract with the National State, within the framework of the contracts that:

- a) According to the regulations in force, because of their amount, must be approved by a competent authority with a rank not inferior to Minister; and
- b) are included in article 4 of Delegated Decree No. 1023/01 and/or governed by laws 13.064, 17.520, 27.328 and public service concession or license contracts.

As informed in the items A.3 and B.1, we have the RITE initiative to encourage the private sector to have integrity programs.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

In this regard, the Criminal Liability of Legal Persons for Corruption Offenses Law N° 27.401, establishes in its article 10 that the general rules stipulated in the Argentine Criminal Code apply to confiscation.

The Argentine Criminal Code establishes the general rules that apply to the confiscation and destination of assets linked to crimes of all kinds. In this way, article 23 determines that at the moment after the conviction, the property used to commit a crime or its fruit will be confiscated.

It indicates in turn that its destination will be the national or provincial States, unless there exists rights of "restitution or compensation of the injured party and third parties." In the same article, establishes that with respect to its administration, it will be the judicial authorities who from the beginning of the proceedings establish the precautionary measures designed to ensure the confiscation.

In addition, article 30 establishes that the obligation to compensate the damages of the crime is preferential to any other, including those related to the costs of the trial, the confiscation of property in favor of the State or the payment of the fine, if any.

Law 20,785 is the norm that regulates the custody and disposition of the property subject to kidnapping in Criminal cases within the jurisdiction of national and federal justice. In general terms, article 1 of this Law assigns the responsibility for the goods object of precautionary measures to the judges to

charge of the causes. The regulations are applicable in all criminal investigations of these jurisdictions, without distinguishing the types of crime, and contains provisions according to the type of good seized.

Along these lines, on February 15, 2018, the Supreme Court of Justice (CSJN), issued Resolution No. 2/2018 (<https://www.csjn.gov.ar/documentos/descargar/?ID=108429>), which regulates the administration and disposition of kidnapped effects and confiscated assets in criminal cases. In her it was recognized that in criminal cases it is common to dispose of assets of any kind nature that, for different reasons, cannot be handed over to their owners and with respect to which it is imperative to ensure its conservation and preserve its economic value during the process with a view to eventual confiscation issued later. And that the custody and maintenance of those it requires the adoption of measures that ultimately imply public expenditures. Therefore, it results from all justice assign to these goods a purpose of public utility in such a way that, along with ensure their conservation, the whole society benefits from them.

For these purposes, it also has a "General Database of Seized and / or Seized Assets in Criminal cases within the jurisdiction of the National and Federal Justice ", created through the Agreed N° 1/13 of the CSJN and its regulations (<https://www.csjn.gov.ar/documentos/descargar/?ID=95979>), in which the complete information of all those of any nature that is are subject to a jurisdictional decision and may become resources of the Judicial Power of the Nation.

Finally, the Supreme Court created a judicial commission to monitor compliance with the regulations and established that the disposition of goods will be made through the Sub-Directorate of Internal Management and Qualification, dependent on the General Secretariat of Administration of the Court.

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

N/A

AUSTRALIA

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

Australian Business Registry Services

As part of the 2020 Budget Digital Business Plan, the Australian Government announced the establishment of the Australian Business Registry Services (ABRS). This will bring together in one place the 31 registers currently managed by the Australian Securities and Investments Commission (ASIC) and the Australian Business Register. It will roll out progressively between 2021 and 2024.

The new system will improve transparency of publicly held company data by creating a single source of trusted and accessible business data that will provide efficient registry service delivery. It will also provide businesses with real time access to their data and allow them to have more visibility and confidence in their transaction partners.

Director identification numbers (director ID) will be the first new function of the ABRS to be delivered in 2021 and is a new requirement for all company directors. Director ID will be a unique identifier that a director will keep forever. An individual will keep their director ID even if they cease to be a director, change their name, or move interstate or overseas.

Verifying the identity of directors is important for improving data integrity and helping regulators to detect and deal with illegal phoenixing activities.

Further information on the ABRS is available on the Australian Taxation Office’s website at: www.ato.gov.au/General/Gen/Modernising-Business-Registers/.

Money Laundering and Counter-Terrorism Financing

Under the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), and the corresponding *Anti-Money Laundering and Counter-Terrorism Financing Rules* (AML/CTF Rules) reporting entities must collect, verify and retain beneficial ownership information on their customers pursuant to their customer due diligence obligations.

On 17 December 2020, the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020* received Royal Assent. This Act included amendments to the AML/CTF Act to:

- expand the circumstances in which reporting entities may rely on customer identification and verification procedures undertaken by a third party; and
- explicitly prohibit reporting entities from providing a designated service if customer identification procedures cannot be performed.

These reforms and the associated amendments to the AML/CTF Rules will commence on 17 June 2021.

The Australian Transaction Reports and Analysis Centre (AUSTRAC) supervises reporting entities for compliance with the AML/CTF Act, in accordance with its risk-based supervisory approach. AUSTRAC builds capability across its regulated entities including by conducting compliance assessments and proactively responding to compliance issues.

The [AUSTRAC website](#) provides detailed guidance for reporting entities on their AML/CTF obligations, including extensive guidance explaining the obligation to identify and verify the beneficial owners of customers. AUSTRAC has published [fact sheets](#) that draw on feedback from reporting entities and compliance assessments conducted by AUSTRAC.

At an international level, Australia is an active participant in the Financial Action Task Force (FATF). Through the FATF, Australia is taking part in discussions about how to improve transparency and to ensure that up-to-date beneficial ownership information is available to authorities.

For further information, refer to:

- [Australia FATF Mutual Evaluation Reports](#) and [follow up reports](#).
- [Australia's response to the 2017 Global Forum on Transparency and Exchange of Information for Tax Purposes](#) and the [2020 Follow Up Report](#).
- [Australia's 2015 G20 report on Beneficial Ownership Transparency](#)

A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement⁶.

Required information can be provided in the form of links to other reviews or published work.

Corporations Act 2001

Listed companies and the responsible entities of listed managed investment schemes can obtain details of the beneficial ownership of securities in those companies or schemes. A person must provide details of the beneficial ownership of securities they own, have a relevant interest in or have given instructions about if they are directed to do so under the *Corporations Act 2001*. Third parties can request the ASIC to give a direction requiring a person to disclose these details.

Further information is available from ASIC's Regulatory Guide 86: Tracing Beneficial Ownership at: www.asic.gov.au/media/5689837/rg86-published-26-june-2007-20200727.pdf.

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Under the AML/CTF Act and the corresponding AML/CTF Rules, reporting entities must collect, verify and retain beneficial ownership information on their customers (which may include a legal person or arrangement) pursuant to their customer due diligence obligations. Where a reporting entity has submitted a report to AUSTRAC under sections 41, 43 or 45 of the AML/CTF Act, specified competent domestic authorities may issue a notice under section 49 of the Act requiring *inter alia* the disclosure of beneficial ownership information where it is relevant to the matters communicated in those reports.

Under section 167 of the AML/CTF Act, an authorised officer of AUSTRAC can require a reporting entity to provide information or documents regarding the beneficial ownership of themselves and their customers, provided it is relevant to the operation of that Act or the AML/CTF Rules.

- A3 Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.**

Required information can be provided in the form of links to other reviews or published work.

There are a number of mechanisms in place to ensure that ASIC can obtain details of the beneficial ownership of securities in listed companies or schemes. Under the *Corporations Act 2001*, a person must provide ASIC with details of the beneficial ownership of securities they own, have a relevant interest in or have given instructions

⁶ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

about if they are directed to do so. ASIC will normally give a direction under the *Corporations Act 2001* at the request of one of its members if the request demonstrates that the information sought will contribute to an informed market in securities in the company or scheme, and states that the member will take action to enforce the direction if it is not complied with.

ASIC can share relevant information with other regulators in prescribed circumstances. Details about this can be found in ASIC's Memoranda of Understanding (MoUs) with relevant regulators. ASIC's MoU's are available at: <https://asic.gov.au/about-asic/what-we-do/our-role/other-regulators-and-organisations/>

Further information is available from ASIC's Regulatory Guide 86: Tracing Beneficial Ownership at: www.asic.gov.au/media/5689837/rg86-published-26-june-2007-20200727.pdf.

As noted above in response to A.2, under the AML/CTF Act and the corresponding AML/CTF Rules, reporting entities must collect, verify and retain beneficial ownership information on their customers (which may include a legal person or arrangement) pursuant to their customer due diligence obligations. Where a reporting entity has submitted a report to AUSTRAC under sections 41, 43 or 45 of the AML/CTF Act, specified competent domestic authorities (including, for example, the AUSTRAC CEO, the Commissioner of the Australian Federal Police, the Commissioner of Taxation, the Integrity Commissioner and others) ownership information where it is relevant to the matters communicated in those reports.

Under section 167 of the AML/CTF Act, an authorised officer of AUSTRAC can require a reporting entity to provide information or documents regarding the beneficial ownership of themselves and their customers, provided it is relevant to the operation of that Act or the AML/CTF Rules. may issue a notice under section 49 requiring *inter alia* the disclosure of beneficial

A4 Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

Australian company information is held across a number of ageing business registers. As mentioned in response to A.1, the Australian Government is seeking to address this with the establishment of the ABRS. The program aims to make business information more trusted and valuable.

There have previously been challenges in Australia tracking directors between companies. Although the law had required that directors' details be lodged with the ASIC, it has not required the regulator to verify the identity of directors.

The introduction of director identification numbers, the first new function of the ABRS to be delivered in 2021, will require the verification of director identity. It will be mandatory for all company directors to have one. The identification of directors will help address some of the current challenges, and in particular it will:

- help prevent the use of fictitious director identities and make it easier for government regulators to trace directors' relationships with companies over time, and
- assist with better identifying and eliminating director involvement in unlawful activity.

Further information is available from the Australian Taxation Office's website at: www.ato.gov.au/General/Gen/Modernising-Business-Registers/.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY⁷

- B. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.**
- 1.**

Where applicable, this can be provided in the form of links to other reviews or published work.

Australia notes additional information in response to this question has been included throughout our responses to Parts B and C of the questionnaire. In addition to the information provided throughout Parts B and C of the questionnaire, Australia would also like to highlight the below measures.

Bribery Prevention Network

In October 2020, Australia launched the Bribery Prevention Network, a public-private partnership that brings together the private sector, government, civil society and academia to support businesses to prevent, detect and address bribery and corruption: <https://briberyprevention.com/>

The Network provides a free online portal of accessible, relevant and reliable resources for Australian companies to help them implement anti-bribery and corruption programs and policies.

Whistleblower policies

⁷ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

From 1 January 2020, public companies, large proprietary companies, and corporate trustees of regulated superannuation entities in Australia are required under law to have in place a whistleblower policy. The whistleblower policy must include information about the legal protections available to whistleblowers, and how a company will investigate whistleblower disclosures and protect whistleblowers from detriment.

In November 2019, ASIC released [Regulatory Guide 270 Whistleblower policies](#) which assists all companies (whether they are legally required to or not) in creating policies that support and protect whistleblowers. The Regulatory Guide contains detailed steps, examples and good practice tips on how to establish, implement and maintain a whistleblower policy. ASIC has also published the following information to assist companies and audit firms develop arrangements for handling whistleblower disclosures that are effective and tailored to their circumstances:

- [Company auditor obligations under the whistleblower protection provisions \(INFO 246\)](#)
- [Company officer obligations under the whistleblower protection provisions \(INFO 247\)](#)

ASX Guidelines

From 1 January 2020, the Australian Securities Exchange (ASX) guidelines took effect, requiring listed entities to have a whistleblower policy and an anti-bribery policy which they must publicly disclose in their annual report or on their website. While adherence to the ASX guidelines is not mandatory, entities that do not comply are required to publicly disclose the reasons for this.

The anti-bribery and corruption policies of the top ASX listed companies have also been collated and published online by the Bribery Prevention Network, to encourage other businesses to create a policy and identify key features to incorporate into a future policy: see [Index-of-Example-ABC-Policies BPN March-2021](#).

Other offences

In addition to a specific foreign bribery offence, the *Corporations Act 2001* places legal obligations on corporations and other regulated entities that closely align with the G20 High Level Principles, in particular in relation to the duties of directors and officers, financial reporting and audit, self-reporting breaches of the law and controls to prevent market misconduct. The Act provides for criminal, civil and administrative consequences for the contravention of many of these requirements.

- B. 2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?**

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

Corporate Whistleblower Regime

On 1 July 2019, the Commonwealth *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* commenced. This legislation strengthens corporate sector whistleblower protections and introduces new protections for tax whistleblowers.

This Act provides for the following strengthened whistleblower protections for the corporate and financial sectors:

- an expansion of the protections to a broader class of people
- the ability to make anonymous disclosures
- an expansion of the types of disclosures that will be protected under the framework including information that relates to an offence against any law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more
- the ability to make emergency disclosures to parliamentarians and journalists, if preconditions are satisfied
- the imposition of civil penalties in addition to criminal sanctions
- easier processes for a whistleblower to bring a claim civil redress for detriment or damage
- an expansion of protections to third parties who suffer detriment or loss as a result of a protected disclosure being made, and
- a requirement that all large companies have a whistleblower policy, with penalties for failing to do so.

Further information on the legislation is available from the Parliament of Australia's website:

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs1120%22>.

Public Sector Whistleblower Regime

The Commonwealth *Public Interest Disclosure Act 2013* (PID Act) provides an effective legal framework that protects public sector whistleblowers when they make disclosures about suspected wrongdoing by another public official or government agency. The PID Act defines wrongdoing broadly to include fraud, serious misconduct and corrupt conduct as well as minor wrongdoing.

A disclosure can be made anonymously, and to the public official's supervisor, or to a nominated official within an agency. Once a disclosure is made about wrongdoing, the PID Act requires the agency that is the subject of the disclosure to investigate the matter, and prepare a report outlining their findings and the steps that the agency will take to remediate any issues identified. This report must be provided to the discloser, and the discloser may, after considering this report and other obligations (set out in section 26 of the PID Act and including, for example consideration of the public interest), make an external disclosure.

The PID Act protects public officials who make disclosures in various ways, including by providing compensation for disclosers who suffer reprisal action, attaching criminal penalties to those who take reprisal action against a discloser, and providing

immunities for disclosers from civil, criminal and administrative liability in relation to the making of the disclosure. The PID Act also provides protections for those involved in PID investigations, such as for witnesses.

- B. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively⁸?**

Where applicable, this can be provided in the form of links to other reviews or published work.

Political donations and funding

Australia has a longstanding history of conducting fair elections with integrity and Australians enjoy the freedom to engage in democratic discourse that is consistent with the implied freedom of political communication under the Australian Constitution. Participation in this process can include Australians financially supporting candidates and political parties of their choice through political donations.

The Australian Government is undertaking an ongoing modernisation program to ensure Australia's electoral framework, particularly in relation to political donations and funding, keeps pace with the evolving electoral environment and ensures public confidence in Australia's democracy.

The *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018* introduced a Transparency Register to Australia's electoral framework. The Transparency Register contains information about political parties, candidates and other participants in the electoral process who are registered with or recognised by the Australian Electoral Commission. The register includes information such as annual financial returns, financial returns during election campaigns, enforceable undertakings, and election funding claims, and is publicly available at <https://transparency.aec.gov.au>

Additionally, this Act increased transparency and assurance about the source of political donations by restricting the ability of foreign money to finance Australian election campaigns, thereby preventing undue foreign influence, and the perception of such undue influence.

The *Electoral Legislation Amendment (Miscellaneous Measures) Act 2020* clarified the relationship between federal and state electoral funding laws to provide more certainty for electoral participants in different jurisdictions, as well as providing other

⁸ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

modernising and technical amendments to the *Commonwealth Electoral Act 1918*. These changes included simplifying funding and entitlement rules including by rounding and indexating public funding entitlements for eligible candidates, parties and groups.

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Under the AML/CTF Act and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* a reporting entity must have procedures to identify whether any individual customer or their beneficial owner(s) is a politically exposed person (PEP), or an associate of a PEP. The reporting entity must undertake this identification process before it provides the customer with a designated service, or as soon as practicable afterwards. Where a customer is determined to be a high risk or foreign PEP, a reporting entity must take steps to establish the source of the person's wealth and funds, obtain senior management approval before establishing or continuing a business relationship with the customer, and take proactive measures to accurately verify the customer's identification information.

Corporate liability and foreign bribery

Under Australia's Commonwealth Criminal Code (which includes offences for domestic and foreign bribery and related offences), where corporate liability can be established because a high managerial agent authorised or permitted the relevant criminal conduct, there is a defence available to the corporation if it proves that it exercised due diligence to prevent the conduct, or its authorisation. This defence is available to corporations of any size (including SMEs). A failure to exercise due diligence may be evidenced by inadequate corporate management, control or supervision, of failure to provide adequate systems for conveying information to relevant persons in the corporation. The relevant legislation is set out at section 12.3 of the Commonwealth Criminal Code: <https://www.legislation.gov.au/Details/C2021C00183>

Additionally, Australia is proposing new reforms that would specifically encourage enterprises to adopt internal controls, ethics and compliance programs to mitigate foreign bribery risk. Australia has introduced into Parliament a new corporate offence that will automatically apply if a corporation fails to prevent the bribery of a foreign public official by one of its associates for the company's profit or gain, unless the corporation can show it had adequate procedures in place to prevent the foreign bribery from occurring. The proposed reforms are contained in the *Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019*: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1246

The Australian Government has developed and publically consulted on draft guidance on the steps a corporation can take to prevent foreign bribery: <https://www.ag.gov.au/crime/consultations/draft-guidance-adequate-procedures-prevent-commission-foreign-bribery>

Australia has also proposed the introduction of a deferred prosecution agreement (DPA) scheme that would be available to corporations for certain offences including domestic and foreign bribery. The DPA scheme will provide incentives for companies to self-report wrongdoing. Under the DPA scheme, the Commonwealth Director of Public Prosecutions (CDPP) can communicate with a corporation that has engaged in serious corporate crime to negotiate an agreement to comply with a range of specified terms.

Corporations would generally be expected to implement compliance programs or policies as a term of the DPA and significant consequences (including termination of the DPA) would be available if they fail to do so. These proposed reforms are also contained in the *Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019*:

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1246

The Public Governance, Performance and Accountability Act 2013

The Commonwealth Public Governance, Performance and Accountability Act 2013 (PGPA Act) provides a legal framework that prescribes internal controls, ethics and compliance programs.

Section 29 of the PGPA Act places a duty on all Commonwealth officials to disclose material personal interests that relate to the affairs of the entity of which they are an official. The *Public Governance Performance and Accountability Rule 2014* (PGPA Rule) at Division 2 (Officials' duty to disclose interests) sets out circumstances the relevant requirements. Officials of Commonwealth entities are required to make a conflict of interest declaration annually.

The PGPA Act does not specifically require reporting on corruption but requires transparency in public resource management. The Transparency Portal (www.transparency.gov.au) is a central repository of publicly available corporate information for all Commonwealth bodies.

Section 46 of PGPA Act requires annual reporting on both financial and non-financial data for Commonwealth entities, including on significant non-compliance with Section 19 of the PGPA Act. Section 19 of the PGPA Act describes the duty for accountable authorities of a Commonwealth entity to keep the responsible Minister and Finance Minister informed of various matters, including notification of any significant issue that has affected the entity or any of its subsidiaries.

Risk Management

- Section 16 of the PGPA Act requires the Accountable Authority (the person or group of persons responsible for, or with control over, the entity's operations) to establish and maintain risk management and control systems within the Commonwealth entity.
- Section 25 of the PGPA Act requires an official of a Commonwealth entity to exercise his or her powers, perform his or her functions and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise. This duty includes managing reasonably foreseeable risks.

Management of Fraud and Corruption under the PGPA Act and PGPA Rule

The PGPA Rule ensures there is a minimum standard for accountable authorities of Commonwealth entities for managing the risk and incidents of fraud. Section 10 of the PGPA Rule provides that the accountable authority of a Commonwealth entity must take all reasonable measures to prevent, detect and deal with fraud relating to the entity, including by:

- conducting fraud risk assessments regularly and when there is a substantial change in the structure, functions or activities of the entity

- developing and implementing a fraud control plan that deals with identified risks as soon as practicable after conducting a risk assessment
- having an appropriate mechanism for preventing fraud, including by ensuring that:
- (i) officials of the entity are made aware of what constitutes fraud; and (ii) the risk of fraud is taken into account in planning and conducting the activities of the entity; and
- having an appropriate mechanism for detecting incidents of fraud or suspected fraud, including a process for officials of the entity and other persons to report suspected fraud confidentially
- having an appropriate mechanism for investigating or otherwise dealing with incidents of fraud or suspected fraud, and
- having an appropriate mechanism for recording and reporting incidents of fraud or suspected fraud.

Guidance materials for Australian Public Servants

The Australian Public Service Commission's website provides a range of guidance materials to employees of the Australian Public Service focussed on their obligations under the Public Service Act 1999, including the following:

- [APS Values and Code of Conduct in practice](#)
- [Handling Misconduct: a human resource manager's guide](#)
- [Guidance for Agency Heads – Gifts and Benefits](#) and,
- [Social Media: Guidance for Australian Public Service Employees and Agencies](#).

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

In Australia there are a variety of organisations that promote transparency and integrity including, for example:

[Australian Corporate Accountability Network](#)
[Bribery Prevention Network](#)
[Global Compact Network Australia](#), and
[Transparency International Australia](#).

Further details of actions taken by the organisations are available from their respective websites (hyperlinked above).

C. LIABILITY OF LEGAL PERSONS⁹

- C. 1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.**

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

In December 2019 Australia introduced reforms into Parliament which, if passed, would introduce a new corporate offence for failure to prevent foreign bribery by an associate of the corporation for the profit or gain of the company. The reforms would also establish a deferred prosecution agreement (DPA) scheme for certain corporate offences including domestic and foreign bribery. The proposed reforms are contained in the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Res ults/Result?bld=s1246. The reforms are currently before the Parliament awaiting debate.

- C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.**

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

Division 70 of the *Criminal Code Act* was inserted on 17 December 1999. Since commencement of the division:

- a total of nine defendants have been convicted. Of those, two are corporations
- prosecutions involving four defendants have been the subject of a permanent stay, and
- there have not been any acquittals following trial.

In August 2020, a natural person was convicted of two counts of bribery of a foreign public official and received a custodial sentence of 2.5 years to be served by way of an Intensive Corrections Order, with an additional condition of 400 hours community service. Further information is available at the following link: <https://www.afp.gov.au/news-media/media-releases/man-convicted-part-foreign-bribery-investigation>.

In September 2020, Australia restrained AUD \$1.6 million in assets in connection with the alleged bribery of foreign public officials: <https://www.afp.gov.au/news-media/media-releases/16million-assets-restrained-connection-alleged-malaysian-official-bribery>.

As at 8 June 2021, twelve cases have involved the alleged commission of corruption-related offences at various stages of the criminal process before the courts, including committal (preliminary) hearing, trial and sentence. Two of the current cases before the courts involve criminal proceedings against a corporation.

Under Australia's laws, proceedings for corruption-related offences can be brought against legal persons irrespective of any proceedings against any natural person or the outcomes of such proceedings.

- C. Does your country provide for liability of legal persons in the following cases:**
- 3. where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures? (A)**

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability? (B)

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad? (C)

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs? (D)

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs? (E)

⁹ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self-reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons? (F)

(A) Yes, Part 2.5 of Australia's Commonwealth Criminal Code (which includes domestic and foreign bribery and related offences) sets out provisions of general application that allow corporations to be held liable for conduct involving natural persons where conduct is committed by an employee, agent or officer of a corporation, and the corporation expressly, tacitly or impliedly authorised or permitted the conduct. This includes circumstances where:

- the board of directors or a high managerial agent authorised or permitted the conduct
- a corporate culture existed that led to non-compliance, or
- the corporation failed to create or maintain a corporate culture that required compliance.

The full provisions are available here:
<https://www.legislation.gov.au/Details/C2021C00183>

(B) Yes, Australia's Commonwealth Criminal Code provides for extensions of liability with general application, including where a natural or legal person procures the conduct of an intermediary (see section 11.3, Commission by proxy).

Even where a merger of one company with another company takes place, that company may still be held criminally liable for conduct engaged in prior to the merger. For example, prosecution proceedings for alleged foreign bribery were commenced in 2018 against Jacobs Engineering Group for conduct engaged in by a subsidiary that it acquired after the subsidiary allegedly engaged in the relevant conduct:
<https://www.theguardian.com/australia-news/2018/jul/14/sinclair-knight-merz-foreign-bribery-case-sparks-call-for-greater-police-resources>

(C) Yes, Australia's Commonwealth Criminal Code provides that corruption-related offences, including foreign bribery, have extraterritorial application. Australia's foreign bribery offences apply to overseas conduct where that conduct is engaged in by an Australian citizen, resident or corporation (see section 70.5 of the Criminal Code).

(D) Australia is proposing new reforms that would specifically encourage corporations to adopt internal controls, ethics and compliance programs to mitigate foreign bribery risk. Australia has introduced into Parliament a new corporate offence that will automatically apply if a corporation fails to prevent the bribery of a foreign public official by one its associates for the company's profit or gain, unless the corporation can show it had adequate procedures in place to prevent the foreign bribery from occurring. The proposed reforms are contained in the *Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019*:
https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1246

If the reforms are passed, it will ultimately be a matter for the court to determine whether adequate procedures existed, such that the corporation would not be liable for failure to prevent foreign bribery. The Australian Government has developed and publically consulted on draft guidance materials setting out the steps a corporation can

take to prevent foreign bribery: <https://www.ag.gov.au/crime/consultations/draft-guidance-adequate-procedures-prevent-commission-foreign-bribery>

Australia has also proposed the introduction of a deferred prosecution agreement (DPA) scheme that will be available to corporations for certain offences including domestic and foreign bribery. Corporations will generally be expected to implement compliance programs or policies as a term of the DPA and significant consequences (including termination of the DPA) will be available if they fail to do so. The implementation and maintenance of such programs and policies would in some cases be assessed by an independent monitor. These proposed reforms are also contained in the *Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019*: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1246

(E) Please refer to our response immediately above.

(F) Where an employee reports alleged corrupt conduct of their employer (including a legal person or in relation to a legal person) Australia's Corporations Act contains certain protections for the protection of information provided by whistleblowers, protections for whistleblowers against legal action and protections for whistleblowers from detriment. Further information is available here: <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-rights-and-protections/>

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

At a Commonwealth level in Australia, asset recovery generally takes place under the Commonwealth *Proceeds of Crime Act 2002* (the POC Act), which provides a scheme to trace, restrain and confiscate property that has a sufficient connection to a foreign or Commonwealth offence. Australian States and Territories also have similar schemes in their jurisdictions.

The POC Act contains a comprehensive regime for investigating, restraining and confiscating the proceeds and instruments of indictable and foreign indictable offences. It provides for non-conviction-based confiscation which allows confiscation action to be taken independently of the criminal prosecution process. This includes, but would not be limited to, circumstances in which where a person cannot be prosecuted, has died or has absconded. It would also include circumstances in which a court can be satisfied on the balance of probabilities (as opposed to beyond reasonable doubt) that a person has committed a serious offence, or that certain property is the proceeds of an indictable or foreign indictable offence.

The POC Act includes the following non-conviction-based powers:

- Forfeiture orders – where restrained property can be forfeited on the grounds that either:
 - it can be shown that a person (including a corporation) has committed a serious offence, or
 - that the property is the proceeds of an indictable offence or foreign indictable offence, or the instrument of a serious offence.
- Pecuniary penalty orders (also known as value-based confiscation)—where it can be shown on the balance of probabilities that a person has committed a serious offence.
- Unexplained wealth orders—, which require a person to pay the amount determined by the court to be the difference between the person's total wealth and that which has been legitimately acquired.

POC Act investigations are carried out by the Criminal Assets Confiscation Taskforce (CACT), a multi-agency taskforce made up of the Australian Federal Police (AFP), Australian Taxation Office, Australian Criminal Intelligence Commission the Australian Transaction Reports and Analysis Centre and the Australian Border Force. Formed in 2011 and led by the AFP, the CACT has had a significant impact on asset recovery in major proceeds of crime cases and continues to actively pursue restraint and forfeiture orders, including in high value and complex cases.

The CACT uses a proactive, intelligence-led approach for the identification of criminal wealth and employs an innovative approach to asset confiscation where intelligence, operations, legal and other specialist resources from each participating agency work together. These matters are litigated by the Criminal Assets Litigation team on behalf of the Commissioner of the Australian Federal Police and, in a narrow range of matters, by the Commonwealth Director of Public Prosecutions.

Recent amendments to the POC Act that entered into force with the commencement of the *Crimes Legislation Amendment (Economic Disruption) Act 2021* in February 2021 have strengthened the Commonwealth's powers to trace and confiscate the proceeds and instruments of crime by:

- ensuring that buy-back orders under the POC Act cannot be used by criminal suspects and their associates to buy back property forfeited to the Commonwealth or unduly delay POC Act proceedings
- clarifying that the POC Act permits courts to make orders confiscating the value of a debt, loss or liability that has been avoided, deferred or reduced through criminal offending
- clarifying the operation of the POC Act in relation to the restraint and confiscation of property located overseas

- strengthening information-gathering powers under the POC Act by increasing penalties for non-compliance and clarifying the circumstances in which information gathered under these powers can be disclosed and used, and
- expanding the Official Trustee in Bankruptcy's powers to preserve the value of restrained and confiscated property, gather information and recover costs under the POC Act to allow the Official Trustee to discharge its functions in a more cost-effective manner.

Extradition

The International Crime Cooperation Central Authority, within the Commonwealth Attorney-General's Department, has provided and received assistance for the resolution of corruption cases involving legal persons through extradition. In the past decade, 5 individuals accused of corruption, bribery, and extortion offences have been surrendered through international extradition processes. Of these surrenders, 3 have been the result of successful resolution of incoming extradition requests from foreign countries to Australia, while 2 of these surrenders have occurred as a result of outgoing extradition requests made by Australia to foreign countries.

Australia is a party to several multilateral conventions that deal with extradition in corruption cases, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the UNCAC and the UNTOC. Australia has extradition relations with approximately 130 foreign countries, based on bilateral treaties (including treaties inherited from the United Kingdom), the London Scheme, and through designation in domestic regulations under the Extradition Act 1988.

Mutual assistance

Australia sends and receives mutual assistance requests in relation to the investigation and/or prosecution of criminal cases involving corruption. Since October 2019, Australia has received 12 mutual assistance requests, and made 8 mutual assistance requests, relating to the investigation and/or prosecution of corruption cases. Types of assistance provided or obtained in response to the requests of this nature include the provision of evidentiary material, witness testimony and the identification, restraint, seizure and forfeiture of proceeds of crime.

BRAZIL

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A. 1 Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

Brazil has developed a multi-pronged approach to implement FAFT Recommendations 24 and 25 by establishing the National Strategy to Combat Corruption and Money Laundering (ENCCLA). Created in 2003, ENCCLA is a network of over 90 institutions dedicated to discussing and coordinating the adoption of measures by the Executive, Legislative and Judicial powers, as well as prosecutors, to combat corruption, tax evasion, money laundering, and terrorist financing.

At first, on a normative level, the Secretariat of the Federal Revenue Service (RFB) enacted Normative Instruction (NI) 1,634, of 2016, providing for the identification of beneficial ownership in the “Legal Entities Taxpayer Registration Number” (CNPJ). NI 1,634 was repealed by [NI 1,863, of 2018](#), which determines the mandatory identification of the entire shareholding structure up to the level of the beneficial owner. Before that, beneficial ownership identification was optional.

NI 1,863/2018 sets forth a chapter dedicated to address the topic of beneficial ownership, including the definition of “beneficial ownership”, the obligations and conditions for providing information when registering a legal entity, and the sanctions for not providing such information.

In line with FAFT “company approach”, pursuant to Article 9 of NI 1,863/2018, legal entities that do not provide information regarding the final beneficiary within 90 days of registration or that do not submit the documents in the prescribed form will have their CNPJ taxpayer registration suspended and, therefore, will be denied access to banking institutions, and subsequently prevented from undertaking transactions using financial instruments, such as bank accounts, financial investments and obtaining loans. Besides, its suspension will be communicated to the Brazilian Securities and Exchange Commission (CVM).

Following an “existing information approach”, Article 10 of NI 1,863/2018 designated the Central Bank of Brazil (BCB), CVM, Notaries, Commercial Registries, and other associated agencies competent to defer the CNPJ registration based on formal and technical aspects to ensure the accuracy of information by cross-checking different government databases.

In a second moment, in order to provide competent authorities access to information on beneficial ownership through different sources other than CNPJ, other regulatory bodies have established their own procedures to identify beneficial owners more broadly:

- On a company approach, in order to improve beneficial ownership identification, Circular BCB 3,978, of 2020, and Instruction CVM 617/2019, both AML/CFT regulatory instruments, determined the minimum shareholding interest for the purpose of identifying the beneficial owner, which must be established according to internal risk assessments by every supervised entity (SE) and may not exceed 25% of equity stake. The quoted percentage shall be documented in the operations manual of supervised entities (SEs). Both regulatory instruments came into effect on October 1, 2020.
- On a Registry approach, two regulatory instruments stand out:
 - In relation to DNFBNs, based on ENCCLA’s Action 12, of 2019, and compliant with FATF Recommendation 28, the National Council of Justice (CNJ) enacted Provision 88, of 2019, that determined AML/CFT procedures and controls to be adopted by notaries and registries, among them the so-called Single Registry of Notary Clients (CCN), which includes those with power-of-attorney, and the Single Registry of Beneficial Owners (CBF). Effective as of February 2020. (For more details regarding CCN e CBF, please refer to Question A2)
 - Commercial Registries: NI 76, of 2020, enacted by the National Business Registration Office (DREI), within the Ministry of Economy, assigned Commercial Registries the task of identifying beneficial owners in line with RFB NI 1,863, of 2018, as one of the AML/CFT procedures and controls to be implemented. NI 76 came into force in July 2020.
- Regarding the “existing information approach”, the aforementioned CNJ Provision 88 allows for agreements to grant access to public authorities’ databases (Article 43), including international organizations (Articles 12 and 32), as well as any entity that hold information about legal persons.

As a result, since CNJ Provision 88 came into force in February 2020, notaries and registries are providing the highest quantities of STR to COAF (Brazilian FIU):

2020 STR to FIU (COAF)	2018	2019	2020	2021	Total
BCB – Supervised Entities	27735 4	20165 2	35109 3	16908 2	999181
CNJ – Notaries and Registries			93797 8	52466 1	146263 9
COAF – FIU Supervised Entities	9949	11060	4642	2120	27771
COFECI – Real estate development, buying and selling	677	588	703	327	2295
CVM – Securities Market transitions	28112	17241	35806	17211	98370

DPF – Storage and Transportation of Valuables and Funds	23942	1973	1353	511	27779
DREI – Commercial Registries	1568	1320	886	484	4258
IPHAN – Works of art and antiques	2	11	4	2	19
PREVIC – Complementary welfare	13054	15189	16353	5074	49670
SUSEP – Insurance Market	60858	85107	85551	28820	260336

Source: COAF website as of May 25th, 2021

In addition, Circular BCB 3,743, of 2015, establishes the mandatory registration of financial assets. Registration entities (BCB's supervised entities) must have procedures to track the asset's ownership (pursuant to Article 4) and must establish mechanisms to identify and report to BCB atypical operations (Article 17).

Regarding the promotion of the transparency of beneficial ownership, among other benefits, the Project 'Conecta.gov.br' stems from the identification of normative and operational gaps regarding exchange of information between Brazil's main institutions. Thus, the use of an already existing technological structure will bring rapid and significant improvements in the sharing of information among public agencies. For more information, please refer to questions A3 and A4.

The National Open Data Infrastructure (INDA) Action Plan for 2021-2022 aims at guaranteeing and facilitating access by citizens, society and, in particular, various public sector institutions to data and information produced or held in custody by the Federal Executive Branch in a platform open for consultation.

INDA aims at ensuring not only that there is adequate, accurate and up-to-date information, but also that the information can be obtained or accessed in a timely manner by competent authorities.

Thus, the feedback and action plan are intended to strengthen the Open Data Policy and other government instruments and tools in that area, as well as the consolidation of the open data ecosystem, through training and dissemination of guidelines and principles of open data.

- A. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement¹⁰.**

Required information can be provided in the form of links to other reviews or published work.

¹⁰ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

As of May 2021, the Central Bank of Brazil (BCB) has signed 27 supervisory MoUs with 33 supervisory authorities, as listed below:

	Country	Supervisory Authority
1	Argentina	Superintendencia de Entidades Financieras y Cambiarias del Banco Central de la República Argentina
2	Áustria	Financial Market Authority (FMA) Oesterreichische Nationalbank (OeNB) Austrian Federal Ministry of Finance
3	Bahamas	Central Bank of the Bahamas
4	Cayman Islands	Cayman Island Monetary Authority (CIMA)
5	Chile	Superintendencia de Bancos e Instituciones Financieras (SBIF)
6	China	China Banking Regulatory Commission (CBRC)
7	Colômbia	Superintendencia Financiera de Colombia (SFC)
8	European Union	European Central Bank (ECB)
9	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) Bundesbank
10	Índia	Reserve Bank of India
11	Indonésia	Bank Indonesia
12	Itália	Banca D'Italia
13	Luxemburg	Commission de Surveillance du Secteur Financier (CSSF)
14	México	Comisión Nacional Bancaria y de Valores (CNBV)
15	Panamá	Superintendencia de Bancos de Panamá
16	Paraguai	Superintendencia de Bancos del Banco Central del Paraguay
17	Peru	Superintendencia de Banca, Seguros y AFP de la República del Perú (SBS)
18	Portugal	Banco de Portugal
19	Spain	Banco de España (BdE)
20	South Africa	Prudential Authority (PA), antigo Bank Supervision Department of the South African Reserve Bank (BSD)
21	South Korea	Financial Services Commission Financial Supervisory Service
22	Switzerland	Swiss Financial Market Supervisory Authority (FINMA)
23	United Kingdom	Prudential Regulation Authority (PRA)
24	United States	Board of Governors of the FED System Office of the Comptroller of the Currency (OCC) Federal Deposit Insurance Corporation (FDIC) Department of Financial Services
25	Uruguay	Banco Central del Uruguay (BCU)
26	Vatican	Financial Information Authority (AIF)
27	European Union	European Central Bank (ECB)

It is worth noting that in all MoUs there is a provision for the exchange of information between signatory countries, which includes information regarding beneficial owners.

National Financial System Client Reference File (CCS)

In order to comply with FATF Recommendation 31, domestic authorities must have access to a mechanism that provides identification of all legal person's accounts with a financial institution.

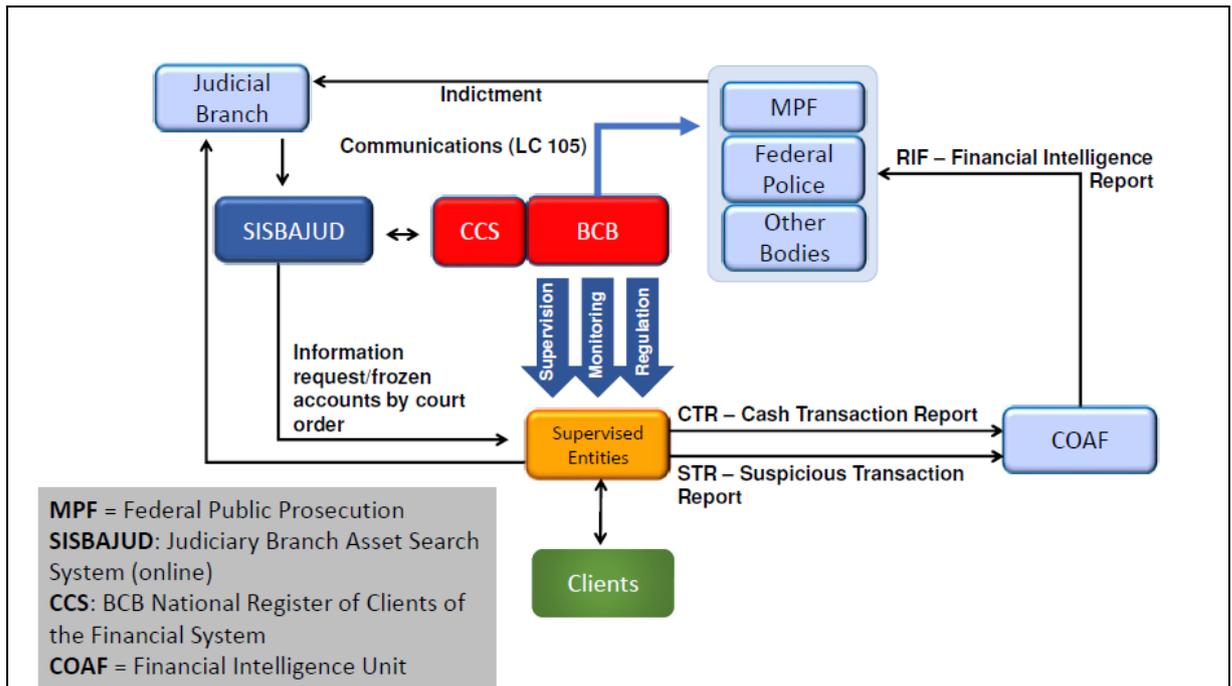
CCS was instituted by BCB's Circular 3,287, of 2005, complying with the terms of Law 9,613, of 1998 (dubbed AML Law), amended by Law 10,701, of 2003, which determines that all financial institutions are required to maintain a data record of account holders and clients, as well as their legal representatives, as part of a general reference file centralized at BCB.

CCS provides the following features:

- Enables authorities to request and consult data on a centralized database involving ownership information on deposit accounts and financial assets regarding properties, rights and values held or administered at SFN institutions.
- Data to be stored include legal entities and natural persons taxpayer identification numbers (CNPJ and CPF, respectively), financial institution with which that person or entity operates and the dates on which the client initiated and terminated that relationship, regardless of whether the person or entity is resident, domiciled or headquartered in the country or abroad.
- CCS data are updated daily (including for legal representatives).

Judiciary authorities are able to utilize CCS information in real time to request ownership information and freeze assets instantly, through the Judicial Branch Assets Search System (SISBAJUD).

[Table 1: AML/TF information flow](#)



Single Registry of Notary Clients (CCN)

The Single Registry of Notary Clients (CCN) is the national database foreseen in the CNJ Provisions 88, of 2019, and 100, of 2020, directly accessed through the CCN website or E-Notariado platform (please refer to question A3). CCN presents the following features:

- Notaries will be able to consult all natural person or legal entity records on CCN, updated by all domestic notaries every 15 days (including notarial acts that do not use the e-Notariado platform to issue notarized digital certificates or perform electronic notarial acts).
- The authenticity of the documents is guaranteed using block chain technology, which provides security and reliability to the documents by means of an encrypted ledger.
- There is the possibility of blocking the natural person taxpayer identification number (CPF) to alert all notaries of suspicions of fraud (i.e. identity theft, death) and judicial decisions.
- The implementation timetable began on January 31st, 2021, initially with the registry of natural persons. The register of legal entities will be implemented after the implementation of the register of individuals and its stabilization.

Single Registry of Beneficial Owners (CBF)

The Single Registry of Beneficial Owner (CBF) is a tool provided by the Federal Council of Brazilian College of Notaries (CNB/CF) to Notaries adequately adhere to CNJ Provision 88, of 2019, which regulates the way notaries comply with AML/TF obligations.

As a repository of data on beneficial ownership, the notary offices must include in the CBF during the registry of legal entities:

- their administrators, partners, legal representatives, agents and beneficial owners.
- status of legal entities domiciled in tax havens, the status of persons investigated or accused of terrorism and/or sanctioned by the United Nations Security Council.
- This information on beneficial owners also feed CCN.

The aim of those obligations, pursuant to Article 13, Paragraph 1, Item VIII of CNJ Provision 88, is compliance with the mandatory electronic record of all notarial acts with economic content (documents as well as proper identification of natural people and legal entities involved) to provide input for suspicious transaction reports to the Brazilian FIU (COAF).

The Brazilian Federal Revenue Service (RFB) has simplified the initial registration of companies and the respective changes on registration through [Redesim](#) Portal (National Network for the Simplification of Registration and Legalization of Companies and Businesses) through which the Federal Revenue Service's registry was integrated with notaries and commercial boards that attest to the reliability of the information provided by taxpayers;

Other RFB initiatives include:

- Creation of specialized and trained teams composed of public agents (tax auditors and analysts) prepared to analyze the information received based on the applicable governing regulation.
- Creation of a regional team composed of public agents (tax auditors and analysts) with extensive experience in the topic of Beneficial Ownership. The objective is to propose improvements and simplifications to the internal rules of the Federal Revenue Service and implement standard procedures for all teams nation-wide.
- Creation of a regional team specialized in registers and tax integrity to act preventively and corrective in relation to fraud.

A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

CNPJ Query App (“Consulta CNPJ”)

The National Register of Legal Entities (CNPJ), administered by the Secretariat of the Federal Revenue Service of Brazil (RFB), comprises the registry information of legal entities and other types of legal arrangements without legal personality (such as condominiums, public agencies, funds).

Launched through Project Conecta gov.br (please refer to Question A1), Consulta CNPJ App allows queries on the CNPJ database free of charge for federal government authorities. The private sector can also access the service through a paid contract with the Federal Data Processing Service (Serpro).

The main operation available by the system is the online query service to obtain the registration data of legal entities, such as: date of opening, legal nature, economic activity (main and secondary), natural person responsible for the company, corporate capital, and the beneficiary owner.

Legal Entity Data Collector (‘Coletor Nacional’)

Coletor Nacional is an app that has the purpose of gathering data and information during the process of opening a company. Its aim is to simplify and integrate the registration process of entrepreneurs and legal entities in the municipal, state, and federal branches, and its use is mandatory throughout the national territory.

Entities domiciled abroad are required to provide information on the beneficial owner if they are (a) Registered with the Secretariat of Federal Revenue Service (RFB), (b) Registered with the Central Bank of Brazil's Register of Companies (Cademp/BACEN) and (c) Registered with the Securities and Exchange Commission (CVM).

Notary platform (“e-Notariado”)

Since the enactment of CNJ Provision 88, of 2019, citizens throughout Brazil can perform notarial acts online, through the *e-Notariado* platform, which renders legal security and the same effects of an act performed at a notary's office. Through the *e-Notariado*, there is access to the Single Registry of Notary Clients (CCN).

Registration Portal (“Sistema Portal de Cadastro”)

Sistema Portal de Cadastro is a system intended to unify the information from the Federal Revenue Service and also house information from other tax administrations (state and municipal revenue services), as well as from various external bodies such as CVM, BCB, police authorities, judicial and prosecution bodies. The System already has some confidential information obtained internally by the Federal Revenue Service and is integrated with the Superior Electoral Court, the Federal Police, and some state public security departments. The system is currently in an expansion phase to include integration with databases of other public institutions mentioned above.

The constitution of a legal entity in Brazil requires the registration of the articles of association or bylaws with board of trade, whose information is public for

consultation. In addition, all legal entities domiciled in Brazil, and each of their establishments located in Brazil or abroad, are required to register with the National Register of Legal Entities - CNPJ (whose administration is the responsibility of the Federal Revenue Service of Brazil - RFB) before beginning of its activities. See for more information on [CNPJ](#).

Brazilian publicly traded companies must file the so-called Reference Form (shelf document) with the Securities and Exchange Commission (CVM) and keep it updated. The Reference Form contains all information regarding the company. Information regarding the economic group to which the company belongs and its ownership and controlling structure should also be disclosed.

Regarding operating in the financial system, Brazil issued the BCB Circular N. 3,978/2020, mandating financial institutions to identify the beneficial ownership of their clients.

The beneficial owner Information is being stored on the REDESIM Portal (National Network for the Simplification of Registration and Legalization of Companies and Businesses) and can be accessed upon requests from authorities.

Legal entities are required to keep the information reported to the different registries up to date. Sanctioning and enforcement powers depend on the type of registry. For example, the registries held by the Federal Revenue Service (RFB), the Securities and Exchange Commission (CVM), and the Central Bank of Brazil have the relevant sanction/enforcement powers.

In that sense, as set forth by Article 9 of Normative Ruling 1,863, of Dec 27th, 2018, issued by the Federal Revenue Service (RFB), the entities that do not provide information regarding beneficial ownership within the deadline or that do not provide the required documents will have their inscription under the CNPJ suspended and will be forbidden to transact with bank institutions, including with respect to moving bank accounts, financial investments and taking out loans.

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

ENCCLA's Action 7, of 2020, has verified the difficulties of the operational aspect or the information technology structures related to the information flow of supervisory authorities. In a survey comprising twenty-three supervisory authorities, it was identified that 74% (seventy-four percent) consider that there are operational or information technology structures difficulties, highlighting as main issues the excessive bureaucracy, lack of trust in relationships, budget, lack of interoperability standards, and restrictions in the number of authorized users.

As a response to the problems listed, ENCCLA proposed using the federal government's project 'Conecta gov.br' (please refer to question A1) to leverage the results achieved by its initiatives to improve the sharing and interoperability of data within the federal government.

The large extension of the Brazilian territory that has 26 states and a Federal District (with geographic proportions of a country many times) and thousands of municipalities is already a factor of difficulty inherent in the information integration process. Another challenge is the scarce budget for integrating the different systems. In addition, there is the issue of different forms and legal arrangements in the various international laws to which the chain of the beneficial owner of the entity providing the information can be extended, as well as the knowledge of its specific formalities, given the peculiarities of each one. Within the scope of registration and monitoring of the beneficial owner of legal entities, there is a (repressed) demand for international cooperation aimed at promoting exchange of information, training, and workshops with other countries with the same economic-tax profile, through international bodies such as G20, OECD and EuroSocial.

Nowadays, beneficial ownership information is still not publicly available in Brazil. This is a goal for the near future and will probably require some sort of legislative endorsement.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY¹¹

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

On April 1st, 2021, the new Brazilian Public Procurement Law ([Law n. 14.133/2021](#)) was enacted by the President.

The new law mandates the adoption of Integrity Programs (anti-corruption compliance programs) by the successful bidder in contracts whose value exceeds 200 million BRL (Article 25, §4).

Art. 25. The bidding notice must contain the object of the bidding and the rules regarding the call, judgment, qualification, resources and penalties of

¹¹ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) A Resource Guide on State Measures for Strengthening Corporate Integrity.

the bidding, inspection and management of the contract, delivery of the object and payment conditions.

(...)

§ 4 In the contracting of large works, services and supplies, the bidding notice must provide for the mandatory implementation of an integrity program by the winning bidder, within 6 (six) months, counted from the execution of the contract, according to the regulation that will provide for the measures to be adopted, the form of proof and the penalties for non-compliance.

Integrity programs were also listed by the legislator as a tiebreaker in public bids (article 60 – IV), as a mitigating factor in the application of sanctions for unlawful acts (article 156, § 1º, V) and as condition for the rehabilitation of companies that have been penalized in the past for the practice of corruption or related acts (article 163 – sole paragraph).

The law also contains provisions on enhanced transparency of public procurement, providing the establishment of an official webpage (Portal Nacional de Contratações Públicas) which will disclose the annual public procurement plans, catalogs, bidding notices, bidding notice minutes, contracts, and other relevant administrative acts, including performance reports and other information about bidding e public procurement.

Law n. 14.133/2021 is national in scope, applicable to federal, state and municipal entities, of the Executive, Judiciary and Legislative branches, and specific regulations are currently being developed.

With regard to the adoption of integrity measures, it is important to mention the fundamental role of [Law 12,846/2013](#) (Corporate Liability Law) and the Decree that regulated it ([Decree 8,420/2015](#)) which recognized the importance of the adoption of integrity programs by companies. The Law also established the existence of such a program as a mitigating factor for determining the sanctions for acts against the national or foreign public administration. The topic is further detailed by Ordinance 909/2015 of the Office of the Comptroller General, which determines the criteria for the evaluation of integrity programs for the purpose of a possible reduction in the amount of the fine.

B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

In April 2021, article 15 of Federal [Law 13.964](#) (Anticrime Law) introduced a set of protections and incentives to whistleblowers reporting criminal activity and administrative misconduct.

Article 15 amends Law 13.698 to provide protections and financial incentives for whistleblowers in four ways:

1 - accessibility: the amendment ensures that anyone has the right to report information on crimes against the public administration, administrative offenses, or any actions or omissions that are detrimental to the public interest.

"Article 4-A. The Union, the States, the Federal District and the Municipalities and their autarchies and foundations, public companies and mixed capital companies shall maintain an ombudsman or correction unit, to ensure any person the right to report information on crimes against the public administration, administrative offenses or any actions or omissions harmful to the public interest.

2 - non-retaliation: the amendment provides full protection against retaliation and exemption from civil or criminal liability in relation to the report:

Article 4-A, Sole paragraph. If the information reported to the ombudsman or correction unit is considered reasonable and forwarded for investigation, the informant will be guaranteed full protection against retaliation and exemption from civil or criminal liability in relation to the report, unless the informant has consciously provided false information or evidence. "

(...)

"Article 4-C. In addition to the protection measures provided for in Law No. 9,807, of July 13, 1999, the informant will be guaranteed protection against actions or omissions practiced in retaliation for the exercise of the right to report, such as arbitrary dismissal, unjustified change of functions or attributions, imposed sanctions, compensation losses or material losses of any kind, withdrawal of benefits, direct or indirect, or refusal to provide positive professional references.

3 - confidentiality: the whistleblower has the right to remain anonymous.

"Art. 4-B. The informant will be entitled to the preservation of his/her identity, which will only be revealed in case of relevant public interest or concrete interest for the investigation of the facts.

Single paragraph. The disclosure of identity will only be effected upon prior communication to the informant and with their formal agreement."

4 - financial incentives: the informant can be reimbursed in double for material damages and rewarded with up to 5% of the recovered amount.

"Art. 4º-C (...)

§ 2 The informant will be reimbursed in double for any material damages caused by actions or omissions committed in retaliation, without prejudice to moral damages.

§ 3 When the information provided results in the recovery of proceeds of crime against the public administration, a reward may be set in favor of the informant in up to 5% (five percent) of the recovered amount.”

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively¹²?

Where applicable, this can be provided in the form of links to other reviews or published work.

[Decree No. 8,420/2015](#) was enacted to regulate [Law 12,846/2013](#) (Corporate Liability Law), defining, in its article 41, an Integrity Program as being "the set of internal mechanisms and procedures for integrity, auditing and incentives to the reporting of irregularities and the effective application of codes of ethics and conduct, policies and guidelines in order to detect and remedy deviations, fraud, irregularities and unlawful acts committed against national and foreign public administration.”

The Decree provides that integrity programs must be structured, applied, and updated according to the current characteristics and risks of the activities of each legal entity and will be evaluated for their existence and application in accordance with the following parameters defined in its article 42:

I – commitment by the senior management of the legal entity, including directors, as evidenced by their visible and unequivocal support for the program;

II – standards of conduct, code of ethics, integrity policies and procedures applicable to all employees and administrators, regardless of position and duties;

III - standards of conduct, code of ethics, integrity policies and procedures extended, when necessary, to third parties such as suppliers, service providers, intermediaries and associates;

¹² Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

IV – periodical training on the integrity program;

V – periodical risk assessment to make any necessary adaptations to the integrity program;

VI – accounting records that accurately and fully reflect the transactions of the legal entity;

VII- internal controls that ensure the prompt preparation and reliability of the financial reports and statements of the legal entity;

VIII – specific procedures to prevent fraud and illicit acts within tendering proceedings, execution of administrative contracts or in any interaction with public sector, even if intermediated by third parties, such as in payment of taxes, submission to supervision, or obtainment of authorizations, licenses, permissions and certificates;

IX – independence, structure and authority of the internal body responsible for enforcing the integrity program and monitoring its performance;

X – channels for reporting irregularities which are open and widely disseminated to employees and third parties, and mechanisms for the protection of whistleblowers;

XI – disciplinary measures in cases of violations of the integrity program;

XII – procedures that ensure the prompt interruption of violations or irregularities and the timely reparation of the damage caused;

XIII – due diligence for hiring and, as the case may be, supervising third parties such as suppliers, service providers, intermediaries and associates;

XIV – verification, during mergers, acquisitions and corporate restructuring, of any irregularities or illicit acts or of the existence of vulnerabilities of legal entities involved in such operations;

XV – continuous monitoring of the integrity program, aiming at improving its effectiveness to prevent, detect and combat the occurrence of wrongful acts as provided for in Article 5 of Law nº 12.846 of 2013; and

XVI – transparency of the legal entity regarding donations made to candidates and political parties.

In addition to legal incentives, the Brazilian government promotes a culture of integrity through incentive programs. Among them, we highlight the program "[Empresa Pró-Ética](#)".

Developed by the Office of the Comptroller General (CGU), Pró-Ética is an initiative that encourages the voluntary adoption of anticorruption compliance programs by private companies (including small or medium enterprise) operating in the country. The project, which has already evaluated more than 600 compliance programs,

aims to encourage, through a positive recognition bias, the voluntary adoption of integrity mechanisms and procedures focusing on the prevention, detection, and remediation of acts of fraud and corruption. Internationally recognized by the OAS, OECD, UNODC, SCCE and, more recently, by UN Global Compact as a good practice example of SDG 16.5 Framework, Pró-Ética is an important tool to improve relations between the public and private sectors and to promote, in the country, a more honest, ethical, and transparent corporate environment.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

Created in 2010 as a partnership between the Office of the Comptroller General (CGU) and the Ethos Institute, Pro-Ética has evolved to include other entities from the public and private sectors, notably recognized in the business world, to compose its Management Committee. Currently, the Committee has the following composition: Ministry of Economy (ME), Brazilian Export and Investment Promotion Agency (ApexBrasil), Brazilian Federation of Banks (Febraban), National Confederation of Industries (CNI), National Confederation of Commerce of Goods, Services and Tourism (CNC), Confederation of Agriculture and Livestock of Brazil (CNA), Institute of Independent Auditors of Brazil (Ibracon), Brazilian Micro and Small Business Support Service (Sebrae) and Brazilian Institute of Ethics in Competition (ETCO) .

The program assesses more than 200 items related to integrity and transparency of companies of all sizes, including SMEs.

From the beginning, the objective of Pró-Ética was to encourage, through the positive recognition bias, the voluntary adoption of integrity mechanisms and procedures by companies, aimed at the prevention, detection and remediation of fraud and corruption acts, to improve relations between the public and private sectors and to promote a more honest, ethical, and transparent corporate environment in the country. It is believed that public recognition of companies that adopt these practices can increase the interest of others and reveal the market-value of integrity programs, often seen as an expense or bureaucracy. Pró-Ética has always had its long-term horizon, the transformation of the culture of organizations and the production chains in which they are inserted and of the market itself, so that unethical and illegal practices, often justified by the search for results, come to be seen as something intolerable and not compatible with the organizations mission.

C. LIABILITY OF LEGAL PERSONS¹³

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

Brazil has a very comprehensive and robust anti-corruption legal framework providing for the liability of natural and legal persons for acts of bribery and related offenses committed both domestically and internationally.

Specifically for legal persons, Brazilian legislation establishes a strict civil and administrative liability for wrongful acts committed against the national and foreign Public Administration (including foreign bribery), under the Corporate Liability Law (CLL; Law 12,846/2013). CLL provides for monetary sanctions, disgorgement, suspension of the company's activity, compulsory dissolution, and prohibition to receive public subsidies. Moreover, CLL can be applied in conjunction with Public Procurement Law, and, thus, making possible to debar legal persons involved in corruption from public tenders. Additionally, Law 8.429/1992 (Law of Administrative Improbity) establishes civil sanctions for natural and legal persons involved in illicit acts resulting in loss to the public treasury, violate the principles of the Public Administration or result in illicit enrichment.

Under CLL, administrative sanctions are a fine in the amount of 0.1% to 20% of the gross revenue of the legal entity and the publication of the condemnatory decision. The fine "shall never be lower than the obtained advantage, when it is possible to estimate it". However, if it is not possible to use the criteria of the value of the gross revenue of the legal entity, the fine will range from R\$ 6,000 to R\$ 60 million.

Civil sanctions provided by the Law include loss of the assets, rights or valuables representing, directly or indirectly, the advantage or benefit gained from the infringement; partial suspension or interdiction of its activities; compulsory dissolution of the legal entity; and prohibition to receive incentives, subsidies, grants, donations or loans from public agencies or entities and from public financial

¹³ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

institutions or institutions controlled by the government, from one to five years. These sanctions may be applied in an isolated or cumulative manner.

Penalties established by CLL:

Article 6. Within the administrative sphere, the sanctions listed below shall apply to legal entities held liable for the wrongful acts provided for in this Law:

I – a fine in the amount of 0.1% (zero point one percent) to 20% (twenty percent) of the gross revenues earned during the fiscal year prior to the filing of administrative proceedings, excluding taxes, which shall never be lower than the obtained advantage, when it is possible to estimate it; and II – extraordinary publication of the condemnatory decision.

Paragraph 1. The sanctions will be applied on a grounded manner on an isolated or cumulative basis, according to the peculiarities of the concrete case and to the severity and nature of the perpetrated offences.

Paragraph 2. The application of the sanctions set forth in this Article shall be preceded by a legal opinion prepared by the Public Advocacy Office or the body of legal assistance, or its equivalent, of the public entity.

Paragraph 3. The application of the sanctions set forth in this Article does not exclude, in any case, the obligation of full restitution for the damage caused.

Paragraph 4. In the event of item I of the head provision, in case it is not possible to adopt the criterion regarding the value of the legal entity's gross earning, the applicable fine will range from BRL 6,000.00 (six thousand Brazilian reais) to BRL 60,000,000.00 (sixty million Brazilian reais).

Paragraph 5. The extraordinary publication of the condemnatory decision will be made as a summary of the decision at the legal entity's expenses, through a means of communication widely circulated in the area where the violation was committed and the legal entity has business or, in its absence, in a nationally circulated publication, as well as by fixing a public notice, for the minimum term of 30 days, at the establishment or at the place where the activity is conducted, in a manner visible to the public, and at an electronic site in the world wide web. (The prerogative of territory, nationality or other forms of extra-territorial jurisdiction over the crime of international bribery);

Article 18. The liability of the legal entity in the administrative sphere does not exclude the possibility of its liability in the judicial sphere.

Article 19. The Federal Government, the States, the Federal District and the Municipalities, through their respective Public Advocacy Offices or legal representation bodies, or their equivalent, and the Public Prosecution Office may file a judicial action in relation to the wrongful acts set forth in Article 5 of this Law, with a view to the application of the following sanctions to the responsible legal entities:

I – loss of the assets, rights or valuables representing the advantage or profit directly or indirectly obtained from the wrongdoing, except for the right of the damaged party or of third parties in good faith

II – partial suspension or interdiction of its activities

III – compulsory dissolution of the legal entity

IV – prohibition from receiving incentives, subsidies, grants, donations or loans from public agencies or entities and from public financial institutions or government-controlled entities from 1 (one) to 5 (five) years.

Paragraph 1. The compulsory dissolution of the legal entity will be established when the following is evidenced:

I – the corporate personality was used on a regular basis to facilitate or promote the performance of wrongful acts; or

II – the legal entity was organized to conceal or dissimulate illegal interests or the identity of the beneficiaries of the acts performed.

Paragraph 2. (VETOED).

Paragraph 3. Sanctions may be applied in an isolated or cumulative manner.

Paragraph 4. The Public Prosecution Office or the judicial representative body of the public entity, or their equivalent, may request the freezing of assets, rights or values necessary to guarantee the payment of the fine or to ensure the full restitution for the damages caused, as provided for in Article 7, except for the right of third parties in good faith.

In order to enforce CLL, Brazil has enacted several regulations:

- a. Decree n. 8,420,/2015 which regulates aspects related to the implementation of the CLL;
- b. Ordinance n. 909/2015, which provides further parameters, rules and procedures to evaluate companies' anticorruption compliance programs;
- c. Normative Ruling n. 13/2019, which sets forth procedural rules for the administrative liability procedures;
- d. Normative Ruling n. 1/2015, which regulates the methodology for the calculation of the fine referred to in the CLL as an applicable sanction;
- e. Normative Ruling n. 2/2015, which regulates the provision of data and information to feed both the Registry of Ineligible and Suspended Companies from Public Tenders (CEIS) and the National Registry of Punished Companies (CNEP).

The aforementioned Decree and related regulation aim at specifying or clarifying some of the CLL provisions.

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

CLL came into force on January 29th, 2014. Since then, the Office of the Comptroller General has been collecting data related to the procedures and sanctions imposed based on the CLL.

Data related to the Federal Executive Branch can be retrieved at <http://paineis.cgu.gov.br/corregedorias/index.htm>

As of June 2021, 177 companies have been sanctioned under the provision of the CLL.

Civil and administrative liability of legal persons are independent and do not exclude the individual responsibility (civil, administrative, or criminal) of any natural person involved in the unlawful acts, including intermediaries or agents. Corrupt individuals can, therefore, face cumulatively and independently criminal, civil, and administrative sanctions for their actions. Moreover, since the procedures and regimes are independent, a legal person can face sanctions regardless of the sanctioning or even the opening of a procedure against a natural person.

Article 3. The liability of legal entities does not exclude the individual liability of their directors or officers, or any other individual who is the offender, co-offender or participant of the wrongful act.

Paragraph 1. Legal entities shall be held liable irrespective of the individual liability of the individuals referred to in the head provision of this Article.

Article 18. The liability of the legal entity in the administrative sphere does not exclude the possibility of its liability in the judicial sphere.

Regarding the civil liability of legal persons under Law 8,429/1992 (Law of Administrative Improbability), the Attorney General's Office has filed nearly 300 lawsuits in the last five years, claiming over BRL 35 billion (~USD 7bi) in restitutions.

Law 12,846/2013 (CLL) also established the instrument of Leniency Agreement, which is a non-trial resolution agreement with companies that voluntarily come forward with information on corrupt practices and assist authorities in the investigations. Companies that effectively collaborate may be exempted from certain sanctions or have the applicable sanctions attenuated – which include a fine reduction or avoid debarment.

Based on the Brazilian experience and international best practices, leniency agreements are an innovative instrument for investigating and fighting corruption. It has become instrumental to rapidly compensating the Public Administration for damages caused by corrupt acts.

This can be vividly seen by the sheer numbers involved in the leniency policy, since its entry into force in 2014. In this period, Brazilian authorities have concluded 13 leniency agreements with legal entities, resulting in the recovery of nearly BRL 14.5 billion (~USD 2.9 billion), of which BRL 5 billion (~USD 1 billion) have already been effectively repaid to the public treasury.

More information on Leniency Agreements is available at <https://www.gov.br/cgu/pt-br/assuntos/responsabilizacao-de-empresas/lei-anticorrupcao/acordo-leniencia/>

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

The Brazilian CLL established a strict liability regime, meaning that a legal person may face sanctions whenever an act of corruption has been committed in its benefit. Such a provision makes it possible to sanction a legal person for unlawful acts of any individual acting in its behalf, including partners, directors, managers, any employee, and intermediaries.

Article 1. This Law provides for the strict civil and administrative liability of legal entities for acts committed against national or foreign public administration.

Article 2. Legal entities shall be held strictly liable, in the administrative and civil spheres, for any of the wrongful acts established in this Law performed in their interest or for their benefit, exclusive or not.

Moreover, the use of an intermediary to perpetrate an act of corruption is expressly established as a wrongful act under the CLL:

Article 5. For the purposes of this Law, wrongful acts against national or foreign public administration bodies are acts performed by the legal entities referred to in the Sole paragraph of Article 1 to the detriment of

*national or foreign public assets, of public administration principles, or to Brazil's international commitments, and are defined as follows:
III – to demonstrably make use of a third party, either an individual or a legal entity, in order to conceal or dissimulate the entities' actual interests or the identity of those who benefited from the performed acts;*

The CLL has also established that a legal person cannot avoid liability, even if there is a change in its corporate structure, such as mergers and acquisitions.

Article 4. The liability of legal entities remains in the event of amendments to their articles of incorporation, corporate changes, mergers, acquisitions or spin-offs.

Paragraph 1. In the event of mergers and acquisitions, the liability of the successor shall be restricted to the payment of applicable fines and to the full compensation for occasional damages, within the limit of the transferred assets, not being subject to the application of other sanctions provided for in this Law related to acts and facts that occurred before the date of the said merger or acquisition, except in case of simulation or evident fraud intention, which must be duly proved.

Paragraph 2. Parent, controlled or affiliated companies or consortium members, within the scope of their respective consortium agreement, shall be held jointly liable for the perpetration of acts provided for in this Law, being such liability restricted to the payment of applicable fines and to the full compensation for occasional damages.

The CLL has established that a Brazilian legal person can be held liable for any wrongful act (including foreign bribery) committed against a foreign public administration.

Article 1. This Law provides for the strict civil and administrative liability of legal entities for acts committed against national or foreign public administration.

Article 5. For the purposes of this Law, wrongful acts against national or foreign public administration bodies are acts performed by the legal entities referred to in the Sole paragraph of Article 1 to the detriment of national or foreign public assets, of public administration principles, or to Brazil's international commitments, and are defined as follows:

[...]

Paragraph 1. Public agencies and entities, or diplomatic representations of a foreign country, at any government level or scope, as well as legal entities directly or indirectly controlled by the government of a foreign country are all considered foreign public administration.

Paragraph 2. For the purposes of this Law, international public organizations will be considered equivalent to foreign public administration bodies.

Paragraph 3. For the purposes of this Law, those who, even transitorily or without compensation, hold a public position, job or office in government agencies and entities, or in diplomatic representations of a foreign country, as well as in legal entities directly or indirectly controlled by the government of a foreign country, or in international public organizations, will be considered foreign public agents.

Article 9. The Office of the Comptroller General (CGU) is responsible for the investigation, the proceeding of and the decision on the wrongful acts provided for in this Law committed against the foreign public administration, subject to the provision set forth in Article 4 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, enacted by Decree N. 3,678, of November 30, 2000.

Article 28. This Law applies to wrongful acts committed by Brazilian legal entities against foreign public administration, even if such acts were committed overseas.

Incentives for the private sector to cooperate with law enforcement officials are provided mainly in two ways: a mitigated sanction and through the use of non-trial resolutions (leniency agreements). Companies can receive credit - as mitigating factors to be considered in the application of the calculated fine – whenever it cooperates with the investigation and self-discloses the illicit acts committed to the authorities. Moreover, the fine can also be significantly diminished if the company proves that it has in place an effective compliance program. The Office of the Comptroller General (CGU) also monitors compliance programs of companies that signed leniency agreements.

Please refer to answers provided in Section B regarding Brazil's initiatives and policies to protect whistleblowers and incentivize legal entities to adopt integrity programs.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred in actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

Yes. The Brazilian CLL expressly establishes that a legal person may have its assets confiscated when they are proceeds of crime.

Article 19. The Federal Government, the States, the Federal District and the Municipalities, through their respective Public Advocacy Offices or legal representation bodies, or their equivalent, and the Public Prosecution Office may file a judicial action in relation to the wrongful acts set forth in Article 5 of this Law, with a view to the application of the following sanctions to the responsible legal entities:

I – loss of the assets, rights or valuables representing the advantage or profit directly or indirectly obtained from the wrongdoing, except for the right of the damaged party or of third parties in good faith;

The Attorney General's Office of Brazil (AGU) has recovered BRL 1.12 billion (~USD 222 million) in 2020, more than doubling the amount recovered in 2019 (BRL 554 million). The amount represents all asset recovery efforts of AGU, which included the collection of non-tax credits of the federal government and proceedings involving administrative improbity.

<https://www.gov.br/agu/pt-br/comunicacao/noticias/arrecadacao-da-pgu-em-2020-e-o-dobro-do-registrado-em-2019>

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Office of the Comptroller General has successfully established a fruitful cooperation network with foreign law enforcement agencies. In this aspect, it is worth mentioning that CGU holds the position of co-chair of the Latin America & Caribbean Anti-Corruption Law Enforcement Officials' Network (LAC LEN). Additionally, CGU has successfully worked in cooperation with American authorities (SEC and DOJ) in joint investigations.

In this regard, we cite the following cases conducted by CGU that have benefited from information and evidence received through international cooperation:

- a) Telefonica Brasil S.A.: imposition of a fine in the amount of R\$ 45.7mi;
- b) Technip Brasil and Flexibras: leniency agreement, in the amount of R\$ 1,13bi, jointly signed by CGU and the US DOJ;
- c) Samsung Heavy Industries: leniency agreement, in the amount of R\$ 811.786.743,49, jointly signed by CGU and the US DOJ.

Currently, there are also two ongoing cases in Brazil that are using evidence received through international cooperation with Portuguese and American authorities.

CHINA

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. **Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

Since 2017, China has begun to establish the BO mechanism. The People’s Bank of China (PBC) issued the *Notice on Strengthening the Customer Identification Work for Anti-Money Laundering* (No. 235) in 2017 and the *Notice on Further Work on Identifying Beneficial Ownership* (No. 164) in 2018. Based on these two regulations, Chinese financial institutions (FIs) are obligated to identify and verify BO required by FATF Recommendations 10 and 24.

In the past four years, China has made great efforts and obtained fundamental achievements to promote BO transparency. First, all the FIs have planted the requirement to identify and check BO into CDD and business process. Second, all the FIs have completely identified and checked BO of all the existing customers. Third, each year PBC made relevant training courses online and open to FIs. Fourth, PBC took BO as a focus of on-site and off-site inspections to urge the FIs to improve their compliance level.

In June 2021, China published the *Draft Amendment to the Anti-money Laundering Law*. The Draft plans to establish a national centralized registry of BO information and create a general obligation for legal entities to report BO information. The new arrangement for BO in the Draft, if finally adopted, is widely considered as a fundamental progress to improve the market and financial transparency.

- A.2. **Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold**

and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement¹⁴.

Required information can be provided in the form of links to other reviews or published work.

There are two channels available for obtaining BO information: a) BO information from CDD procedures conducted by FIs and b) basic information in company registry as a reliably assistant method to identify BO.

- For channel a), the PBC issued two Notices in 2017 and 2018 to require the AML/CFT regulated institutions to collect BO information in CDD process and provided the identification measures for BO information according to the FATF standards.

- For channel b), the National Enterprise Credit Information Publicity System (NECIPS) provides enterprise information in China, including basic information, shareholders (or “Initiator and Capital Contribution”), directors (or “key personnel”) and sanctions, etc. Based on the identification measures provided in PBC Document No.[2018] 164 (25% of share; other controlling means; and senior management position) which fully meets the FATF standard, BO information of legal persons can be inquired through “shareholders”, “key personnel” and other related information in the NECIPS system. The NECIPS System contains information far more than shareholders’ information, and there is information on directors (or “key personnel”) and sanctions which can be very helpful for competent authorities to understand the share and control (ownership) structure.

A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

In China, competent authorities have general powers to obtain BO information according specific laws. For example, the Criminal Procedure Law authorized the law enforcement and prosecutorial authorities to obtain BO information timely from

¹⁴ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

FIs and the person or legal entity subjected to investigation. Similarly, the taxation authorities have the legal authorization based on the Taxation Management Law. The financial supervisors and the AML regulator are also authorized with similar legal powers. In sum, the competent authorities have sufficient legal authorization to obtain BO from FIs and the person or legal entity subjected to investigation.

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

First, it substantially increases the cost for FIs to identify BO. The FIs should be equipped with special personnel, IT facilities, and outsourcing databases. Second, it is not only costly but also difficult to check and verify the foreign legal persons. The domestic FIs often do not fully understand the foreign laws and have difficulties in checking and verifying the information provided by their customers.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY¹⁵

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

China has taken several measures to help the business prevent and combat corruption and related wrongdoings.

1. In order to safeguard fair competition among business, China revised the Anti-Unfair Competition Law of the People's Republic of China twice in 2017 and 2019, which puts more emphasis on the protection of the rights and interests of business, and increases the administrative penalties for business committing bribery.
2. China promulgated the Regulations on the Management of Foreign Contracted projects, the Measures for the Management of Overseas Investment and the Guidelines for Corporate Compliance of Enterprises' Overseas Operations, and

¹⁵ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

Guidance on Corporate Compliance for State-Owned Enterprises, to help companies enhance corporate compliance and self-discipline, properly invest and operate overseas in accordance with relevant laws and regulations.

3. China has set up a "blacklist" system, which restricts dishonest enterprises from doing business and making investments overseas.
4. China has been actively raising the anti-bribery awareness of its enterprises with trainings and roundtable seminars. In November 2020, the third Seminar on Business Integrity and Compliance for the Belt and Road was successfully held by China and Asian Infrastructure Investment Bank, to enhance the awareness and capacity building of enterprises. Companies participating in the seminar proposed the Initiative on Business Integrity and Compliance for the Belt and Road, and commits to strictly abide by laws and regulations, enhance corporate compliance, and reject business bribery.
5. In 2021, all central enterprises in China has established internal compliance committees, with a view to improving compliance, self-discipline, and preventing corruption risks.

B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

China affords equal protective measures for whistleblowers both in the public sector and in the private sector.

Firstly, the *Constitution of the People's Republic of China* protects the rights of citizens to criticize, suggest, accuse and report, which the corresponding handling authorities must treat seriously and may not suppress, attack or retaliate.

Secondly, China's *Criminal Law*, *Criminal Procedure Law* and *Civil Servant Law* forbid retaliating whistleblowers. Article 254 of the *Criminal Law* criminalizes retaliation and frame-up on whistleblowers by state employees through the abuse of power and exploitation of public office to frame accusers, complainers and critics. Articles 110 and 111 of the *Criminal Procedure Law* provide that Chinese citizens are entitled to report to public security authorities, people's procuratorates and people's courts, and the corresponding state organs must adopt measures to protect the safety of the whistleblowers and accusers. Once again, the legal rights of whistleblowers are protected through the regulations of procuratorial and supervisory agencies. The Supreme People's Procuratorate promulgated a series of regulations protecting the legal rights of whistleblowers, such as the *Regulations of the People's Procuratorates for the Reporting of Illegal Activities* (2014).

Following its inauguration, the National Commission of Supervision issued the *Regulations for the Handling of Reports and Accusations*, which prescribes the protection for whistleblowers. The key content includes: 1) keeping the reported matters and related materials strictly confidential throughout the entire process.

Disclosure of reported content is strictly prohibited; 2) fully protecting the personal identities of whistleblowers and keeping their information strictly confidential. Disclosure of any information on the whistleblowers is strictly prohibited. Reports shall be received or investigation launched without exposing the identities of the whistleblowers; 3) fully protecting the personal and property rights of the whistleblowers and their close families. Protection shall be timely provided according to the law to keep the personal and property rights of the whistleblowers and their close families away from threats and damage as a result of the reporting. Individuals who retaliate whistleblowers or facilitate the retaliation shall be held accountable; and 4) where the whistleblowers suffer personal injuries and related losses as a result of attacks and retaliation, they have the rights to seek compensation according to the law.

China has set up sound reporting channels from the central to provincial, municipal and country level. Whistleblowers are able to write, visit or call the 12388 reporting hotline to report any corruptive act to supervision authorities at all levels.

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively¹⁶?

Where applicable, this can be provided in the form of links to other reviews or published work.

China has a regulatory framework to encourage or require internal controls, ethics and compliance programs.

First, in terms of governmental policy and guidance, China issued the *Provisional Guidance on Compliance Management of Central Enterprises* in 2018, which requires all central enterprises to establish sound compliance mechanisms.

Second, in terms of award and punishment, China has set up a "blacklist" system, which restricts dishonest enterprises, especially those without proper compliance mechanisms, from doing business and making investments overseas.

Third, in terms of awareness raising, China has conducted various training programs and other activities to raise the awareness of enterprises to establish sound compliance mechanisms.

As a result, all central enterprises in China have established internal compliance mechanisms in 2021 and the SMEs are also mobilized to set up similar mechanisms.

¹⁶ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

Business organisations and professional associations in China provide coordination and set up standards for the sector, including the requirements for member individuals and enterprises to abide by laws and regulations, enhance self-discipline and regulate their behaviors overseas. They also provide training and capacity building for businesses on corporate compliance. For example, the China International Contracting Association has set up a compliance and integrity office, which supports its member companies in their development of internal control and compliance programs as well as the promotion of transparency and integrity.

C. LIABILITY OF LEGAL PERSONS¹⁷

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Criminal Law of the People's Republic of China provides for the liability of legal persons. Article 30 provides for the criminal responsibility that a unit (a company, enterprise, institution, state organ or organization) should bear criminal liability, if it commits an act endangering society.

Article 393 establishes as a crime the act by a unit or entity to offer bribes for the purpose of securing illegitimate benefits. Article 164 defines the crime by a unit or entity to offer bribes to non-state personnel and criminalizes paying bribes to a public official of a foreign country or an official of an international public organization for any improper commercial benefit.

¹⁷ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

The penalty can either be penal, civil and administrative.

Article 31 of the Criminal Law provides that a unit (a company, enterprise, institution, state organ or organization) responsible for a criminal act shall be fined.

Article 60 of the Civil Code of the People's Republic of China stipulates that a legal person shall bear civil liability independently with all its property.

The Law of the People's Republic of China Against Unfair Competition and the Government Procurement Law of the People's Republic of China provide for administrative liability of legal persons with improper behaviors including corruption and bribery.

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

The most relevant case is the GSKCI case. In 2013, The Changsha Intermediate People's Court in Hunan Province, China, has ruled that Glaxo Smith Kline China Investment Co. Ltd (GSKCI) has, according to Chinese law, offered money or property to non-government personnel in order to obtain improper commercial gains, and been found guilty of bribing non-government personnel. GSKCI will pay a fine of £297 million (3 billion RMB).

Article 31 of the Criminal Law of the People's Republic of China provides that a unit (a company, enterprise, institution, state organ or organization) responsible for a criminal act shall be fined. The person in charge and other personnel who are directly responsible shall also bear criminal responsibility. Liability of legal persons do not contradict with the penalty against natural persons.

**C. Does your country provide for liability of legal persons in the following cases:
3. where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?**

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

China provides for liability of legal persons where a manager or officer with the requisite level of authority commits the offence and where such a person directs or authorizes a lower-level person to commit the offence. But for the situation where such a person fails to take adequate measures to prevent a lower-level person from committing bribery, it varies in real practice as the final ruling much depends on the evidence of each case. Article 387 of the Criminal Law of the People's Republic of China stipulates that state organs, state-owned companies, enterprises, institutions, and public organizations which solicit or illegally accept articles of property from other people shall be sentenced to a fine if the circumstances are serious; moreover, the personnel who are directly in charge and those who are directly held responsible for the crime are to be sentenced to not more than five years of fixed-term imprisonment or to criminal detention.

China provides for liability of legal persons when intermediaries are used or corporate structures are altered in an effort to avoid liability, on the condition that the evidences are enough for court judgment.

If legal persons commit corruption offenses overseas, China has the jurisdiction. The Chinese government attaches great importance in fighting all kinds of corruption including foreign bribery.

Chinese government has promulgated guidelines for the private sector to follow in setting up integrity programs. For state-owned enterprises, the relevant management authority regularly (usually once a year or half a year) reviews the effectiveness of those programs by, e.g. checking whether there are enough training programs provided, whether the whistle-blowing mechanism is user-friendly and well-functioned, whether there are corruption activities detected and prevented, and etc.

Yes, China has been implementing incentives to foster legal persons' effective corporate compliance programs.

China has provisions to protect employee's rights in case of investigations. They are protected from any retaliation. The Regulations for the Handling of Reports and Accusations prescribes the protection for whistle-blowers, including keeping the reported matters strictly confidential, disclosure of reported content is strictly prohibited, fully protecting the personal information of whistle-blowers and keeping the information strictly confidential, fully protecting the personal and property rights of the

whistle-blowers and their close families, where the whistle-blowers suffer personal injuries and related losses as a result of retaliation, they have the rights to seek compensation according to the law.

For employees, their basic welfare, benefits and legitimate rights, such as the right of defense will be guaranteed during investigation or the prosecution of the legal person.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

If legal persons violate relevant laws of China, the proceeds of crime of legal persons will be traced according to Chinese law.

In 2018, an asphalt production company in northeastern China has been sanctioned for committing the crime by a unit or entity to offer bribes, and paid a fine of 100,000 RMB (source: <https://susong.tianyancha.com/0240ff083cdb11e8b0207cd30ae00c08>). Legal persons which are held accountable for committing a crime are usually sanctioned with fines, and the assets of the legal persons will be traced where necessary.

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

In terms of international cooperation, China has provided and received assistance, such as the inquiry of bank account and evidence collecting in corruption cases involving legal persons.

FRANCE

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included.

Required information can be provided in the form of links to other reviews or published work.

France has transposed the entire EU AML 4 and 5 provisions which incorporate FATF recommendation 24 and 25.

- A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement¹⁸.**

Required information can be provided in the form of links to other reviews or published work.

France has introduced since 2018 a BO central register for legal persons which is open to the general public since April 2021, free of charge. France also benefits from BO registries for trusts and other legal arrangements, as required by EU AML 4.

- A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement**

¹⁸ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

See above.

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

Timely answer from foreign authorities.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY¹⁹

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

Since the last general Accountability Report, France has adopted the [Transparency, Anti-corruption and Economic Modernisation Act 2016-1691 of 9th December 2016](#), known as the Sapin II Act. This act revamped the institutional framework for corruption prevention with the creation of the French Anti-Corruption Agency (AFA) and introduced innovative criminal policy provisions, including the judicial public interest agreement (CJIP), which established a transactional procedure that allows a company to negotiate a fine in order to avoid a trial.

In accordance with the Sapin II Act, the AFA “shall draft guidelines to help public and private sector entities prevent and detect bribery, influence peddling, extortion by public officials, illegal taking of interest, misappropriation of public funds and favouritism” (article 3 2° of the Sapin II Act).

¹⁹ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

Thus, the [AFA's guidelines](#) were first published in December 2017, and updated and supplemented in January 2021.

These guidelines interpret the provisions of the Act dealing with arrangements for preventing and detecting the abovementioned offences and define the procedures for implementing programmes for preventing and detecting corruption and corruption related behaviours that all public or private entities, incorporated under French or foreign laws and doing business in France or abroad may deploy.

Moreover, the Sapin II Act, the implementing decrees, these guidelines and the guides published on the AFA's website constitute the French anti-corruption policy framework. This framework contributes to the implementation of France's international commitments in the fight against corruption and previous offences.

The Agency's publications are accessible on its website (<https://www.agence-francaise-anticorruption.gouv.fr/fr>).

All these measures ensure that businesses have a clear and accessible policy framework on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Transparency, Anti-Corruption and Economic Modernisation Law 2016-1691 of 9 December 2016, known as the Sapin II Law, has set up general rules regarding whistleblowers protection. These rules are gathered in chapter II of the Law, entitled "About whistleblowers protection", from article 6 to article 16.

The provisions of Chapter II are completed by those of the organic law n°2016-1690, of the same day, concerning the competence of the Defender of Rights tasked with "directing to the competent authorities any person reporting an alert under the conditions fixed by the law, to watch over the rights and freedoms of this person".

These new measures are aimed at individuals who disclose, in good faith and in a disinterested manner, certain facts of which they have acquired personal knowledge in the exercise of their duties. They aim to protect employees in the public and private sectors against discriminatory or disciplinary actions to which they may be exposed as a result of their reporting or disclosure.

This enhanced whistleblower protection system includes guarantees of confidentiality, guarantees against retaliation, in particular a reversal of the burden of proof, and sanctions against those who take such retaliation. Specific awareness-raising actions have been undertaken by the Defender of Rights and the AFA to publicize the existence of this mechanism.

To receive legal protection, a whistleblower must meet the definition provided by the law (article 6), based on two elements: the facts that can be reported, and the characteristics of the person making the report.

The whistleblower has also to comply with a graduated three-stage whistleblowing procedure (article 8), as described in the third paragraph of the response II. A.3 :

- first level: the alert is brought to the attention of the employer's direct or indirect superior or a representative designated by the latter;
- second level: if the alert has not been dealt with internally within a reasonable period of time, it is sent to the judicial authority (prosecutor, judge) or administrative authority or the competent professional association
- third level: if the alert has not been dealt with within 3 months, the alert may be made public (media, associations, NGOs or trade unions).

The law also indicates that "in case of serious and imminent danger or in the presence of a risk of irreversible damage", the whistleblower can immediately refer the matter to the regulator (level 2) or to civil society (level 3).

As soon as he or she meets the conditions and has respected the procedure in force, the whistleblower has the following protection (articles 6 to 15):

- The nullity of individual decisions taken in retaliation (dismissal for example) with adjustment of the burden of proof and reinstatement in the job (for the public agent, civil or military, or the employee).
- Criminal irresponsibility, even in the case of disclosure of a secret protected by law (for instance professional secrecy - article 7 creating Article 122-9 of the Penal Code). An exception persists concerning defence secrecy, medical secrecy and the secrecy of lawyer-client relations.
- The guarantee of strict confidentiality of one's identity, under penalty of penal sanctions in case of disclosure of this identity without one's agreement (article 9).
- Civil and criminal sanctions against the authors of retaliation.

This system is effective for both private and public sectors, however considering size thresholds defined by the Law. In detail, appropriate procedures for collecting reports issued by their staff members or by external and occasional employees are established by legal persons governed by public or private law of at least 50 employees, state administrations, municipalities with more than 10,000 inhabitants and public institutions of inter-municipal cooperation with own taxation of which they are members, the departments and the regions, under conditions fixed by decree in Council of State.

Moreover, article 17 of the Law created an internal alert system, different from the one above described and included in the set of anticorruption measures that large companies and public entities must deploy and that must make it possible for employees and casual collaborators to report breaches of the anti-corruption code of conduct.

The transposition of the EU directive n°2019/1937 of October 23, 2019 on the protection of persons who report violations of Union law ("whistleblower directive"), which will take place by the end of 2021, will be the occasion for a revision of the current system, the preliminaries of which have been initiated through a public consultation.

In order to make administrations aware of this issue, a circular was published on July 19, 2018 to present the new system and the protections granted to whistleblowers.

Article 16 of Law No. 2019-828 of August 6, 2019 on the transformation of the civil service introduced an obligation to provide training in ethics for contractual agents recruited to management positions (e.g. head of department, deputy director). In addition to this legal obligation, it was decided to make this training available to all agents appointed to these management positions, including those who are civil servants and already work within the administration. This training, which is currently being developed, will include all subjects relating to ethics, including the obligation to report crimes and offences provided for in Article 40 of the Code of Criminal Procedure, as well as the provisions relating to whistleblowers.

Annex 1 of the AFA's recommendations presents, beyond the implementation of a system for collecting reports, the protection regime for whistleblowers and, in particular, the possibility of "turning to the judicial authority, the administrative authority or the professional orders". In addition, the possibility of referring to the Defender of Rights is mentioned, as he/she is likely to direct people to the appropriate body for the collection of the alert. On its website, the Defender of Rights offers a dedicated welcome as well as a guide on the orientation and protection of whistleblowers, reminding in particular that:

- the whistleblower is criminally irresponsible as long as the definition criteria set by law n° 2016-1691 of December 9, 2016 are met, that the disclosure of information "is necessary and proportionate to the safeguarding of the interests at stake" and that it takes place in compliance with the procedures for reporting whistleblowers (article 122-9 of the penal code) ;

- whether an employee or public agent, civilian or military, the whistleblower may not be dismissed, sanctioned or discriminated against in any way for having reported facts in compliance with the procedure for reporting alerts (article L 1132-3-3 of the French Labor Code; article 6 ter A paragraph 2 of law n° 83-634 of July 13, 1983; article L. 4122-4 paragraph 2 of the French Defense Code).

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies

and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively²⁰?

Where applicable, this can be provided in the form of links to other reviews or published work.

First of all, political contributions by corporations are forbidden in France (Article L. 52-8 of the Electoral Code) and facilitations payments are assimilated to corruption and are forbidden too.

Moreover, the Sapin II Act has established a legal framework which sets out the measures and procedures that companies must implement to prevent and detect the commission of acts of corruption, both in France and abroad. The AFA monitors the existence and effectiveness of these measures

Indeed, the organisations mentioned in the Sapin II Act (article 17 I) must also deploy an anti-corruption programme to comply with the Act, including :

- A code of conduct and related procedures and policies;
- An internal whistleblowing system;
- Corruption risk mapping;
- Third-party due diligence;
- Accounting controls;
- Training about corruption risks;
- Disciplinary rules;
- Internal control for the monitoring and the evaluation of the anti-corruption programme.

In particular :

- Corruption risk mapping, as defined by the AFA, is the cornerstone of the anti-corruption programme. It is the basis for defining the other prevention and detection measures. It contributes to a risk-based approach that requires understanding and assessing the organisation's corruption risks, as well as implementing appropriate and proportionate measures and procedures to manage these risks effectively
- The code of conduct "defines and illustrates the various types of proscribed conduct that could constitute bribery or influence peddling. This code of conduct is to be incorporated into the company's rules of procedure and, by virtue of this fact, it shall be the subject of consultation with the staff representatives as stipulated in Article L.1321-4 of the Labour Code" (article 17 II 1° of the Sapin II Act).
- The [Agency's guidelines](#) recommend that the code of conduct describes proscribed conduct based on the risks identified in the corruption risk mapping. "The code of conduct provisions deal with the types of proscribed conduct the staff are likely to encounter in the course of the company's activities". The guidelines also recommend that the code of conduct

²⁰ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

“stipulates prohibitions of conduct and practices that constitute corruption in the company’s specific context. For this purpose, it may deal with gifts and hospitality, facilitation payments, conflicts of interest, sponsoring and patronage, and, as appropriate, lobbying and entertainment expenses”.

The Agency has also published guides about :

- [The corporate anti-corruption compliance function](#)
- [Anti-corruption due diligence for mergers and acquisitions](#)
- [Gifts and hospitality policy in private and public sector, corporations and non-profits](#)

The Sapin II Act is not legally binding for companies under 500 employees and a turnover of less than 100 million euros, but they all are encouraged to deploy an anticorruption programme. This is the reason why the Agency works on a guide addressed to SMEs, which is not published yet.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

Third party due diligence, which is imposed to the organisations subjected to the Sapin II Act, is a pillar of the promotion of transparency and integrity. Large firms are required to ensure that their partners paid attention to anticorruption practices. By asking about the integrity to their partners (including SMEs), there is a domino effect in respect of anticorruption, from the Sapin II Act to large firms and then to SMEs.

Business organisations and professional associations also support the private sector in the promotion of transparency and integrity by working with the AFA on the guidelines and the guides published. At present, business organisations and professional associations are included in the working group of the Agency for the writing of the guide addressed to SMEs, with the idea that the AFA promotes anti-corruption compliance as a lever for competitiveness.

These organisations also circulate these publications and other information from the AFA to their members (natural people and legal entities). In 2019, a specific document was given to the business organisations and passed to the SMEs.

The AFA regularly organizes training courses and working groups with and for the business organisations and professional associations. More and more SMEs attend these courses and groups.

C. LIABILITY OF LEGAL PERSONS²¹

- C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.**

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

France is currently being assessed by the OECD Working Group on Bribery (site visit in May 2021).

The Law n° 2020-1672 of December 24, 2020 on the European Public Prosecutor's Office, environmental justice and specialized criminal justice has extended the judicial agreement of public interest (CJIP), a transnational mechanism applicable to legal entities intended to improve the effectiveness of the criminal response (reduction of delays and more dissuasive sanctions) to the laundering of corruption and bribery of foreign public officials (article 41-1-2 of the code of criminal procedure).

- C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.**

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

The Sapin 2 Law of January 1, 2009 introduced a major innovation into French law, designed to strengthen the effectiveness and speed of the criminal response to corruption offenses committed by legal persons: the Judicial Agreement in the Public Interest (CJIP), a transactional sanction mechanism.

²¹ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

This new approach has proven to be effective, and the CJIP has already been used on several occasions to sanction legal persons suspected of corruption. The AIRBUS SE CJIP, which was approved on January 31, 2020, should be mentioned. The legal entity was fined more than two billion euros (2,083,137,455 euros) for transnational corruption.

With respect to substantive legal rules, the important ruling of the criminal chamber of November 25, 2020 (n°18-86.955) states that in the event of a merger, the absorbing company may now, under certain conditions, be criminally convicted for acts committed by the absorbed company prior to the merger.

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

Liability of a legal person for acts committed by a non-executive employee

The manager's liability for lack of supervision is not stipulated in the French legislation. However, Article 121-2 of the French Penal Code states that legal persons may be held liable under this text for offenses committed not only by senior managers but also by any employee, regardless of his or her hierarchical level, because the notion of representative covers any employee with delegated authority. No proof of lack of supervision is required.

Regarding the use of intermediary legal entities, the Court of Cassation, in its March 14, 2018 ruling No. 16-82.117, held that the parent company is liable for offenses committed by subsidiaries without legal and financial autonomy: in this case, the

parent company was convicted of bribery of foreign public officials committed through a wholly owned subsidiary.

CJIPs have also been issued against legal entities that have used third-party intermediaries (e.g. CJIP AIRBUS SE).

Any legal entity under French law is subject to French law whether the acts were committed in France or abroad (for illustration ruling March 14, 2018 n° 16-82.117 mentioned above)

The Sapin 2 Act of December 9, 2016 imposed the obligation for the largest companies (consolidated revenues of more than €100 million and employing more than 500 employees) and almost all legal entities governed by public law to adopt a program to prevent and detect acts of corruption.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

The identification, seizure and confiscation of assets has been a high-level political priority in France since the Warsmann Law of July 9, 2010, which created the AGRASC, an agency dedicated to the management of seized and confiscated assets, training and operational support for magistrates and investigators.

In France, confiscation is incurred by legal entities (art. 131-39, 131-16 and 131-43 of the French Penal Code), according to the modalities set forth in article 131-21 of the Penal Code for all crimes or offenses subject to a prison sentence of more than one year, which covers national and transnational corruption and the laundering of these offenses.

Confiscation covers the direct or indirect proceeds, their equivalent in value, the instrument and the object of the offence.

Asset investigation, i.e. the identification of criminal assets for seizure as soon as possible, has become the rule in all investigations of offences generating significant profits, including corruption and its laundering. The judicial police services in charge of corruption investigations systematically carry out financial investigations, facilitated in France by access to numerous files (including FICOBA, the national bank account record). For more complex asset investigations, support is provided by specialized services: the interministerial research groups, interministerial units deployed throughout the country, and the PIAC, an asset recovery office and contact point for international cooperation networks (in particular CARIN) for the identification of criminal assets. This approach has enabled French courts to pronounce confiscations of very significant amounts, in particular in the area of corruption laundering. For example, the confiscation of more than 100 million euros of assets (real estate, vehicles and other valuables) was ordered in a case involving

the laundering in France of assets derived from offenses committed in a foreign country.

The CJIP also has a systematic confiscatory dimension, the amount of the settlement fine being set in proportion to the "benefits derived from the breaches observed" (see for example CJIP Airbus SE).

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

Mutual legal assistance is widely used in cases of corruption, especially when it concerns transnational cases. The Airbus SE case, which led to the formation of a joint investigation team with Great Britain and the United States, provides an illustration of this cooperation, in a case of major importance.

GERMANY

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

Following our last statement on the Accountability Report Questionnaire 2018, we are now in a position to announce that the German registry on beneficial ownership (“Transparenzregister”) is not only accessible by authorized persons and institutions, but also, since 1. January 2020, in all cases to any member of the general public. They have access to name, date of birth, country of residence, nationality of the beneficial owner as well as nature and extent of the beneficial interest held. Furthermore, the Financial Intelligence Unit as well as law enforcement authorities have further and automatized access with additional functions, for example a search tool by name of a beneficial owner.

Since 1 January 2020, foreign companies wanting to acquire real estate in Germany are also required to register in the beneficial ownership registry. Furthermore, obliged entities must report to the registrar authority without undue delay any discrepancies they identify between the beneficial ownership information available in the transparency register and the beneficial ownership information and knowledge available to them.

Finally, on 10 June 2021, in the German parliament passed into law a government bill („Transparenzregister- und Finanzinformationsgesetz“)intended to further improve the present transparency registry. In future, the registry contains an entry for each legal person under private law and registered partnerships. At the moment, the requirement to be registered in the registry is deemed to have been met if other registers already include the information on the beneficial owner, for example the commercial registry. This will also strengthen German efforts in international cooperation for providing beneficial ownership information to other countries in a rapid, constructive and effective manner.

A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the

natural person(s) who ultimately owns or controls a legal person or arrangement²².

Required information can be provided in the form of links to other reviews or published work.

Beneficial owners of legal persons under private law and registered partnerships must notify the information required to fulfil the obligations, e.g. to obtain, hold and disclose beneficial ownership information to competent domestic and international authorities and obliged entities to those associations (as financial institutions or companies) and must notify any change to this information without undue delay. Shareholders being beneficial owners or under the direct control of a beneficial owner must notify the information required to fulfil these obligations to the associations, and must notify any change to this information without undue delay.

Financial institutions or companies have access to the beneficial owner registry to verify the information. Any discrepancies have to be reported to the registrar authority and can result in prosecution as an administrative offence. The registrar authority can provide the discrepancy report to the authority competent for prosecuting administrative offences.

A.3 Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

Competent authorities, law enforcement authorities, supervisory authorities, tax authorities and the Financial Intelligence Unit have full access to the data held in the German beneficial owner registry ("Transparenzregister"). Furthermore, the Financial Intelligence Unit as well as law enforcement authorities have additional and automatized access with additional functions, for example a tool for searches by the name of a beneficial owner. Finally, the government bill mentioned under A.1. I („Transparenzregister- und Finanzinformationsgesetz“) will broaden this advanced access to additional authorities like supervisory authorities, tax authorities and intelligence services.

A.4 Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels.

²² Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

Required information can be provided in the form of links to other reviews or published work.

According to our assessment, the main challenges remain with the complexity of ownership structures, especially in multi-layered companies. Notwithstanding readily available information in public registers, the complexity of identifying and verifying the relevant beneficial ownership information sometimes overburdens especially smaller obliged entities. Furthermore, more attention should be given to the role of specialised service providers. These companies often have great expertise in gathering and administering beneficial ownership information, but are themselves not necessarily subject to AML regulation and supervision.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY²³

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

Since this question is closely related to B.3 and B.4 as well as C.3 please refer primarily to the answers to these questions. Beyond the framework and measures listed there, one additional measure aiming at corruption prevention in businesses is a joint guidance published by the Federal Ministry of Justice and for Consumer Protection and the Federal Ministry for Economic Affairs and Energy, on corruption prevention in companies, in particular when operating abroad. The guidance is published here:

<https://www.bmwi.de/Redaktion/DE/Publikationen/Wirtschaft/korruption-vermeiden.html>

B.2. Does your legislation provide for an effective legal framework to protect whistle-blowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistle-blowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

²³ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

Germany does not have a comprehensive whistle-blower legislation yet, but broad case law. (Reference is made to the 2018 questionnaire.) This will be completed by clear and comprehensive protections for whistle-blowers across the public and private sectors by transposing the EU Directive 2019/1937 on the protection of persons who report breaches of Union law of 23 October 2019 (“whistle-blower directive”) into German law. The implementation process is ongoing.

B.3 Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively ?

Where applicable, this can be provided in the form of links to other reviews or published work.

In the field of company law, in particular (but not only) in the case of capital market-oriented stock corporations directors have to set up a risk management system and an internal control system in order to comply with their duty of care (section 93 para. 1 of the German Stock Corporation Act (AktG)). The risk management system encompasses all means for identifying and addressing risks and therefore is to be understood in a general way. The Act to Strengthen Financial Market Integrity (Finanzmarktintegritätsstärkungsgesetz) will introduce an explicit duty to establish a risk management system and an internal control system for the management board of publicly listed companies with effects from 1 July 2021 (new section 91 para. 3 of the AktG). The AktG also includes provisions regarding transactions with related parties (definition in para. 111a section 1 of the AktG making reference to European law). A transaction with a related party under certain circumstances needs to be approved by the supervisory board (see section 111b of the AktG) and made public (section 111c of the AktG) in publicly listed stock corporations.

Under the current corporate liability framework, failure to take adequate compliance measure such as mentioned in the question trigger corporate liability in case of a corporate offence.

In addition, the new draft corporate liability act adopted by the German government in June 2020 will strengthen incentives for companies to create ethics and compliance programs which, as appropriate, include detailed policies and procedures for particular risk areas. Please see our explanations under C.3.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

There are numerous examples of how business organisations or professional organisations support the private sector. Partly, such support happens in cooperation with authorities or is funded by authorities. Such initiatives include i.a.:

- Guidance by the Global Compact Network Germany on Corruption Prevention, developed together with the German Institute for Compliance and the Alliance for Integrity, commissioned by the Federal Ministry for Economic Cooperation and Development:

<https://www.globalcompact.de/de/themen/Korruptionspraevention.php>

- Brochure and project by the Technical University of Kaiserslautern in cooperation with the Association of small and medium sized businesses, funded by the Feder Ministry of Education and Research:

https://hrmob.wiwi.uni-kl.de/fileadmin/hrmob.wiwi.uni-kl.de/Forschungsprojekte/Herausforderung_KorruptionsPR%C3%84VENTION_in_KMU_meistern.pdf

- The aforementioned Alliance for Integrity (Afln) – initiated by the German Federal Ministry for Economic Cooperation and Development – is a business-driven, multi-stakeholder initiative that pursues the objective of promoting transparency and integrity in the economic system and provides support to businesses to fight corruption on the ground. It tries to achieve its goal by fostering collective action of all relevant actors from private and public sector as well as civil society.

In more detail, it offers practical solutions to and strengthens the compliance capacities of companies as well as their supply chains. Moreover, framework conditions are improved through facilitated dialogue between public and private sectors. Supporters are encouraged to share experiences on local, regional and global level providing opportunities to discuss challenges and to develop solutions, offer practical training programmes and raise awareness through conferences, workshops and research.

Practical examples for the Afln's multi-stakeholder approach are:

- The Afln's Working Group Asia has been working on capacity building in India and Indonesia and brings together business and integrity experts to share knowledge and participate in activities regarding business integrity and combating corruption. The regional sub-working groups focus on the healthcare sector, compliance and human rights. The most recent publications are awareness raising videos for the healthcare sector.

- The Afln's Working Group Latin America focuses on regional compliance experts and consists of representatives from public and private sectors as well as civil society of eight Latin American countries. Its latest publication focused on Data Privacy in the Private Sector in Times of Covid-19.

- In addition to the regional working groups, the Afln participates in various international conferences and events and is globally active. The most recent activity was the launch of a global integrity campaign.

In addition to that, many German business organisations and associations have dedicated workshops, working groups and offer guidance for companies on issues related to integrity, transparency and corruption prevention.

C. LIABILITY OF LEGAL PERSONS

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

In its phase 4 evaluation of Germany in 2018, the OECD Working Group on Bribery (WGB) found that the investigation, prosecution and sanctioning in foreign bribery cases could be improved. In the final report, the examiners addressed a number of recommendations to Germany regarding the liability of legal persons for corruption offences (Please see: <https://www.oecd.org/corruption/anti-bribery/Germany-Phase-4-Report-ENG.pdf>)

Under the current legal framework, administrative liability of legal persons is established under the Act on Regulatory Offences (OWiG). Liability of legal persons is triggered where any “responsible person” (as listed in OWiG section 30 para. 1; including a broad range of senior managerial stakeholders and not only an authorised representative or manager), acting for the management of the entity commits a criminal offence including bribery or an administrative offence including a violation of supervisory duties (and resulting failure to prevent another person in a non-managerial position from breaching a duty) which either violates duties of the legal entity, or by which the legal entity gained or was supposed to gain a “profit” (section 30 in conjunction with section 130 OWiG).

Also in order to implement those recommendations, the German Government adopted a draft bill on corporate liability in June 2020. The government bill for strengthening the integrity of business conduct (Gesetz zur Stärkung der Integrität in der Wirtschaft) was discussed in the Bundesrat (the second chamber) and was submitted to parliament (Deutscher Bundestag) for deliberating and adoption.

The bill provides for the creation of a new act for sanctioning of corporate offences (Gesetz zur Sanktionierung von verbandsbezogenen Straftaten – hereinafter “Corporate Liability Act”, “Act”). The Corporate Liability Act will replace existing provisions for corporate liability for criminal offences in the Administrative Offences Act (Ordnungswidrigkeitengesetz - hereinafter “OWiG”).

The Act will provide a new legal framework for the liability of legal persons and associations (operating with a commercial purpose) for corporate offences. The investigation and prosecution of corporate offences will be subject to the principle of legality, making it mandatory to initiate and conduct investigations also against the concerned company or companies, and not only the natural person. The principle of legality will insofar replace

the principle of discretionary prosecution that governs existing OWiG provisions for corporate liability and will hence ensure a uniform level of prosecution also against companies across the 16 federal states ("Länder").

A set of appropriate sanctions for corporate offenses – including bribery of foreign public officials – will be introduced. Moreover, the Corporate Liability Act will promote effective compliance measures and incentivize companies to detect and internally investigate criminal offences.

Under the OWiG, the court or competent prosecutor can impose a regulatory fine which carries an upper limit of EUR 10 million. In addition, the legal person can also face confiscation of its illegally obtained assets and any benefits derived there from, and for which there is no upper limit (OWiG sections 17 and 30, and the Criminal Code sections 73 and 75).

Section 9 of the Corporate Liability Act introduces the possibility of imposing an administrative fine of up to 10 % of the company's turnover for a corporate offence in case the yearly turnover of this company exceeds 100 million euros. The provisions of section 9 ensure that sanctions against legal persons, including for the charge of foreign bribery, have a dissuasive effect also for large multinational companies. At the same time, the proportionality of the applicable sanction is guaranteed due to the graduated sanctioning system which takes into account the different economic capacities of small or medium-sized and large companies.

The company's average turnover of the past three years will constitute the basis for calculating the maximum amount of the fine imposed on large companies in cases of section 9 paragraph 2, whereas section 9 paragraph 1 contains maximum amounts for companies with a turnover lower than 100 million euros.

For intentional corporate offences, the maximum fine for small and medium-sized companies with an annual turnover lower than 100 million euros remains fixed at 10 million euros, which corresponds to a relative maximum sanction of at least 10% of the company's annual turnover. For cases of negligence the maximum monetary sanction is limited to the amount of 5 million euros for small and medium-sized companies. For companies with an annual turnover of more than 100 million euros, the maximum amount in cases of negligence is fixed at 5% of the company's turnover. The reduced maximum amount in case of negligence ensures that sanctions remain appropriate with regard to the severity of the offence the legal person is held liable for.

Section 9

Amount of corporate monetary sanction

(1) The corporate monetary sanction imposed

1. in the case of an intentional corporate offence is at least 1,000 euros and at most 10 million euros,
2. in the case of a negligent corporate offence is at least 500 euros and at most 5 million euros.

(2) In the case of a corporation with an average annual turnover of more than 100 million euros, the corporate fine, in derogation from subsection (1),

1. in the case of an intentional corporate offence is at least 10,000 euros and at most 10 per cent of its average annual turnover,
2. in the case of a negligent corporate offence is at least 5,000 euros and at most 5 per cent of its average annual turnover.

The global turnover of all natural persons and corporations over the last three business years preceding the conviction is to be used as the basis for determining average annual turnover, insofar as these persons and corporations operate as an economic unit with the corporation. The average annual turnover may be estimated. No account is taken of the turnover of corporations which are not engaged in business operations.

In the WGB follow-up report from March 2021 (<https://www.oecd.org/daf/anti-bribery/germany-phase-4-follow-up-report.pdf>), the WGB commended Germany for the efforts undertaken to transform the conceptual foundation of the existing corporate liability regime and to make it more effective.

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

For information regarding cases of foreign bribery in Germany please refer to the phase 4 evaluation and follow-up reports by the WGB: <https://www.oecd.org/daf/anti-bribery/germany-phase-4-follow-up-report.pdf>.

Yes, the German corporate liability regime does allow for proceedings against the legal person to take place irrespective of any proceedings against a natural person. An administrative proceeding pursuant to sections 30, 130 OWiG can be opened solely against the legal person.

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

(a) Yes, the existing legal framework provides for the liability of legal persons in all three cases. Where a manager or officer with the requisite level of authority commits the offence, the legal person can be held liable pursuant to section 30 OWiG. Where such a person directs or authorizes a lower-level person to commit the offence, the liability of the legal person can exceptionally be triggered under the conditions of section 25 para 1 Criminal Code. This requires that the lower-level person cannot be held liable of the offence i.e. because the person does not display the necessary level of intent or acts justified.

The legal person can also be held liable for cases where a manager or officer with the requisite level of authority fails to take adequate measures to prevent a lower-level person from committing such an offence pursuant to sections 130, 30 OWiG.

If managerial staff commits a criminal offence, legal persons are sanctioned by the criminal court, usually in connection with the proceedings against the natural person who committed the crime. Where managerial staff commits an administrative offence, including breach of duty resulting in a criminal offence, the public prosecutors' office is responsible for sanctioning the legal person.

(b) The liability of a legal person can also be triggered where an offence is committed by an intermediary with the involvement of the legal person's management. The altering of corporate structures can trigger successor liability which is regulated in section 30 para. 2a OWiG and will be broadened under the new legislation.

(c) Yes, provided Germany has jurisdiction over the foreign bribery offence committed by the natural person acting for the legal person. The draft legislation current before parliament, will result in a broad inclusion of offences committed abroad which allows a consistent prosecution and sanctioning of German companies (i.e. those with a seat in Germany) for corporate crimes committed abroad. It also includes offences to which German criminal law does not apply. Section 2 para 2 requires that the act would constitute a criminal offence under German law if it had been committed in Germany and that the act is punishable in the country where it was committed.

(d) +(e)

The German anti-corruption framework comprises incentives for compliance and integrity programs i.e. in the context of public advantages:

The new Competition Register helps fight white collar crimes – including corruption – in the field of public procurement and contributes to ensuring fair competition for public contracts. It will enable more than 30,000 contracting authorities to obtain information whether an undertaking has committed relevant violations of the law and therefore can or must be excluded from a public procurement procedure.

The nationwide online Competition Register is currently being built up by the Federal Cartel Office to gradually take effect in the course of 2021. As a fully digitised federal register in Germany, the Competition Register is a highly ambitious IT project with interfaces to many administrative authorities. The register will dispose of a number of interfaces to external bodies (e.g. public prosecutor's **offices**). **Decisions like criminal convictions, penalty orders or decisions on fines** – some of which must exceed a certain minor threshold as

concerns the level of the sentence imposed – are reported to the Competition Register electronically and enable seamless inquiries from public authorities.

On one hand, the register is a very effective deterrence tool for serious economic offences: Every contracting authority is obliged to consult the register before awarding a contract with an estimated value of EUR 30,000 or more. Below this threshold, consultations of the Registers are possible on a voluntary basis. Undertakings with an efficient and functioning integrity program will be less likely to commit economic offences and, thus, to be listed in the Competition Register.

On the other hand, the Competition Register provides incentives to prevent misconduct in the future by offering companies a “self-cleaning” mechanism. While entries in the Competition Register are automatically deleted after 3 or 5 years, undertakings may apply for earlier deletion of the entry following “self-cleaning”, i.e. demonstrating that they have taken effective compliance measures.

For self-cleaning measures to be successful, undertakings must demonstrate that they fulfil the following requirements:

- the undertaking at stake compensates or commits to compensate for any damage caused by the infringement,
- the undertaking cooperates both with the investigating authorities and the contracting authority in the clarification of the circumstances linked to the misconduct,
- the undertaking takes specific technical, organisational and personnel-related measures to prevent further criminal offences or misconduct.

The Federal Cartel Office examines whether the self-cleaning measures taken by the respective undertaking are sufficient or not. Where a request for earlier deletion has been granted following sufficient self-cleaning measures, contracting authorities and entities are bound by this decision and can no longer exclude undertakings based on the misconduct in question.

Additionally, within the anti-bribery measures of the German export credit guarantee system the compliance management system (CMS) of a company will be assessed as part of the enhanced due diligence procedure according to the OECD Recommendation on Bribery and Officially Supported Export Credits if there are indications for corruptive misconduct. A company is not released from the enhanced due diligence procedure unless it improves its compliance management program, if necessary, or proves that it has a robust CMS. As a result, the private sector is encouraged to implement or maintain an adequate CMS. The level of compliance is assessed on the basis of the company's answers to a comprehensive questionnaire. In addition, the company has to present its internal anti-bribery measures and a case scenario.

The fine-reducing effects of effective compliance management systems (CMS) is another important incentive for the private sector to invest into integrity programs. In a decision from 2017 (BGH 1 StR 265/16 of 9 May 2017), the Federal Supreme Court (Bundesgerichtshof – BGH) has for the first time commented on this effect. The BGH concluded that the establishment and ongoing improvement of a CMS must be taken into account in order to reduce fines, and at the same time stated that this effect can also be attributed to improvements made to a CMS - in the course of ongoing proceedings. At the same time, the BGH emphasises that a fine to be imposed for a compliance violation should exceed the economic benefit derived from the offence.

This ruling is a milestone in the compliance discussion. The court's jurisprudence has established the following principles for the fine-reducing effect of CMS:

1. the enormous efforts of a company to establish or improve a compliance management system can also have the effect of reducing fines. This means that a CMS not only serves to prevent breaches of rules in the company, but that a CMS can also lead to a reduction in the fine to be imposed in the event of a breach of rules.
2. improvements to existing CMSs made during ongoing proceedings must also be taken into account.
3. This applies not least because, the establishment or revision of a CMS is also relevant for the avoidance/reduction of possible fines for corporate management bodies under section 130 OWiG.

The Corporate Liability Act will further introduce rules for the taking into account of compliance measures in determining

- the liability of the company for offences committed by non-managerial staff
- whether the conditions for dispensing with prosecution against a legal person are met (sections 36, 37; see below recommendation 3d); specifically, section 36 allows the prosecution with the approval of the court to refrain from the prosecution of companies subject to the imposition of conditions and/or directions if the severity of the crime does not make a sanction indispensable. Where appropriate, the company can also be directed to introduce and/or improve its compliance measures as a condition for dispensing with prosecution.
- the appropriate type and level of sanctions for a corporate offence (section 10 paragraph 1 numbers 1 and 2, section 15 paragraph 3 numbers 6 and 7). Specifically, section 10 paragraph 1 of the draft law allows the courts to refrain from sanctioning the legal person with reservation of a fine if the following cumulative conditions are met:
"1. it is to be expected that issuing the warning is sufficient to prevent future corporate offences for which that corporation is responsible in accordance with section 3 (1),
2. the overall assessment of the corporate offence and its consequences indicate that special circumstances exist which obviate the need to impose a corporate fine, and
3. the defence of the legal system does not necessitate imposition of a corporate fine."

In this case, the court can issue a warning to the responsible legal person and can impose conditions e.g. the payment of a compensation to the treasury (section 12) or directions (section 13). Section 13 paragraph 2 expressly introduces the possibility for the court to direct the legal person to design and implement measures for the prevention of corporate crimes and to provide proof of their implementation through certification by a competent authority. The authority selected to monitor the company's efforts has to be approved by the court. Such directions will become an important tool in promoting effective compliance, including anti-corruption compliance.

Section 13 para 2 and the possibility for the court to direct the legal person to design and implement compliance measures and to supply proof by an expert institution to be approved by the court of their implementation are also applicable in conjunction with the provision on deferred prosecution in section 36.

(f) the Corporate Liability Act will provide incentives for companies to carry out internal investigations in order to assist investigation authorities in detecting and prosecuting corporate offences, e.g. foreign bribery offences. In sections 16 and 17, the Act draws up precise conditions under which a company's internal investigations can be considered as a mitigating factor by the courts. Section 17 paragraph 1 numbers 1 and 3 define the

degree of co-operation expected from companies. Section 17 states that the concerned company's internal investigations need to have "considerately contributed to solving the case" and that, in addition, the company's management or representative in charge of the investigations is required to fully collaborate with enforcement authorities throughout their investigations. The requirement to considerately contribute to the success of the official investigations

The appropriate concrete level of cooperation required by these provisions has to be determined by the courts on a case by case basis, taking into account, e.g., the size of the company and the severity of the charge.

In order to guarantee that the results of internal investigations remain legitimate sources for legal authorities, section 17 para 1 number 5 stipulates that internal investigations must be conducted in respect of the guarantees of a fair trial, specifying e.g. that, when employees are questioned, they need to be previously cautioned that their answers can be used in a criminal proceeding.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

Yes, the German legal framework provides the possibility to trace and confiscate proceeds of crime obtained by a legal person pursuant to the relevant rules of the Code of Criminal Procedure. Reference is made to Germany's asset tracing profiles: https://www.bmjv.de/SharedDocs/Downloads/EN/G20/Asset_Tracing_Country_Profiles.pdf?__blob=publicationFile&v=2
http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Asset%20Tracing%20Country%20Profiles.pdf;jsessionid=0836AB8815BD74DED964B767E0F38EE1.2_cid289?__blob=publicationFile&v=1

Both in a criminal and in an administrative proceeding, the court or competent public prosecutor can refrain from issuing an administrative fine (i.e. due to serious efforts of the company to improve the CMS or important contributions to the official investigations) and confiscate illicitly gained profits by issuing a confiscation order against the legal person pursuant to section 29a para 1 OWiG (in case of an administrative offence) or section 73b StGB in case of a criminal offence.

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

In August 2019, Germany received a request for mutual legal assistance from Mexico in a case involving corruption with (presumably) the participation of legal persons (so-called "Odebrecht fraud"). The request was forwarded to the competent public prosecutor's office. Mexico requested information, among other things, as to whether the accused was, as he claimed, a partner in a German limited liability company. In addition, it was to be checked whether the accused holds shares in other German companies or has otherwise gained income in Germany. The Mexican request has been fully executed in January 2021. The responsible public prosecutor's office has i.e. carried out searches in the "Panama Papers".

In addition to that, Germany received from and sent to other countries including G20 countries requests in corruption cases involving legal which are partly still pending.

INDIA

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

Aimed at enhancing Beneficial Ownership transparency, the Significant Beneficial Owner Rules 2018 have changed the original definition of “significant” beneficial ownership from a 25% shareholding to a 10% shareholding.

- 1.1 The Companies (Amendment) Act, 2017 was enacted in Jan, 2018 contains clause 22 (amending section 90 of The Companies Act 2013) which requires every individual holding (alone or together with other entities) beneficial interest of 10% or more in shares of the company or having significant influence or control over the company (“significant beneficial owner”) to make a declaration to the company specifying his interest and other particulars.
- 1.2 Further, the company has to maintain the Register of interest declared by such individuals and changes therein. The company is also required to file a return of significant beneficial owners and subsequent changes, if any, with the Registrar of Companies. For this purpose, the company is empowered to ask information from any person about such beneficial ownership. When no natural person can be defined as an SBO, the SBO should be identified as a senior manager.
- 1.3 The Significant Beneficial Owner Rules 2018 issued by the Ministry of Corporate Affairs in June 2018 later amended, requiring both resident and foreign SBOs (Significant Beneficial Owners) to declare the nature of their interest to that company, where the 'significant' threshold was set at 10 per cent of the ownership. It also included individuals who have the right to exercise significant influence or control over the reporting company.

Moreover, SBOs are required to notify the relevant companies in which they have an interest. Therefore, every individual who becomes an SBO, or who changes their SBO status also must declare it to the company within 30 days, and the company must report these declarations to the official registrar of companies within 30 days of receiving them. In fact, failure to disclose can result in fines or even imprisonment for the SBO. Moreover, the relevant company must apply for an order restricting the owner's rights to sell the shares or receive dividends.

2. The Reserve Bank of India (RBI) on December 18, 2020 has issued an amendment to Master Direction (MD) No.: 81/14.01.001/2015-16 in respect of the Central Know Your Customer Registry (CKYCR) (operational for individual customers) – extending the same to cover Legal Entities (LEs). Accordingly, REs shall upload the KYC data pertaining to accounts of LEs opened on or after April 1, 2021, on to CKYCR in terms of Prevention of Money Laundering (Maintenance of Records) Rules, 2005. REs shall ensure that during periodic updation, the customers' KYC details are migrated to current Customer Due Diligence (CDD) standards.

CKYC registry, operational since July 2016, is the centralized repository of records for the customers in financial services. The registry for Central KYC or cKYC is maintained by the Central Registry of Securitization and Asset Reconstruction and Security Interest (CERSAI) in India. This centralized registry ensures that norms for KYC are standardized across the financial sector in India. It also ensures that inter-usability of KYC records and data making sure that the consumer does not have to do KYC each time when opening a financial relationship with an entity.

Central KYC application can be accessed by authorised institutions or other notified institutions under the Prevention of Money Laundering Act or rules framed by the Government of India or any Regulator (RBI, SEBI, IRDA, and PFRDA) there under.

Pursuant to the provisions of section 90 of the Companies Act, 2013 (the Act) to identify the natural person controlling a corporate entity and to check misuse of corporate vehicles for the purpose of evading tax or laundering money for corrupt or illegal purposes, including for terrorist activities, Companies (Significant Beneficial Owners) Rules, 2018 [SBO Rules] were notified in June, 2018 by the Ministry of Corporate Affairs (MCA).

Further, on the basis of feedback received on these rules, amendments have been made on 8th February, 2019 to provide more clarity on the definition of 'significant beneficial owner' and manner of filing of relevant declaration to the company and the Registry. Every reporting company has also been put under obligation to take necessary steps to find out if there is any individual who is a significant beneficial owner in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in relevant Form.

The Companies Act, 2013 and all notifications and circulars etc issued thereunder are available on the website of MCA.

<https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks.html>
https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=11566

- A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement²⁴.**

Required information can be provided in the form of links to other reviews or published work.

India uses multi-pronged approach for collecting and maintaining Beneficial Ownership information by utilising the Registry Approach (Maintained by Ministry of Corporate Affairs), the Existing Information/Databases Approach (FIs, DNFBPs, Stock Exchanges) and the Company Approach (The Companies Act, 2013). In addition to this, Income Tax Department extensively requires the companies to provide information about BO, holding companies, subsidiaries and related parties/associated enterprises in the annual tax returns filed by them. Further, various measures have been taken by the Government of India which aim at enhancing the quality of BO information through verification of self declared information and interlinking of databases through unique identification system

Section 90 of the Act read with (Significant Beneficial Owners) SBO Rules provide for requirements with regard to such mechanism viz,

Every individual who is a SBO in a reporting company, is required to file a declaration with the company in specified Form within period specified in the SBO Rules.

Once the relevant Company receives the declaration from the SBO, it is required to file a return in specified Form with the Registrar of Companies (MCA-21 Electronic Registry), within 30 days of receipt of such declaration. Any document filed in the Registry can be inspected by any member of the public on payment of fees specified in this regard.

Further, every company is also required to maintain a register of SBO in the specified Form which is open for inspection by any member of the company on payment of requisite fees.

If the SBO fails to submit the information required by the notice issued by the company or when the information given is unsatisfactory, then the company may

²⁴ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

approach the Tribunal for restricting the transfer and suspension of the rights attached to such shares. In case no application is filed for vacation of such order within a period of one year, such shares will be transferred to the Investor Education and Protection Fund Authority (IEPFA) without any further restrictions on transfer by such Authority.

1. Company Approach (The Companies Act, 2013)

1.1 The Government of India has already implemented the reporting requirements at company level through Companies (Amendment) Act, 2017 was enacted in Jan, 2018 and the Significant Beneficial Owner Rules 2018 issued by the Ministry of Corporate Affairs in June 2018 as detailed in A1.

1.2 As per these rules each SBO is required to complete form No. BEN-1 and to the company. Once this declaration is made, the company must then file form No. BEN-2 with the Registrar, thus lodging the SBO information. Penalties for not complying can be strict, including the suspension of rights attached to shares.

2. Registry Approach (Maintained by Ministry of Corporate Affairs(MCA)):

The Registrar of Companies (RoC) receives online applications for company formation and only after verification, when it is satisfied with an application, including the supporting information and documentation submitted, the applicant company is incorporated. The updation is maintained by the individual companies as required under the law. Companies are required to keep the information reported to the Registrar of Companies up-to-date and the Registrar of Companies has enforcement and sanction powers under various provisions to ensure that information recorded in the registry is correct and up-to-date. The timeframe for filing information with the Registrar varies from provision to provision. In case the up-to-date filing is not made by the companies within the prescribed timeframe, additional fees are levied. Delays in filing information constitute an offence for which prosecution may be launched against the company.

Thus, RoC database maintained by the MCA aimed maintaining up-to-date BO information and can be accessed by the Central Authority of India and other LEAs.

3. Existing Information Approach (FIs, DNFBPs, Stock Exchanges)

3.1 The reporting entities are required to do a KYC (Know Your Customer) as a precautionary procedure and the reporting entities are required to periodically update the KYC records which is a part of their ongoing due diligence on accounts. The periodicity of such updation varies in categories of accounts depending on the bank's perception of risk.

3.2 Additionally, earlier all the RBI Circulars on Know-Your-Customer (KYC) were consolidated in a Master Direction on KYC titled "Master Direction – Know Your Customer (KYC) Direction, 2016" dated 25 February 2016 (Master Circular), which was last amended on 8 December 2016.

3.3 The PMLA states as per rule (9) (I) (1)(1A) "Subject to the provisions of sub-rule (1) of the Prevention of Money-laundering Act, 2002 every reporting entity shall

within three days after the commencement of an account-based relationship with a client, file the electronic copy of the client's KYC records with the Central KYC Records Registry"; (1C) Where a client submits a KYC Identifier to a reporting entity, then such reporting entity shall retrieve the KYC records online from the Central KYC Records Registry by using the KYC Identifier and shall not require a client to submit the same KYC records or information or any other additional identification documents or details; (1D) A reporting entity after obtaining additional or updated information from a client under subrule (1C), shall as soon as possible furnish the updated information to the Central KYC Records Registry, which shall update the existing KYC records of the client and the Central KYC Records Registry shall thereafter inform electronically all reporting entities who have dealt with the concerned client regarding updation of KYC record of the said client.

3.4 The Central KYC Registry is a centralized repository of KYC records of customers in the financial sector with uniform KYC norms and inter-usability of the KYC records across the sector with an objective to reduce the burden of producing KYC documents and getting those verified every time when the customer creates a new relationship with a financial entity.

3.5 Central KYC application can be accessed by authorised institutions or other notified institutions under the Prevention of Money Laundering Act or rules framed by the Government of India or any Regulator (RBI, SEBI, IRDA, and PFRDA) there under.

3.6 The SEBI had also issued a Master Circular in 2010 on Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) with a focus on CDD obligation of securities market intermediaries under the PMLA. By 2019, SEBI also mandated disclosures by listed companies on SBO.

3.7 In addition to the above-mentioned the Government of India has also taken significant steps to create the record of 'Beneficial Ownership' of all legal entities. Under the Indian Taxation Laws, all such legal entities including any such arrangements must file their annual tax return electronically, mandatorily containing the details of at least one bank account in India in their name with effect from Financial Year 2013-14. India relies primarily on the availability of beneficial ownership with financial institutions under the AML/CFT legislation, the full coverage of which is ensured through a tax filing requirement. Companies, partnerships and trusts are obliged to file an annual tax return electronically, which must include the details of at least one bank account in India in their name.

4. LEAs have the powers to enquire and require the production of documents and evidences for identifying the BO

5. Law Enforcement Agencies (LEAs) can seek information under section 50 of PMLA and Section 91 of CrPC. Search & Seizure provisions under section 17 of PMLA gives enough legislative powers to get required information.

6. The LEA can call for information from various sources including FIU, different reporting entities, Registrar of Companies, open source databases, Income Tax Department, Customs and Excise Department, other State Departments etc.

A.3 Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

The Registrar of Companies (RoC) Company Registry contains BO information in respect of corporate entities and is maintained by the Ministry of Corporate Affairs. It aimed maintaining up-to-date BO information through various self declaration requirements placed upon corporates and penalties for non-updation and furnishing inaccurate information. This can be accessed by the Central Authority of India and other LEAs.

As pointed out in the previous SN, once the relevant Company receives the declaration from the SBO, it is required to file a return in specified Form with the Registrar of Companies (MCA-21 Electronic Registry), within 30 days of receipt of such declaration. Any document filed in the Registry can be inspected by any member of the public on payment of fees specified in this regard. Accordingly, the public can view such forms on payment of requisite fees.

The Registrar of Companies (RoC) receives online applications for company formation and only after verification, when it is satisfied with an application, including the supporting information and documentation submitted, the applicant company is incorporated. The updation is maintained by the individual companies as required under the law. Companies are required to keep the information reported to the Registrar of Companies up-to-date and the Registrar of Companies has enforcement and sanction powers under various provisions to ensure that information recorded in the registry is correct and up-to-date. The timeframe for filing information with the Registrar varies from provision to provision. In case the up-to-date filing is not made by the companies within the prescribed timeframe, additional fees are levied. Delays in filing information constitute an offence for which prosecution may be launched against the company.

The Central KYC Registry is a centralized repository of KYC records of customers in the financial sector with uniform KYC norms and inter-usability of the KYC records across the sector with an objective to reduce the burden of producing KYC documents and getting those verified every time when the customer creates a new relationship with a financial entity.

Central KYC application can be accessed by authorised institutions or other notified institutions under the Prevention of Money Laundering Act or rules framed by the Government of India or any Regulator (RBI, SEBI, IRDA, and PFRDA) there under. This is a supplementary information platform in addition to company registry.

Law Enforcement Agencies (LEAs) can seek information under section 50 of PMLA and Section 91 of CrPC. Search & Seizure provisions under section 17 of PMLA gives enough legislative powers to get required information.

The LEA can call for information from various sources including FIU, different reporting entities, Registrar of Companies, open source databases, Income Tax Department, Customs and Excise Department, other State Departments etc.

Thus, LEAs are empowered to make the requisite BO information available to the Central Authority in pursuance to a request made by a foreign jurisdiction.

A.4 Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels.

Required information can be provided in the form of links to other reviews or published work.

- i) The primary challenge in exchange of reliable BO information is the manpower and resource constraints faced by the relevant agencies considering huge number of entities incorporated and complex ownership structures
- ii) In cases where complex ownership structures are deliberately designed to mask the actual BO of legal entities, identification of the actual BO requires investigation which is complex and time consuming.
- iii) There is scope for leveraging technology such as unique identification numbers for inter-linking of BO information available in Central registries and the existing databases containing BO.
- iv) Financial Criminals are proficient at often using multi-layered and multi jurisdictional legal structures, including shelf and shell companies, to launder illicit funds and hence requires regular monitoring of the companies at domestic level
- v) One of the major impediments at the international level is accessing BO information on timely basis. A mechanism may be devised to ensure timely access of the information among the world countries.
- vi) Another major impediment is the availability of accurate BO information. Cooperation among FIUs have certain limitations. Certain foreign FIUs rely mainly on the reports being filed with them by their respective reporting entities. Either due to administrative or legal constraints, they are not able to approach their reporting entities to collect information apart from what is already available in the reports filed with them. Certain other FIUs routinely resort to redirecting requests for information to websites hosting public registries. Usage of such registries is not very obvious and we believe that the maximum utility of such registries could be derived by the country itself which designed such registry. This makes it difficult to rely on the information provided as this is not verified.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY²⁵

- B.1 Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.**

Where applicable, this can be provided in the form of links to other reviews or published work.

The Companies Act provides for a number of provisions to ensure that companies function in a transparent and accountable manner. Non-compliance with provisions of the Act is liable for punishment/payment of penalty etc. The Act also provides for duties of the directors (section 166).

Also, the directors are required to give a responsibility statement to the members on annual basis to the effect that the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. [section 134(5)(f) of the Act].

- B.2. Does your legislation provide for an effective legal framework to protect whistle-blowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistle-blowers?**

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

- Every listed company and other class of companies prescribed through rules are required to establish a vigil mechanism (whistle blowing mechanism) for directors and employees to report genuine concerns in the specified manner.
- The said mechanism is required to provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for

²⁵ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

direct access to the chairperson of the Audit Committee in appropriate or exceptional cases. The details of establishment of such mechanism are required to be disclosed by the company on its website, if any, and in the Board's report.(Section 177(9)/(10)). More details in this regard have been provided in Companies (Meetings of Board and its powers) Rules, 2014 (Rule 7).

- Recently, Government introduced the Companies (Auditor's Report) Order, 2020 ("CARO 2020") with the objective of strengthening the corporate governance framework. CARO 2020 necessitates enhanced due diligence and disclosures on the part of auditorsto bring in greater transparency in the financial state of affairs of the companies. Pursuant to this Order, the auditor is required, inter alia, to dislose to the members every year whether he has considered whistle-blower complaints, if any, received during the year by the company.

B.3 Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively²⁶?

Where applicable, this can be provided in the form of links to other reviews or published work.

The Companies Act provides for specific requirements with regard to the eligibility, authorisation and disclosure aspects when a company intends to contribute to charitable funds or for political contributions. (Section 181 and 182). These provisions are applicable to SMEs also.

B.4 Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Industry Chambers and Professional Institutes organise various programmes, seminars, webinars and other interactive meetings to disseminate issues of importance for the corporate sector. A number of such initiatives (including through Investor Education and Protection Fund Authority (IEPFA)) are taken for promoting awareness about changes made in legal provisions in the statutes administered by Ministry of Corporate Affairs, Government of India.

²⁶ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

C. LIABILITY OF LEGAL PERSONS²⁷

- C. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.**

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

India has established the liability of legal persons for corruption and corruption related offences at national level. Section 9 of the amended Prevention of Corruption Act, 1988 creates an offence with respect to a commercial organization for its failure to prevent bribery. Under this section, if any person associated with a commercial organization gives or promises to give any undue advantage to a public servant in order to obtain or retain business or an advantage in the conduct of business for such commercial Organization, then such commercial organization shall be punishable with fine.

However, it will be a defence for the commercial organization to prove that it has adequate procedures designed to prevent persons associated with it from doing such conduct. The provisions of Section 10 of the PC Act create a vicarious liability in respect of the senior management if the offence under Section 9 is committed with the consent and connivance of such senior management. Under this Section, where an offence under Section 9 is committed by a commercial organization, and such offence is proved in court to have been committed with the consent or connivance of any director; manager; secretary or other officer of the commercial organization, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. Further, the provisions of Section 3(42) of the General Clauses Act, 1897, defines 'person' to include any company or acquisition or body of individuals, whether incorporated or not thus where ever the law uses the word "person", the liability of the legal person stands created by virtue of position.

The Company Act has a robust structure to take legal action in case of non-compliances with the provisions of the Act by any company (legal entity) or its officers in default (OID). For serious offences, higher punishment (fine or imprisonment or

²⁷ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

both) has been provided. The more serious offences (including those connected with fraud) are punishable with “fine and imprisonment” and are non-compoundable. For procedural and technical defaults the in-house adjudication mechanism exists for levying civil/monetary penalties on the defaulting company or its OIDs. The term “officer who is in default” has been defined in section 2(60) of the Act and covers “key managerial personnel”, whole-time director and other directors/officers of the company, as provided in the text of such definition. In the exercise undertaken in 2018-2020 for decriminalisation of minor/procedural offences under the Act, the more serious offences (non-compoundable) have been kept without any change.

Link to India’s Executive summary 1st cycle UNCAC review

<https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/Implementation/ReviewGroup/ExecutiveSummaries/V2003403e.pdf>

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

As mentioned above, the Company Act provides for criminal liability for offences (involving criminal intent) to be punishable with fine or imprisonment or both. It also provides for civil liability for minor/procedural defaults for which monetary penalty is leviable under In-house adjudication mechanism provided in the Act. The penal provisions (included in individual sections of the Act) provide for liability against company (legal persons) and/or officer in default (OID) who is a natural person depending upon the nature of the offence. Clear demarcation in this regard has been provided in the Act. The court/adjudicating officer shall be the competent authority to take decision with regard to action against company or its OIDs or both. Similar analogy has been followed in the LLP Act, 2008.

Case Study

Supreme Court of India in 2005 in Standard Chartered Bank v. Directorate of Enforcement in a majority decision ruled that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which punishment prescribed is mandatory imprisonment.

Yes. A legal juridical person may be prosecuted for commission of an offence under PMLA, notwithstanding whether the prosecution or conviction of any such company / legal juridical person shall be contingent on the prosecution or conviction of any individual. Explanation 2 of Section 70 of PML Act, in this respect states:

[Explanation 2.--For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.]

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

(i) Yes, As indicated above, the penal provisions in the Company Act invariably refer to the term "*Officer who is in a default*" which is a term defined under section 2(60) of the Act. Since individual penal provisions in the Act refer to liability of company or its OID or both, the action would be taken appropriately and the adjudicating court/officer would take a final decision on the punishment after examining all aspects and hearing the parties concerned.

(ii) Section 3 of Prevention of Money Laundering Act 2002 reads as under:

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the 1[proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

2[Explanation.--For the removal of doubts, it is hereby clarified that,--

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is

a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:--

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

- Thus, if during the investigation it is proved that
- a manager or officer with the requisite level of authority has committed the offence;
- where such a person has directed or authorized a lower-level person to commit the offence;
- and where such a person has failed to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures,

It falls within the definition of the offence of money laundering as per PML Act, 2002.

(iii) Yes, the corporate criminal liability is recognized under various sections of the Companies Act, 2013. The concept of criminal liability has evolved to investigate and lift the corporate veil in situations where legal structures have been created to avoid detection and prosecution. The liability of the legal persons for the action/inaction of its employees is fastened to the extent that the said legal persons have been utilized as a vehicle for corrupt practices and perpetuate fraud.

(iv) Further, If during the investigation it is proved that intermediaries have been used or corporate structures have been altered in an effort to avoid liability, they would be considered guilty of the offence of money laundering within the purview of Section 3 of PML Act, 2002, as reproduced above.

(v) Companies Act provides for various measures to ensure compliance, transparency and accountability, like :

- Vigil Mechanism
- Risk Management Policy
- Class Action Suit
- Reporting by Auditor(s)
- Independent Directors appointment
- Committees of the Board of Directors.

Corporate Governance awards are given by ICSI and other similar recognitions are granted by certain other organisations to reward more compliant companies/individuals.

(vi) Yes. Section 70 of the PML Act provides that persons in charge of the company will not be liable for the contravention if they are able to prove that the contravention of the PML Act by the body corporate took place without their knowledge or that they exercised all due diligence to prevent the commission of such an offence by the body corporate. In this regard the relevant part of Section 70 of PML Act, 2002 is as under:

Proviso to Section 70(1) states that ‘ Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.’

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

i) Yes. Section 5, 8, 17, 22 & 24 of PMLA give wide mandate and powers to the Directorate of Enforcement to trace, provisionally attach, seize and confiscate proceeds of crime obtained by legal persons.

ii) In a large majority of cases of the Directorate of Enforcement in India, proceeds of crime have been traced to legal persons such as corporate entities and such assets owned by these corporate entities have been provisionally attached or seized. In some cases, such tainted assets belonging to corporate entities have also been concluded upon completion of trial by the PMLA Court.

In this respect, an illustrative case wherein assets of a legal entity have been confiscated upon completion of trial proceedings in the Court, is as under:

A Narcotics case involving cross border transactions and nationals was investigated by the Directorate of Enforcement. Predicate offence investigated by Narcotics Control Bureau (NCB), AZU, Ahmedabad India. A Corporate entity M/s ABC was involved in manufacturing Psychotropic Substances and was supplying the same to Mr. X, a foreign resident. The said supply chain busted by NCB and the

total value of drugs involved was more than Rs.4 Crores. Movable & Immovable assets to the tune of Rs.7,100,000 (including assets owned by legal person i.e. corporate entity M/s ABC) were attached. Prosecution Complaint was filed by the Directorate and 5 accused including one Legal Person M/s ABC, were convicted by Special Court PMLA and attached assets were confiscated.

iii) Section 221 of the Companies Act provide for freezing of assets of a company during the proceedings of inquiry or investigation, through an order from the NCLT, where a case is made before the Tribunal that removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest.

iv) Section 224 (5) of the Act provides that where an inspector's report states that fraud has taken place in a company and due to such fraud any director, KMP, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.

v) Similar provisions have been provided in section 212(14A) of the Companies Act with regard to Serious Fraud Investigation Office(SFIO) Inspector's report.

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

Experience so far is not encouraging in getting requisite information regarding the corporate entities/intermediate entities created by the Indian Legal Persons (Corporates) in foreign jurisdictions as subsidiaries/JVs/Associates for embezzlement of funds.

The Directorate of Enforcement in India has provided and received assistance in corruption cases involving legal persons. An illustrative case of international cooperation in which a corporate entity was involved in corruption involving bank fraud is reproduced as under:

The Central Bureau of Investigation (CBI), a central investigative agency established by Indian government, filed charge-sheet against the key managerial person, Mr A and various directors of M/s GPL, an Indian based entity.

Based on the predicate offence, investigation for the offence of money laundering was initiated under the provisions of Prevention of Money Laundering Act, 2002 (PMLA) by the

Directorate of Enforcement, an agency established by Indian government to investigate money laundering cases and to confiscate the proceeds of crime.

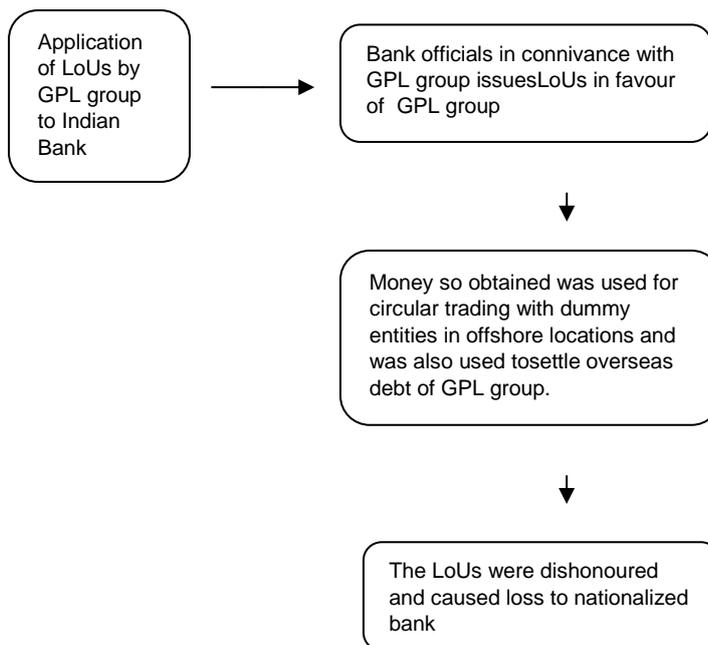
Mr. A was engaged in the business of diamonds. During the investigation it was revealed that Mr A has misused the banking facilities being availed by his companies for wrongful personal gains. His flagship company M/s GPL had sought Letter of Undertaking (LoUs) [*a form of bank guarantee under which a bank can allow its customer to raise money from another Indian bank's foreign branch in the form of a short term credit*] from banks to pay its overseas suppliers without any requirement of cash margin (margin money to be paid by the customer for availing such credit facilities) and security (collateral received by bank against the sanctioning of credit facilities) for the LOUs.

It was revealed that LoUs worth USD hundreds of millions were issued to M/s GPL without underlying securities. Moreover, the procedural and reporting requirements were circumvented in connivance of the banking officials to hide these transactions from being reflected in the bank's Core Banking Solutions (CBS) system i.e. centralized online real-time exchange which facilitated centralized access by various bank branches.

It was also revealed during the investigation that the funds generated through this mode were not utilized for the purpose for which it was raised, but to settle overseas debt of the GPL group companies. Various offshore dummy entities in Hong Kong and Dubai were formed for money laundering activities.

The offshore dummy entities in Hong Kong and Dubai were used to project genuine export-import transactions which could create huge outstanding liabilities in the books of the said dummy companies against the Indian companies. The fraudulent funds obtained from the bank were then layered for making payments for the bogus imports. It may be noted that the majority of the foreign trade was with the dummy companies created which were owned / managed by the ex-employees of Mr A's companies so as to avoid making related party disclosures. But the decision making was effectively with Mr A himself.

In brief, the dummy Dubai and Hong Kong companies were used to launder the LOU monies by Mr. A and his associates through layering and camouflaging with a purpose to hide the criminal source of funds. These dummy companies have no manufacturing activity and were primarily used for sale amongst themselves for inflating the balance sheet for procuring credit facilities from the Banks and the primary role of these dummy Hong Kong and Dubai companies were to act as nodes for circular transactions of the monies obtained through fraudulent LOUs. The same Diamonds and Jewellery were exported-imported in these companies so that the proceeds of crime by way of fraudulent LOUs could be adjusted in guise of Export-Import Payments. The proceeds of crime were also diverted from these dummy companies to various countries including to India and were projected by Mr. A and his associates as being coming from a legitimate source.



Letter Rogatory (LR) to Singapore:

A request dated 09.03.2018 was forwarded by the Directorate of Enforcement to Singapore for recover and seize the stock of movable/immovable properties, and to collect documents related to companies of Mr. A and M/s. GPL.

In lieu of execution of same, business profiles of related companies of Mr. A were provided by Singapore Authorities on 28.03.2018. In continuation of same, it details with regards company owned by Mr. A 's sister Ms. B were provided by Singapore Authorities. Further intelligence received from Singapore Authorities revealed that another company owned by Ms. B namely M/s. ABC has bank account in Singapore holding USD 13.3 million (same later got transferred to EFG bank in Switzerland) and is also owner of flat worth GBP 6.3 million in UK.

In person meeting was held with officers from Singapore Authorities wherein it was informed that there is one more account in the name of M/s. XYZ whose beneficial owners are Ms. B and Mr. C-Husband of Ms. B). Amount of USD 6 million was still lying there. Acting on behest of ED's supplementary request with regard to attachment of said accounts unearthed during this time, Singapore's High Court has frozen USD 6.12 million lying in said account.

Letter Rogatory (LR) to Switzerland:-

A request dated 24.09.2018 was forwarded by the Directorate of Enforcement for the execution of Provisional Attachment order attaching thereby related bank accounts of Mr. A & M/s. GPL and for procuring related bank accounts details situated in Switzerland.

In lieu of execution of said LR, Swiss Authorities provided the documents resulting from the execution of subject request and froze four bank accounts situated therein and having amount of **USD 3,74,11,595.59** and **GPB 27,38,136.25**.

INDONESIA

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1 Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

Beneficial Ownership Transparency Regime in Indonesia

Indonesia is committed to implementing beneficial ownership transparency, which includes undertaking activities and measures to assess the current situation and risk, improving national regulations with a view towards the establishment of a comprehensive legislation on beneficial owner, enhancing compliance, integrating database, collecting data and facilitating exchange of information and international cooperation.

Indonesia accelerated the implementation of BO transparency after the enactment of the Presidential regulation on beneficial ownership transparency in 2018 which aims to be an effective tool to mitigate the use of legal persons as a vehicle to conceal proceeds of crime, as well as money laundering and terrorist financing risks.

Indonesia hit its first beneficial ownership transparency milestone by establishing a beneficial owner registry system which is managed by the Ministry of Law and Human Rights through a web-based application called “AHU Online”. Indonesia, by way of Minister of Law and Human Rights regulations, has also enacted implementing regulations related to beneficial ownership transparency, such as the Ministerial regulation on cooperative enactment; Ministerial regulation on procedure for recognizing the beneficial owner; and Ministerial regulation on supervision or verification of beneficial owner.

Indonesia has been developing cooperation between strategic ministries regarding information sharing on beneficial ownerships to detect and minimize the corruption and

money laundering of state revenues from upstream processes. This initiative shall help encourage improvements of good governance; particularly in the extractive industry, as well as the tax, banking, and other economic sectors. This includes the enactment of the Minister of Agriculture Regulation No 45 of 2019 on Electronically Integrated Business Licensing Services in the field of Agriculture and Circular Letter (SE) of the of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency No. 6 / SE-HM.01 / IX / 2019 concerning Control of Beneficiaries and Affiliated Companies in the Process of Establishing and Transferring Rights for Land.

Beneficial ownership transparency is a part of the Indonesian National Strategy on Corruption Prevention, under the priority area of licensing in the extractive, forestry, and plantation sectors as well as economic governance/commerce. The program focuses on Strengthening and Utilizing Beneficial Ownership (BO) Database. The ministries that are involved in the program are Ministry of Law and Human Rights, Ministry of Finance, Indonesian Financial Transaction Reports and Analysis Center, Ministry of Agriculture, Ministry of Energy and Mineral Resources, State Ministry for Cooperatives, and Small and Medium Enterprises and the National Land Agency.

Beneficial ownership transparency is also a part of Indonesian National Strategy on Prevention and Eradication of Money Laundering, initiated by Indonesian Financial Transaction Reports and Analysis Center (INTRAC/PPATK).

Indonesia's Compliance to FATF's Recommendations on Beneficial Ownership Transparency

Currently, Indonesia is a member of the Asia / Pacific Group on Money Laundering (APG), which is one of the FATF-Style Regional Bodies (FSRBs). As for the FATF, Indonesia still has the status of observer and is actively seeking full membership in the FATF.

The process of Indonesia's membership in the FATF continues, namely through Indonesia's success in the Indonesian Mutual Evaluation Review (MER) by FATF during 2019 to 2020. MER Indonesia by FATF will assess the compliance of the AML-CFT regime in Indonesia against all FATF recommendations, including those related to beneficial ownership transparency. The MER assessment includes aspects of technical compliance with 40 FATF Recommendations and an assessment of the effectiveness of their implementation (11 Immediate Outcomes / IO).

Indonesia has developed a strategy for preparing Indonesian MER by FATF in 2019/2020, among others, through the fulfilment of the priority action plan and a series of MER preparation activities involving various ministries and institutions, representatives of financial services sector associations, and financial service industry players.

In general, the main strategy is drawn up to overcome Indonesia's deficiency in the previous MER (2016/2017). For this reason, Indonesia continues to implement the risk-based AML-CFT program effectively (including in implementing beneficial ownership transparency) in order to strengthen the AML-CFT regime in Indonesia and support Indonesia's efforts to achieve full membership status in the FATF.

Capacity Building Efforts to Promote the Implementation of BO Transparency

To foster the implementation of beneficial ownership transparency in Indonesia, the Ministry of Law and Human Rights, KPK, the Indonesian Financial Transaction Reports and Analysis Center, the Financial Service Authority, other related ministry/agencies, as well as the Indonesian Notary Association, have been actively conducting a series of Focus Group Discussion (FGDs) and public discussion with the following purposes:

1. Identification of problems that arise in the application of BO regulations based on the point of view of practitioners such as notaries and corporations as well as experts including lawyers related to the anticipation of potential legal loopholes as implications of implementing BO regulations;
2. Discuss the solutions to simplify or encourage corporations to report BO information in order to increase the percentage of corporate compliance in submitting BO through online platform;
3. Obtain input from experts regarding the effectiveness of implementing Presidential Regulation No 13 of 2018 and other BO regulations, especially on how to create a complete, accurate and up-to-date BO database;
4. Comparing notes on the application of BO regulations with other countries such as the UK and Singapore; and
5. Obtain other suggestions related to the regulation of BO in the prevention of money laundering, terrorists financing and tax crimes.

It is worth noting that the FGDs and public discussions have been conducted from 2018 – now.

Publication links:

I. Regulation related to beneficial ownership transparency

- a. Ministerial Regulation of Law and Human Rights No 14 of 2019 on cooperative enactment
<http://peraturan.go.id/peraturan/view.html?id=49a69c1601c5cbc276b25f6d1ebae549>
- b. Minister of Law and Human Rights Regulation No 15 of 2019 on procedure for recognizing the beneficial owner
<http://peraturan.go.id/peraturan/view.html?id=71e00e87786697b6304dd5357a648e05>
- c. Minister of Law and Human Rights Regulation No 21 of 2019 on supervision or verification of beneficial owner.
<http://peraturan.go.id/peraturan/view.html?id=0aca2cf3cac4b61fdf300f7aaa5b202d>
- d. Minister of Agriculture Regulation No 45 of 2019 on Electronically Integrated Business Licensing Services in the field of Agriculture
<https://paralegal.id/peraturan/peraturan-menteri-pertanian-nomor-45-tahun-2019/>

Unfortunately, the aforementioned publication links are not yet available in English.

II. Beneficial Ownership Transparency program under Indonesian National Strategy on Corruption Prevention

<https://stranaspk.kpk.go.id/id/fokus-aksi/perizinan-tata-niaga>

III. Indonesian National Registry for Beneficial Ownership

<https://bo.ahu.go.id/>

IV. APG Mutual Evaluation Report Indonesia - 2018

<https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-Indonesia-2018.html>

V. FGD Series on Beneficial Ownership Transparency (example)

<https://www.youtube.com/watch?v=8-NZ8RhEcXk>

A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement²⁸.

Required information can be provided in the form of links to other reviews or published work.

Under Indonesian Beneficial Ownership Transparency legal frameworks, corporations that have obtained or are still in the process of registration, enactment, approval, notification, and obtaining a business license, must follow the principles of recognizing the beneficial owner(s). The parties that can submit such information on the beneficial owner of the corporation include the founder or management of the corporation, notary public, or other parties who are authorized by the founder or management of the corporation to convey information on the beneficial owners of the corporation.

The supervision of beneficial ownership transparency is carried out by the Directorate General of General Legal Administration of the Ministry of Law and Human Rights. Supervision program is carried out on-site as well as off-site, based on the money laundering sectoral risk assessment on corporation. On-site supervision includes document and information verification, verification of BO determination information, reports from competent agencies and related agencies, the process of granting business licenses from authorized agencies, meetings with corporations, and compilation of direct supervision results. Meanwhile, off-site supervision includes examining documents and information, assessing the implementation of BO, and collecting information on the results of indirect supervision.

Corporations are obliged to:

1. Identifying and determining the Beneficial Owner (BO);

²⁸ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

2. Reporting / register includes updating information on Beneficial Owner (BO) in honest manner, either independently or through a notary, in accordance with the mechanism regulated in Ministerial Regulation of Law and Human Rights No 15 of 2019 on procedure for recognizing the beneficial owner; and
3. Cooperating with the authorities and law enforcement agencies, if required, to provide information regarding verification of Beneficial Owner

Notaries are obliged to:

1. Explain to the corporation the obligation to report beneficial owner (BO) information in accordance with Presidential Regulation No 13 of 2018 and other derivative regulations;
2. Explain the BO concept according to Presidential Regulation No 13 of 2018 and other derivative regulations, to corporations;
3. Identifying and verifying / confirming the data on beneficial owner in accordance with Ministerial Regulation of Law and Human Rights No 9 of 2017 on Recognizing Notary Service Users; and
4. Refuse if the corporation asks to disguise the identity of the corporate BO and explain the risks and consequences

In light of this, the Indonesian BO legal frameworks also enables law enforcement agencies to:

1. Encouraging the development of a BO transparency regime in the context of preventing corruption and money laundering;
2. Utilizing BO information related to the prosecution of cases of corruption and money laundering (tracing the flow of illicit funds / assets);
3. Collaborating with Ministry of Law and Human Rights and other relevant government authorities in the verification process of BO Information; and
4. Carry out legal proceedings against corporations and notaries who are involved in cases of corruption or money laundering (those who are intentionally hiding BO information)

- A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.**

Required information can be provided in the form of links to other reviews or published work.

Central Registries of Beneficial Ownership in Indonesia

Indonesian BO regulations requires a BO central registry to provide direct access of BO information to the BO database that is maintained by the Ministry of Law and Human Rights. The BO information are submitted electronically.

Indonesian Ministry of Law and Human Rights has developed a guidance for corporations to submit their information on beneficial owner. The guidance can be accessed here: <https://panduan.ahu.go.id/doku.php> The guidance separates the beneficial ownership data submission during:

- the establishment of the corporations ([https://panduan.ahu.go.id/doku.php?id=perseroan terbatas#i pemilik manfaat](https://panduan.ahu.go.id/doku.php?id=perseroan%20terbatas#i_pemilik_manfaat));
- the operation of the corporations (updating the BO data) ([https://panduan.ahu.go.id/doku.php?id=perseroan terbatas#g pengisian pemilik manfaat](https://panduan.ahu.go.id/doku.php?id=perseroan%20terbatas#g_pengisian_pemilik_manfaat))

Exchange of Information on the Beneficial Owner of Corporations

Exchange of Beneficial Owner information conducted by sharing database login access provided by Ministry of Law and Human Rights to five Ministries that has Memorandum of Understanding (MoU), among others Ministry of Finance, Ministry of Agriculture, Ministry of Energy and Mineral Resources, Ministry for Cooperatives and Small and Medium Enterprises, and National Land Agency. In addition, Law Enforcement Agencies and related authorities, including the Corruption Eradication Commission (KPK), Indonesian National Police (INP), Attorney General Office (AGO), and the Indonesian Financial Transaction Reports and Analysis Center (PPATK), are also provided access to the database. Moreover, other government agencies could also access the information by submitting a request to the Ministry of Law and Human Rights.

The BO database is not yet publicly available. However, the public can still access the corporation data including shareholder(s) or legal owner(s) information, in accordance with the provisions of relevant laws and regulations.

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

The challenges that we have recently are not related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels, but rather:

1. There are still many corporations who are not aware of the BO reporting obligation;
2. There are difficulties in determining BO in certain corporations;
3. The need for the development of an online registry system as well as effective data integration between related Ministries / Agencies; and
4. There are corporations that deliberately disguise their BOs to avoid financial obligations, including tax evasion.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY²⁹

- B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.**

Where applicable, this can be provided in the form of links to other reviews or published work.

Promoting the Anti-Bribery Management System (ABMS) in the Private Sector

In business integrity area, for the last 2 years under the National Strategy on Corruption Prevention, Indonesia has been promoting the anti-bribery management system in the private sector by implementing ISO 37001, UK Bribery Act, the Foreign Corrupt Practices Act (FCPA) guidelines, and the Corruption Eradication Commission's (KPK's) Corruption Prevention System Guideline for Corporations/Enterprises.

The Ministry of State-Owned Enterprises (SOEs), the Special Task Force for Upstream Oil and Gas Businesses (SKKMIGAS) and the Ministry of Home Affairs have stipulated that all enterprises under their responsibilities should improve good governance and code of conduct by implementing anti-bribery management system (ABMS). The responsible ministries are also required to enhance the role of internal supervision, which includes zero-tolerance and enforcement of sanctions for non-compliance. It has been strongly recommended that the ABMS is to be applied for private to private business relations as well.

KPK's Corruption Prevention System Guideline for Corporations/Enterprises

Considering that implementing FCPA, UKBA or ISO 37001 may be difficult for the private sector (in particular for the resources needed), there should be other ways that enable corporations (especially for small to medium enterprises) to implement the anti-bribery management system without having to shoulder the high cost.

In 2018, the KPK and the Indonesian Chamber of Commerce and Industry (KADIN), along with governance experts and practitioners, have published a book on Corruption Prevention Guidelines for Business Sector. It is a 55-page manual that serves as minimum guidelines for corporations to set up internal mechanism to prevent corruption and build compliance.

²⁹ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

Adopting concepts and good practices at the national and international levels, the book conveys corruption prevention steps that are simple and practical, so that they can be adapted according to corporation size and capacity. The book uses PDCA approach or Plan, Do, Check, and Action, and includes stages of response to make the cycle sustainable. The concept of corruption prevention in this book emphasizes on CEO commitment as the determining factor in the success of prevention corruption. The commitment will decide the direction of the prevention efforts. The next factors will be planning, implementation process, evaluation and improvement, as well as stages of response and corruption prevention efforts implementation.

KPK urges every company to follow the guidelines in the book and immediately establish internal control system to keep the actions of internal parties from going toward corruptive behaviours. KPK has been conducting seminars, public discussions, FGDs, and webinars with the aim to raise awareness on anti-corruption commitment in the private sector.

Publication Links

- The KPK's Corruption Prevention Guidelines for Business Sector can be downloaded here:

<https://www.kpk.go.id/id/publikasi/pengumuman-lelang/pengumuman-lainnya/693-materi-hari-anti-korupsi-sedunia-2018>

B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

Yes, Indonesian legal framework provides for an effective legal framework to protect whistleblowers.

Indonesia has enacted Government Regulation No. 43 of 2018 on Procedures for Implementing Community Participation and Awarding in the Prevention and Eradication of Corruption. This law regulates protection by law enforcers of reporting parties, witnesses, and experts, which is in line with Indonesia's efforts to comply with article 32 of the UNCAC.

In the area of whistleblower protection, Indonesia has established the Witness and Victim Protection Agency (LPSK) in 2008, pursuant to Law No. 13 of 2006 as amended by Law No. 31 of 2014. For reports to the KPK, KPK provides protection by maintaining the confidentiality of the whistleblower's identity, and if required at

the request of the whistleblower, KPK may provide physical protection for the whistleblower and/or his/her family, in coordination with the Witness and Victims Protection Agency (LPSK).

These legal frameworks along with LPSK protect the whistleblowers that come from both public and private sector.

Updated Information on the Existing Framework for Public Reporting

Law enforcement agencies authorized to handle corruption cases in Indonesia are the KPK, Indonesian National Police (INP) and Attorney General Office (AGO). Government Regulation No. 71 of 2000 on Procedures for the Implementation of Public Participation and Issuing Awards in the Prevention and Eradication of Corruption stipulates that all law enforcement agencies are obliged to facilitate reports of alleged criminal acts of corruption and have their own reporting systems.

The public can report corruption-related acts through the following channels: Letter or email; Walk-in to the Public Complaints desk at the KPK office, the Integrated Police Service Center (SPKT) in the area where the alleged corruption crime occurred, the High Prosecutor's Office or the Public Prosecutor's Office where the alleged corruption crime occurred; Telephone; Facsimile; SMS (text message) and KPK Whistleblower System (<http://kws.kpk.go.id>), in which the identity of the whistleblower will be kept confidential and shall not be disclosed to the public.

In 2019, the Corruption Eradication Commission (KPK) launched a hotline (198) to facilitate the public to report alleged corruption, seek public information and obtain information about gratification.

- B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively³⁰?**

Where applicable, this can be provided in the form of links to other reviews or published work.

Indonesian legal frameworks in encouraging or requiring that internal controls, ethics and compliance programs in the private sector depends on the type of the corporations/sectors.

1. Public Companies

³⁰ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

Indonesia's Corporate Governance Manual developed by the Indonesian Financial Services Authority (OJK) together with the International Finance Corporation (January 2014) aiming to assist companies in improving standards and business efficiency, through addressing five core components: corporate governance framework, shareholders' protection, stakeholders' roles, transparency of information as well as the role and responsibilities of the board of commissioners and board of directors.

The Manual contains chapter 13 on information disclosure of material matters regarding the corporation (including financial situation, performance, ownership/beneficial ownership, and governance), as well as chapter 14 on control and audit procedures. The Manual also addresses codes of ethics and conflicts of interest.

As a measure to enforce the guidelines, Indonesia issued OJK Regulation No. 21/POJK.04/2015, Corporate Governance Guideline for Public Companies, which includes provisions on information disclosure, including ownership, as well as accounting requirements. The Regulation mandates public companies to comply with the Corporate Governance Guidelines for Public Companies and provides for administrative measures in case of non-compliance.

For further guidance, OJK issued OJK Circular Letter No. 32/SEOJK.04/2015 concerning Corporate Governance Guidelines for Public Companies. Based on those regulations, public companies should have policies on anti-corruption and anti-fraud which are reflected in their rules and procedures, codes of ethics and trainings. Those policies should cover programmes and procedures for overcoming practices of corruption, kickbacks, fraud, bribery, and/or gratification in public companies.

2. State-Owned Enterprises (SOEs)

The Ministry of SOE has directed all SOEs to prevent corruption by having an Anti-Bribery Management System. In 2019, the Minister of SOE issued a Circular Letter No SE-2/MBU/07/2019 concerning Clean Management of SOE through the Implementation of Prevention of Corruption, Collusion and Nepotism, and Handling of Conflict of Interest and Strengthening Internal Control. In 2020, the Minister of SOE issued a follow up Circular Letter No SE-35/MBU/01/2020 to the Directors of all SOEs to apply ISO 37001 specifically for large SOEs and / or the Corruption Prevention Guide issued by the KPK or other Anti-Bribery Management Systems (ABMS).

The ABMS implementation is also being promoted to the SOEs in the provincial level by Indonesian Ministry of Home Affairs.

Indonesian SOEs are required to implement Anti-Bribery Management System (ABMS) under the National Strategy on Corruption Prevention. 82 SOEs have already carried out the preparation stage for the implementation of the Anti-Bribery Management System Implementation / ISO 37001: 2016, 55 SOEs are in the awareness training stage, while the remaining 27 BUMN have not conducted awareness training (Q4 2020 data).

3. Banking, Capital Market and Non-Bank Financial Institutions (NBFI) sectors

Indonesian Financial Services Authority (OJK) has stipulated a Regulation No. 12/POJK.01/2017 on the Implementation of the Anti-Money Laundering and Prevention of Terrorism Financing Programs in the Financial Services Sector (POJK APU - PPT), which includes the Banking, Capital Market and Non-Bank Financial Institutions (NBFI) sectors. Meanwhile, the financial services sector that is regulated and supervised by OJK includes the banking sector (commercial banks, sharia commercial banks, people's credit banks, and sharia people's credit banks), capital market sector (securities companies that serve as underwriters, broker-dealers and investment managers, and commercial banks that serve as custodians), and non-bank financial industry sector (insurance companies, sharia insurance companies, insurance brokerage companies, financial institution pension funds, financing companies, joint venture companies, infrastructure financing companies, Indonesia export financing companies, pawnshops and micro financial companies).

POJK APU-PPT regulates implementation of the Anti-Money Laundering and Prevention of Terrorism Financing Programs in the financial services sector using a risk-based approach (RBA) pursuant to Financial Action Task Force (FATF) Recommendation, including regulation of the identification, verification, and monitoring of potential customers, customers, walk-in customers (WIC), including Beneficial Owners of the potential customers/customers/WIC, high-risk customers and high-risk areas, through Customer Due Diligence (CDD) and Enhanced Due Diligence (EDD).

Indonesian FSA (OJK) is responsible for the corporations under its supervision to implement the ABMS under the National Strategy on Corruption Prevention, and here is the progress:

- 90 out of 124 capital market companies have completed and returned the self-assessment on ABMS mapping: a). 44% stated that they have a unit or person appointed to carry out efforts to control and prevent corruption; b). 23% stated that they had maps of corruption prone areas; c). 20% stated that they had a plan on ABMS. Meanwhile, for the banking sector, 18 banks, 90 capital markets and 105 non-banks are ready to implement the ABMS (Q4 2020 data).

4. SMEs and other Corporations

The implementation of internal controls, ethics and compliance programs for other type of corporations is in voluntary basis. SMEs, for example, need specific model of anti-bribery principles for companies with fewer resources time, money and people. Unlike a large company, an SME may not have a Board of Directors, a Human Resources Department or the resources of time and money to appoint a committee to oversee the introduction of Business Principles.

However, there are growing requirements made by larger companies to encourage SMEs in their supply chain to implement no bribe policies. The

KPK, through the Directorate of Anti-Corruption of Business Entities (which was established in 2020) targeted the SMEs to implement the ABMS.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

1. The Indonesian Chamber of Commerce and Industry (KADIN) have succeeded in implementing good practices in anti-bribery management. They have expressed their seriousness in encouraging the business sector to implement ISO 37001 by forming a special committee, namely KUPAS (Community of Entrepreneurs with Integrity). KUPAS was established since 2017 in collaboration with the KPK by forming a regional advocacy committee. KUPAS already exists in all 34 provinces consisting of various parties, namely from KADIN, KPK, governors, mayors and regents. The committee's response was very positive in order to reduce and prevent corrupt practices in the private sector.

In April 2021, KADIN, the Indonesian Institute for Corporate Directorship (IICD) and the Indonesian Anti-Corruption Coalition (KAKI) signed a collaboration in eradicating and reducing corrupt practices.

Publication Link:

<https://www.kpk.go.id/en/news/highlights/1960-kpk-expresses-appreciation-to-5-institutions-adopting-anti-bribery-management>

<https://www.republika.co.id/berita/qs9pzw318/kadin-berkolaborasi-untuk-berantas-korupsi-pengusaha>

2. The Collective Action Coalition (CAC) anti-corruption prevention system formed by the Indonesian Institute for Corporate Directorship (IICD) and the Center for International Private Enterprises (CIPE) was launched on August 11, 2020. The launch was carried out virtually with the National Committee on Governance Policy (KNKG), AEI, the Indonesian Employers' Association (Apindo), KADIN, the National Private Bank Association (Perbanas), and IBL.

The task of the CAC coalition is to mobilize the private sector to be steadfast in running the business without corruption, and to maintain the consistency and sustainability of the anti-corruption agenda in Indonesia. CAC was also established bearing in mind the important role played by the private sector in addressing corruption effectively as well as in supporting the development and economic growth in Indonesia.

Publication Link:

<https://acgc.cipe.org/business-of-integrity-blog/businesses-launch-collective-action-effort-to-fight-corruption-in-indonesia/>

<https://www.republika.co.id/berita/qewjtc318/sistem-pencegahan-antikorupsi-cac-diluncurkan>

C. LIABILITY OF LEGAL PERSONS³¹

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

Yes, Indonesia has established and amended its legislation on the liability of legal persons for corruption and corruption-related offences.

Indonesia has enacted corporate liability for corruption offences through the enactment of Anti-Corruption Law and Money Laundering Law. The following is the list of regulations on corporation penalty:

1. Law No. 5/1999 on Prohibition Against Monopolistic Practice and Unfair Business Competition
2. Law No. 8/1999 on Consumer's Protection
3. Law No. 31/1999 juncto Law No. 20/2001 on Corruption Crime Eradication
4. Law No. 31/2004 on Fisheries
5. Law No. 32/2009 on Environmental Protection and Management
6. Law No. 8/2010 on Money Laundering Prevention and Eradication
7. Law No. 7/2014 on Trade
8. Law No. 38/2014 on Plantation
9. Law No. 7/2016 on Protection and Empowerment of Fishermen and Fisherwomen, Fish Farmers, and Salt Farmers
10. Attorney General's Decree No. PER-028/A/JA/10/2014 on Guidelines to Handle Corporation Crime

³¹ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

In addition, the Indonesian government has enacted the Supreme Court of Indonesia Regulation No. 13 of 2016 on Case Handling Procedures for Corporate Crimes. It serves as a guideline for law enforcement officers in handling criminal cases with a corporation or its management as the perpetrator; fills in the legislative gap in the criminal procedure law for cases related to corporations; and promotes the effectiveness and optimization of handling criminal cases with a corporation or its management as the perpetrator (Article 2).

The Supreme Court Regulation provides guidelines for judges in sentencing corporations by establishing three assessment criteria that are provided for in the Article 4 therein, as follows:

- a. The Corporation was able to gain profit or benefit from the crime or the crime is perpetrated for the interest of the Corporation;
- b. The Corporation acquiesced to the crime to occur; or
- c. The Corporation failed to take necessary measures for prevention, to prevent a wider impact and to ensure compliance with provisions of the prevailing laws in crime prevention.

Article 4 of the Supreme Court Regulation further regulates whether corporations are able to demonstrate that they have conducted adequate prevention procedures to avoid criminal offences.

However, the law does not yet criminalize foreign bribery offences.

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

Yes, Indonesian corporate liability regime allows for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings.

Indonesia Corruption Eradication Commission (KPK) recorded that nearly 70 percent of the cases it handled involved businesses, public officials and legislators. Regarding case type, almost 80 percent of corruption cases related to bribery and procurement. This statistic shows significant involvement of corporation in corruption cases. Since 2004 until December 31st, 2020, the Commission has prosecuted 308 natural persons from the private sector and 6 corporations.

Publication link:

Statistic data can be accessed here: <https://www.kpk.go.id/id/statistik/penindakan/tpk-berdasarkan-profesi-jabatan>.

Example of court decisions regarding corruption and related offences where legal persons:

- In 2018 the KPK charged PT Duta Graha Indah (DGI), which had changed its name to PT Nusa Konstruksi Engineering (NKE) until it was sentenced to a fine of Rp. 700 million (equivalent to USD 48.938) and the obligation to pay replacement money of Rp. 85.49 billion (equivalent to USD 5.976.793).
Publication link: <https://www.kpk.go.id/id/berita/berita-kpk/742-berhasil-jerat-koorporasi-kpk-terima-apresiasi>
- In 2018, PT Putra Ramadhan (Tradha), which has been named by the Corruption Eradication Commission (KPK) as a suspect in the crime of corporate money laundering has returned Rp. 6.7 billion (equivalent to USD468.583) back to the state.
Publication link: <https://www.medcom.id/nasional/hukum/GKdWRYWk-pt-tradha-serahkan-rp6-7-miliar-ke-kpk>

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures? (A)

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability? (B)

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad? (C)

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs? (D)

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs? (E)

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons? (F)

(A) Yes, the Supreme Court Regulation No. 13 of 2016 on Case Handling Procedures for Corporate Crimes also applies when a crime perpetrated by a person on the basis of employment relationship, or on the basis of other relationships, either severally or jointly who were acting for and on behalf of the Corporation within or beyond the

Corporate Environment (article 3). Employment Relationship referred here is a relationship between the corporation and its workers/employees under an agreement which has elements of work, wage, and/or order.

(B) Yes, the Regulation of the Supreme Court of Indonesia No. 13 of 2016 on Case Handling Procedures for Corporate Crimes regulates that the liability of legal persons also applied to:

1. Corporate Group Liability (article 6), this includes the parent Corporation and/or a subsidiary Corporation and/or related Corporations, they are criminally liable depending on their roles respectively.
2. Corporate Liability in Merger, Consolidation, Spin-Off and Liquidation of the Corporation (article 7):
 - a. In the event of a merger or a consolidation of a Corporation the criminal liability shall be imposed within the limits of the value of properties or assets placed on the Corporation that accepts the merger or the Corporation resulting from the consolidation.
 - b. In the event of a spin-off of a Corporation, criminal liability shall be imposed on the Corporation that has been spun off and/or the Corporation that conducted the spin-off and/or both depending on their roles they occupied.
 - c. In the event the Corporation is in the process of liquidation, criminal liability shall still be imposed on the Corporation about to be liquidated.

(C) No, Indonesian legal framework has not yet criminalized legal persons that committed corruption offences abroad.

(D) Indonesia does not yet have incentives to encourage the private sector to have integrity programs. However, when corporations are able to demonstrate that they have conducted adequate prevention procedures in the avoidance of criminal offences, this factor will be one of the Judges' consideration in sentencing a corporation. The other two factors are:

1. The Corporation was able to gain profit or benefit from the crime or the crime is perpetrated for the interest of the Corporation; and
2. The Corporation acquiesced to the crime to occur;

(E) Indonesia has not yet implemented incentives to foster legal persons' effective corporate compliance programs. However, as part of the National Strategy on Prevention of Corruption, Indonesia is improving the anti-bribery management system in the private sector by implementing ISO 37001, UK Bribery Act, the Foreign Corrupt Practices Act (FCPA) guidelines and the KPK's Corruption Prevention System Guideline for Corporations/Enterprises.

The Ministry of State-Owned Enterprises (SOEs), the Special Task Force for Upstream Oil and Gas Businesses (SKKMIGAS) and the Ministry of Home Affairs have stipulated that all enterprises under their responsibilities should improve good governance and code of conduct by implementing the anti-bribery management system (ABMS). The ministries are also required to enhance the role of internal supervision, which includes the zero-tolerance and the enforcement of sanctions for non-compliance.

The positive impacts of this compliance on corporate compliance programs are improving the company's reputation, achieving cost efficiency, and increase stakeholders' trust.

(F) No, our legal framework has not yet regulated protection for employee's rights in case of investigations (including internal investigations) and prosecution of legal persons.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

Yes, Indonesian Legal Framework enables law enforcement agencies to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons.

Article 8 of the Supreme Court Regulation No. 13 of 2016 on Case Handling Procedures for Corporate Crimes stipulated that the liquidated Corporation after the crime had been committed cannot be sanctioned, but assets that belong to the Corporation allegedly used to commit a crime and/or constitute proceeds of crime, law enforcement shall be imposed in accordance with the mechanism as regulated by the laws and regulations. Furthermore, the article also regulated that the claim over assets may be filed against the former management, heir or a third party who has control over assets of the liquidated Corporation.

Article 21 of the Supreme Court Regulation No. 13 of 2016 stipulates as follows:

1. Corporate assets that are subject to seizure, are the assets as referred to in Code of Criminal Procedure (KUHAP).
2. In the event that the seized assets consist of perishable or dangerous goods, hence it is impossible to be stored until a court ruling against the case in question acquires permanent legal force, or if the custody fee for storage of the goods are excessive or its economic value may depreciate, if possible and with approval from the suspect or their legal counsels, the goods shall be secured or auctioned in accordance with provisions of the laws and regulations.

Article 32 (4) of the Regulation of the Supreme Court of Indonesia No. 13 of 2016 stipulated that if a convicted Corporation fails to pay compensation, damages and restitution, the assets can be seized by the prosecutor and auctioned off to pay the compensation, damages and restitution.

Publication Links:

- The Regulation of the Supreme Court of Indonesia No. 13 of 2016 on Case Handling Procedures for Corporate Crimes
<https://jdih.bumn.go.id/lihat/PERMA%20NOMOR%2013%20TAHUN%202016>
- In 2019, the KPK frozen the bank account, which contains Rp 60 billion (equivalent to USD 4.25 million), of PT Merial Esa (ME), a company named a graft suspect. The graft case involves the procurement of sea surveillance satellite systems at the Maritime Security Agency (Bakamla).
<https://www.thejakartapost.com/news/2019/03/04/kpk-freezes-companys-bank-account-in-bakamla-graft-case.html>

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

The KPK has been handling several corruption cases that involves legal persons by taking advantage of international cooperation.

International Cooperation in Handling Garuda Case (2020)

KPK is currently handling Garuda case. Garuda is a state-owned enterprise and one of the major airlines in Indonesia. The company is a 5-star airline that provides both domestic and international flights (passengers and cargo). The case includes various illicit transactions that are concealed through multi-layered structure businesses transaction across various jurisdictions. KPK appreciates support and assistance from the Serious Fraud Office (SFO) of the United Kingdom, the Corrupt Practices Investigation Bureau (CPIB) of Singapore, UK's Home Office (UK Central Authority), the Attorney-General's Chambers as the Singaporean Central Authority, and the Indonesian Ministry of Law and Human Rights (Indonesian Central Authority) during the investigation of this bribery case.

Outcomes of the investigation are, among others:

Former President Director of PT. Garuda Indonesia, Emirsyah Satar and the Beneficial Owner of Connaught International Pte. Ltd, Soetikno Soedarjo, were convicted for corruption and money laundry allegations. Emirsyah Satar was sentenced to 8 years in prison and fined Rp1 billion. In addition, the judge also sentenced Emirsyah to pay restitution of SGD2,117,315.27. Whereas Soetikno Soedarjo was sentenced to 6 years in prison and fined Rp1 billion.

Publication Links

- International cooperation in handling Garuda case (2020)
<https://www.kpk.go.id/en/news/press-releases/1687-international-cooperation-in-the-investigation-of-garuda-case>

The KPK also helps the United Kingdom's Serious Fraud Office (SFO) probe corruption allegedly committed by Canada-based airplane manufacturer Bombardier Inc. in a deal with national flag carrier Garuda Indonesia.

Publication Links

- <https://www.thejakartapost.com/news/2020/11/07/kpk-to-help-uks-antigraft-agency-in-probe-into-bombardier-garuda-graft-case.html>

ITALY

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

In 2017, Italy amended Legislative Decree n. 231/2007 (Anti Money-Laundering Law) introducing in the Business Registry [held by the Chambers of Commerce, it is a public register in which all entrepreneurs must be registered: it guarantees the legal publicity of the information contained therein] a specific Register of Beneficial Owners of Legal Persons and Trusts ([Leg. Decree n. 90/2017](#)).

As per articles 21 and 22 of the national AML Law, comprehensive information is included in the Register not only related to the owner of legal persons and trusts but also to their managers.

The current legal basis of the Italian Transparency Register is Legislative Decree 231/2007 and subsequent amendments and integrations provided for in 2017 and 2019 to implement the IVth and the Vth EU Anti-Money Laundering Directives.

The IV AMLD (Anti Money-Laundering Directive) has been implemented by LD 90/2017, while the V AMLD has been implemented by LD 125/2019.

Pursuant to the amended article 22 of the Italian AML Law:

- shareholders of a legal entity have to provide the relevant information on beneficial owner.
- each legal entity is responsible for identifying its beneficial owners.

Legal entities are required to make filings with the Transparency Register

Pursuant to article 21 of the Italian Decree, only the following legal entities have an obligation to notify:

- legal persons having legal personality which are required to be recorded in the Registry of Companies;
- private legal entities which are required to be recorded in the Registry of Private Legal Entities;
- trusts that produce legal effects that are relevant for tax purposes as well as similar legal arrangements ("*istituti giuridici affini*") established or resident on the territory of the Republic of Italy.

Entities other than the ones listed above are not obliged to file with the register.

Pursuant to article 21 of the Italian Decree, failure to provide the information is punished with a fine of between EUR 103.00 and EUR 1,032.00 and the respective legal entity must communicate and register its beneficial owners with the Italian Registry of Companies; the information is registered in a specific section of the Registry of Companies and the filing may only be made electronically.

Improving transparency on the real owners of undertakings and private legal entities: access to the competent register is now allowed to the general public; trusts and similar legal arrangements: access to the competent register is now allowed to private persons who have a legally protected interest that justifies such access.

On December 23, 2019, the Italian Ministry of the Economy and Finance published on its web site a draft of the Ministerial Decree setting forth the provisions for the establishment and operation of the Register of Beneficial Owners of business entities, non-commercial entities and trusts.

The establishment of the Register of Beneficial Owners is required by article 21 of the Legislative Decree n. 231 of November 21, 2007, which contains the domestic legislation implementing the European Union Anti-Money Laundering Directives into Italian law; the draft Decree remained open to public discussion, and comments and observations could be submitted through the Ministry's web site until February 28, 2020; the final decree was then submitted to the Italian Privacy Protection Authority, which gave his consensus to the draft Decree.

Since then, the Decree will entry into force as soon as the Ministry for Economy and Finance and the Ministry for Economic Development will solve some technical inter-ministerial issues to give "green light" to the new legal provisions about the BOs Registry.

The new beneficial owners' filing obligations will apply to commercial entities, private non-commercial organizations, trusts, foundations and other fiduciary arrangements, requiring require disclosure of information on directors, managers, trustees, administrators and entity's ultimate owners.

Members of the public can have access to the information filed with the register provided that they have standing, meaning, upon showing that they have a direct, present and ascertainable legal interest, right or claim the pursuance of which requires access to the information.

Individuals classified as beneficial owners and subject to the disclosure can preemptively object to the filing of their personal information on the ground that

disclosure would expose them to an excess risk of threat, kidnapping, blackmailing, and similar dangers.

- A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement³².**

Required information can be provided in the form of links to other reviews or published work.

See A.1.

- A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.**

Required information can be provided in the form of links to other reviews or published work.

As per in bullet A.1, the Inter-Ministerial Decree about the regulation of the national central registry of Beneficial Ownership will soon entry into force (here the IT version of the published draft:

http://www.dt.mef.gov.it/modules/documenti_it/regolamentazione_bancaria_finanziaria/consultazioni_pubbliche/BOZZA_SCHEMA_DM_TITOLARE_EFFETTIVO_-_CONSULTAZIONE.pdf).

By now, in consistency with the inspiring principles of BOs transparency, Italy can provide information on the BOs through its domestic regulatory and supervisory regime for banks and non-bank financial institutions, which has been enhanced through its enactment of the AML Law.

Italy's primary agencies responsible for AML supervision include the Ministry of Economy and Finance (MEF), the Bank of Italy (BoI), and the Ministry of Justice.

A risk-based approach typically defines the frequency and types of due diligence obligations; moreover, the Italian AML Law includes requirements for customer due diligence (CDD) and beneficial owner identification/verification (art. 17 et seq.), record keeping (art. 31 et seq.) and the reporting of suspicious transactions (art. 35 et seq.) to the national Financial Intelligence Unit.

³² Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

The UIF, established at the Bank of Italy but autonomous and operationally independent from the Bank, is the national Financial Intelligence Unit responsible for the receipt, analysis and dissemination of suspicious transaction reports (STRs) related to money-laundering, associated predicate offences and terrorist financing.

Pursuant to the AML Law, a broad range of subjects, namely banks and other financial intermediaries and operators, professionals, auditors, and a series of entities engaged in other (non-financial) activities are required to send the UIF an STRs “whenever they know, suspect or have reason to suspect that money-laundering or terrorist financing is being or has been carried out or attempted”.

The suspicion may arise from the characteristics, size, or nature of the transaction or from any other circumstances that come to the reporting institution’s attention by reason of its functions, and taking account of the economic capacity or business activity of the persons carrying out the transaction.

The suspicion must be grounded in a comprehensive assessment of all elements – objective and subjective – of the transaction that are known to the reporting institution. UIF is responsible for establishing and updating anomalous indicators to help obliged entities in detecting and reporting suspicious transactions.

With the same aim, UIF has also been regularly elaborating, issuing and updating patterns and schemes representative of economic and financial anomalous behaviours.

Furthermore, with the transposition of the IVth AML/CFT EU Directive, the UIF has been charged with the function of receiving, in addition to the STRs, ‘threshold-based communications’ that the obliged entities must periodically submit and that refer to data and information identified on the basis of objective criteria linked to money laundering or terrorist financing risks.

It’s also worth noting that in the context of the same Italian legislation implementing the IVth AML/CFT Directive, some public administrations that handle certain types of administrative procedures in specific public sectors (public tenders and contracts, public funding, real estate and trade), are obliged to notify the UIF about any data or information concerning suspicious transactions in accordance with instructions and indicators issued by the UIF in order to facilitate this specific reporting activity (please note that such Instructions were promptly issued by the UIF in April 2018).

FIU Italy has the capacity to exchange information with foreign FIUs through structured international and European networks such as the Egmont Secure Web and the FIU.NET. Such mechanisms ensure speed and efficiency in the FIU-to-FIU cooperation, together with high levels of confidentiality in the information exchanges.

On a domestic level, the UIF disseminates STRs and the outcomes of the related financial analysis to the competent law enforcement agencies specifically indicated by the law (L.D. n. 231/2007, as amended by L.D. n. 90/2017, art. 40, lett. d)): the Nucleo Speciale di Polizia Valutaria (NSPV) of Guardia di Finanza (GdF) and the Direzione Investigativa Antimafia (DIA).

The STRs are sent to the judicial authorities if crimes are involved or if the authorities themselves request the reports. This means that relevant exchange of information between the UIF and the competent authorities is carried out not only to start possible investigations, but also to assist ongoing investigations and prosecutions.

Taking into account the findings of the FATF Mutual Evaluation, the Italian AML legislation implementing the IVth and the Vth EU Directives introduced provisions regarding in domestic collaboration on information exchange among competent authorities. In particular, the amended AML Law states that in addition to NSPV and DIA, information can be forwarded by UIF, in cases of specific interest, to the Intelligence Services.

Furthermore, the National Anti-Mafia Directorate (DNA) receives from UIF, through NSPV and DIA, ID data of subjects reported or connected to STRs. Furthermore, NSPV and DIA transmit to the DNA the reports that are relevant to organized crime or terrorism.

The data relating to STRs – especially those regarding reported persons or their associates – are to be transmitted to the DNA for it to conduct its own analysis essential for giving input to possible investigations, or to check whether they are relevant for pending court cases. This helps both the DNA to promote investigations or coordinate ongoing prosecutions and the UIF to prioritize its financial analysis.

The national AML Law, as amended with the national transposition of the recent EU AML-Directives, while granting UIF the access to law enforcement information, has subjected this access to limitations deriving from investigation secrecy (L.D. n. 231/2007, as amended by L.D. n. 90/2017, arts. 12(4), 13(1)).

In addition to this, further information may be obtained through the national declaration system to monitor cross border movement of cash and bearer negotiable instruments, requiring natural persons entering or leaving Italy with EUR 10,000 or higher to declare to Italian Customs (art. 3 of L.D. n. 195/2008). In cases of false declaration, Customs and Guardia di Finanza can seize amounts equal to 30 or 50% of the amounts transferred over EUR 10,000, depending on the value of the undeclared amount (arts. 6 and 9, L.D. n. 195/2008).

For the protection from the misuse of aforementioned data Italy has created a strong legal framework for ensuring access to information and their use through its Freedom of Information Act (L.D. n. 33/2013 as amended by Law 160/2019).

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

We may point out that very often we face a lack of prompt answer from foreign authorities.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY³³

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Italian law concerning the private sector transparency and integrity has not significantly changed since the introduction of the legal framework on liability of legal persons in 2001 (Legislative Decree 231/2001); the approach to the private sector is not regulatory, but rather based on a strong incentive and encouraging towards the sector itself to take advantage of the benefits of being compliant with the legal provisions concerning the avoidance of sanctions for the liability of legal persons.

This means that all the private sector is strongly encouraged to have in relation to the dimensions and the economic turnover of the single legal persons, inner instruments like Ethical Codes, Codes of Conducts et similia which do have to reflect, in their content, the guidelines that the National Anti-Corruption Authority (ANAC) has to provide to the public sector and to the private entities where the public sector has shares and quotes; those anticorruption guidelines are published and updated regularly by ANAC and are open to everyone through the ANAC website.

The Italian legal system of prevention of corruption is also addressed to the private sector, which includes public corporations, state-owned enterprises (article 2-bis, paragraph 2, of Legislative Decree No. 33/2013 and article 1, paragraph 2-bis, of Law No. 190/2012).

In detail, the following private subjects are required to adopt anticorruption measures: private associations, foundations and bodies however named, including those without legal personality, having a budget exceeding five hundred thousand euros, whose activity is for the most part financed, for at least two consecutive fiscal years in the last three-year period, by public administrations and in which all of the members/participants of their bodies of management or direction are appointed by public administrations.

³³ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

In resolution n. 1134/2017 “Guidelines on measures against corruption for the publicly controlled companies, publicly controlled private law agencies and public economic entities”, ANAC established that the above referred subjects must integrate, where adopted, the “231 model” (measures introduced pursuant to Legislative Decree No. 231 of June 8th 2001) with suitable measures to prevent corruption and illegality in line with the purposes of law No 190 of 2012.

The suggestion was pointed out in a logic of coordination of the measures and simplification of the obligations.

These measures must refer to all the activities carried out and be included into a unitary document that takes the place of the Corruption Prevention Plan.

Even if the adoption of the "231 model" is not mandatory, this adoption, if the companies have not already done so, it is, however, strongly recommended, at least simultaneously with the supplementary anti-corruption measures.

Companies that decide not to adopt the "231 model" and limit themselves to the adoption of the document containing the anti-corruption measures will have to justify this decision. The ANAC, in its supervisory activities, will therefore verify the adoption and quality of the corruption prevention measures.

Companies, whether or not they have adopted the “231 model”, define the measures for the prevention of corruption in relation to the functions performed and their specific organizational characteristics.

Companies must also appoint a subject Responsible for the prevention of corruption and transparency (RPCT).

In order to make the appointment mandatory, the companies adopt, preferably through statutory amendments, but possibly also in other forms, the appropriate adjustments which, in any case, must contain a clear indication of the person who will have to perform the functions of RPCT.

With specific regard to the integrity strategy, private law bodies under public control must integrate the code of ethics already approved pursuant to Legislative Decree no. 231/2001 or adopt a specific code of conduct, where not provided, taking care to focus on the conducts aimed at the prevention of corruptive events.

In case of breach of integrity rules, private companies’ employees are subject to a disciplinary action.

In order to ensure the implementation of the rules of the code, ANAC recommended: a) to ensure adequate interpretative support to employees in order to understand the correct behaviours to adopt in certain circumstances; b) provide for a sanctioning system and a system for collecting reports of breaches of the code.

In resolution n. 177/2020, ANAC underlined the importance for private law bodies under public control (art. 2-bis, co. 2) to adopt a code of conduct, even though there is not an obligation to adopt it.

In this document, ANAC confirmed that the adoption of a code of conduct must be carried out by integrating the organization and management model or the code of ethics, if adopted pursuant to Legislative Decree No. 231/2001, with a specific section dedicated to the duties of conduct to fight corruptive phenomena according to l. 190/2012.

Private subjects referred to in art. 2-bis, paragraph 3, of Legislative Decree 33/2013, are not obliged to appoint a person responsible for the prevention of corruption and transparency. They are also excluded from the scope of the measures to prevent corruption.

They apply transparency measures, as compatible and limited to the data and documents relating to the activity of public interest governed by national or European Union law. Private subjects included in the above paragraph 3 are: semi-public companies, associations, foundations and private bodies, including those without legal personality, having a budget exceeding five hundred thousand Euro, and performing administrative functions, activities of production of goods and services in favour of public administrations or of management of public services.

In resolution n. 1134/2017, despite the fact that these subjects are not direct addressees of the provisions of Law 190/2012, ANAC has encouraged public administrations, which either entrust these subjects with public functions or control their activities, to promote the adoption of measures to prevent corruption for the activities of public interest they carry out.

Among the measures to ensure the integrity of employees that operate in the aforementioned private law entities required to prevent corruption is the so-called pantouflage (or “revolving doors”). Art. 1, co. 42, lett. l), of the l. 190/2012 has inserted in art. 53 of Legislative Decree 165/2001 the co. 16-ter which provides for a ban on employees who, in the last three years of service, have exercised powers authoritative or negotiating on behalf of public administrations, to carry out, in the three years following the termination of the employment relationship, work or professional activity for those private subjects for whom the administration activity had been carried out through the aforementioned powers.

Article 21 of Legislative Decree No. 39 of 8 April 2013 extended this preventive measure to private law bodies establishing post-government employment restrictions on private sector employers too.

The consequences of violating the pantouflage prohibition relate primarily to nullity of the contracts concluded and the assignments given to the former public employee by private parties.

In addition, the private person who has concluded employment contracts or entrusted tasks to the former public employee in violation of the prohibition cannot sign contracts with the public administration.

Public administration as well as private law bodies must also comply with the legislative provisions on the non-conferrable status and incompatibility of

assignments (Legislative decree no. 39/2013). Non-transferability and incompatibility are among the preventive and not sanctioning measures.

Rotation is one of the various measures that Administrations have at their disposal in relation to corruption prevention. ANAC in the PNA 2019 also recommended the rotation of the subjects who are appointed with a certain degree of stability in carrying out activities of public interest in the Private subjects referred to in art. 2-bis, paragraph 2, of Legislative Decree 33/2013.

The aim behind the rule is to prevent a subject from exploiting a power or knowledge acquired to obtain an illegal advantage.

Alongside public administrations in the strict sense there are private law entities that perform public functions. For this reason, the Italian Legislator valued important to ensure that the discipline of corruption prevention and transparency was also extended to these subjects.

With specific regard to the integrity strategy, it was also necessary to protect public integrity also referred to the private sector as part of the overall corruption prevention strategy. Hence the need to introduce for private law bodies some principles and rules, in addition to the ones of the code of ethics approved pursuant to Legislative Decree No. 231/2001.

The strategy to fight fraud and other types of corruption for private law bodies is implemented, at national level, by the National Anti-corruption Authority (ANAC) through the National anticorruption Plan (PNA) and Guidelines (Resolution No. 1134/2017 and No. 177/2020).

For further elements please see B.3 and B.4.

B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Italian whistleblowing law (Law 30.11.2017, nr. 179) strengthens the pre-existing whistleblower protection for public-sector employees and extends to some extent the same protection to the private sector.

Regarding the public sector, the law provides that a public employee who reports illegal or unethical conduct in the public interest shall not be retaliated against through any sanctions, dismissal, demotion, transfers to other offices, or other measures having a negative effect on his/her working conditions.

The protection is granted to: employees of public administrations; employees of public-economic entities; employees of private-law entities subject to public control; employees and contractors of private companies supplying goods, works or services to the public administration.

Employees may report a violation either to:

- the person within the public administration who is in charge of corruption prevention and transparency,
- the National Anticorruption Authority (ANAC), and
- the judicial or accounting authority.

There is no provision of hierarchy between channels.

The law covers unlawful behaviours and ethical misconduct, including (but not limited to): criminal conducts; violations of codes of conduct; mismanagement of public resources; nepotism; accounting irregularities; violation of environmental and occupational safety regulations, etc.

The protection takes the form of a guarantee, albeit within certain limits, of the confidentiality of the whistleblower's identity. The main protection mechanisms include also: the reversal of the burden of proof on retaliation upon the administration, the reinstatement of the employee whose dismissal was ascertained as retaliatory, and a pecuniary sanction against the author of the retaliatory act or behavior ranging from €5,000 to €30,000 imposed by ANAC.

On 9 June 2021, ANAC approved the new guidelines on whistleblowing (see ANAC Resolution No. 469 of 09/06/2021).

The guidelines illustrates the main changes in the subjective scope of application of the institution, with reference both to the persons required to implement the legislation (public administrations and other entities), and to the beneficiaries of the protection regime and the procedures followed by ANAC, which is vested with specific sanctioning powers pursuant to paragraph 6 of Article 54-bis.

Below a few summaries of decisions taken by ANAC on whistleblowers' protection during 2020.

Decision 1 October 2020, n. 761

1) ANAC found that retaliation against a whistleblower occurred and imposed a pecuniary sanction on the responsible officer. The whistleblower, a public employee who was a member of a public exam commission, reported to ANAC irregularities relating to the composition of the commission. Following the filing of the report, the whistleblower was subjected to the disciplinary measure of confinement for three days.

After a careful examination of the matter, ANAC: a) qualified the reporting person as a whistleblower and his report as a protected disclosure; b) found that the motivation underlying the disciplinary measure was prima facie connected to the report of irregularities c) assessed that the employer had not proved that the

disciplinary measure was not related to the report and thus the measure against the whistleblower was retaliatory, and d) inflicted a penalty of €5,000 (\$6,200) upon the officer responsible for the retaliatory measure.

<https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/Atti/Delibere/2020/Del.761.2020omis.pdf>

Decisions 16 October 2020, n. 1118 and 1119

2) ANAC found that retaliation against a whistleblower occurred and imposed a pecuniary sanction on the responsible officer and on the Major of an Italian municipality. The whistleblower, a police officer of an Italian municipality, reported to ANAC offenses relating to the assignment of a public office inside the municipality. Following the filing of the report, the employee was subjected to the disciplinary measure of suspension from work without pay for ten days.

After a careful examination of the matter, ANAC: a) qualified the police officer as a whistleblower and his report as a protected disclosure; b) found that the only reason underlying the sanction was the fact that the employee, through the report, had allegedly defamed the municipality; c) considered that the Italian law on whistleblowing requires a court decision against the employee for defamation before any disciplinary measure can be issued by the Administration; d) assessed the measure against the whistleblower as retaliatory, in the absence of proof from the employer, and e) inflicted a penalty of €5,000 (\$6,200) upon the responsible for the suspension.

ANAC also imposed a sanction upon the Major that proposed the suspension from work.

The motivation of ANAC's decision contained an explicit reference to the European Directive 2019/1937 (Whistleblowing), which states "the whistleblowers should be protected from any form of retaliation, direct or indirect, implemented, encouraged or tolerated from their employer".

https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/Atti/Delibere/2020/Delibera%20n.%201118_2020.pdf

https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/Atti/Delibere/2020/Delibera%20n.%201119_%202020_sito.pdf

The whistleblowers' protection ceases, though, in the event of criminal responsibility of the reporting person for the crimes of slander or defamation, in case of crimes committed with the report, or in cases of willful misconduct or gross negligence.

The Italian Government is currently drafting a legislative decree to transpose the EU Directive on reporting persons into the Italian system.

The new legislation will extend the whistleblowers' protection to the private sector (companies with more than 50 employees) and expand the list of public and private employees allowed to submit reports and ask for protection.

The system will also provide three levels of possible reporting – internally, to an external authority and to the public), providing protection to whistleblowers who report to the press or other media.

A significant innovation has been brought, both in the public and the private sector, by the modifications introduced to the Code of Procedure for litigations before the Supreme Audit Institution of Italy, the *Corte dei conti* (e.g. *Codice di giustizia contabile*), by Legislative Decree no. 114/2019.

Pursuant to the Code, during investigations regarding losses of public money and misuse of financial public resources the confidentiality of the person reporting the alleged illicit conducts should be guaranteed.

Accordingly, following the above modification, the Code of Procedure of the SAI of Italy, which originally protected only the identity of public sector's employees who fulfil their duty to report, now also grants the same level of confidentiality to public and private entities that report any fact to the Prosecution's Office, even if not obliged to do it (Article 52, para. 1).

Focusing on the private sector, the law on the protection of whistleblowers (Law n. 179/2017) provides for certain mandatory requirements on whistleblowing for those companies which have chosen (or choose) to implement an Organizational Management and Supervisory Model in line with Legislative Decree n. 231/2001 (so called "Model 231").

The Whistleblowing Law, by amending the Legislative Decree n. 231/2001, introduces in the Model 231 one or more channels of communication that allow to present detailed reports based on precise and consistent factual elements which expose offences listed in the catalogue of crimes relevant for the Legislative Decree n. 231/2001.

These communication channels shall guarantee the confidentiality of the whistleblower in the management of the reports; additionally, at least one alternative reporting channel must be provided to guarantee - using IT-based techniques - the confidentiality of the identity of the whistleblower; the Model 231 must also prohibit acts of retaliation, direct or indirect discriminatory actions against the whistleblower for reasons connected to the report/alert itself.

Sanctions must be introduced in the disciplinary system adopted with the Model 231, both for those who breach the measures to protect the whistleblower, as well as for whistleblowers themselves who make malicious or grossly negligent reports that prove to be groundless; discriminatory measures can be notified to the Italian Labour Authorities (*Ispettorato del Lavoro*) and to the relevant trade unions.

Furthermore, discriminatory redundancies, changes of tasks and any discriminatory measures adopted against the whistleblower will be null and void unless the

company is able to prove that they are in no way related to the whistleblowing activity³⁴.

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively³⁵?

Where applicable, this can be provided in the form of links to other reviews or published work.

Private-to-public bribery offenses are governed by Sections 317, 318, 319, 319-quarter, 320, 321 and 322 of the Italian Criminal Code (ICC).

Italian law criminalizes both “active bribery,” namely the conduct of a person who corrupts or tries to corrupt a public official, and “passive bribery,” namely the conduct of the corrupted public official.

“Bribery” is defined as offering, promising, requesting or receiving, or accepting a promise to receive money or other advantages for the public official to perform his or her functions (Section 318 of the ICC) or for the public official to omit or delay, or having omitted or delayed, an act relating to his or her office, or to act or having acted in breach of his or her official duties (“proper bribery” – see Section 319 of the ICC).

The meaning of “advantages” with respect to bribery offenses is very broad and includes any advantage for the recipient of any kind, material or moral, pecuniary or not: the Supreme Court, in a series of judgments, has affirmed that in order to constitute corruption, the offer or the commitment to offer money or other advantages must be suitable to achieve the purpose of the crime, that is, suitable to improperly influence the performance of the public official’s duties.

This must be evaluated having regard to objective and subjective situations, such as the type or amount of the compensation paid and the economic position of the beneficiary of the payment, which must be such as to determine the likely possibility that the beneficiary is influenced by the offer and is induced to accept it to perform his or her duties.

³⁴ The Italian Institute for Statistics (ISTAT) introduced a series of questions in its 2015-2016 survey on the Safety of citizens, in order to examine the phenomenon of corruption. The survey will be repeated in 2022. Data were delivered in the “Corruption in Italy: the citizen’s point of view report” (2017). As a result, 5.2% of the employed population has witnessed exchanges of favours or money considered as illicit or inappropriate in their own line of work. About the opinion on whistleblower, it is considered mainly an honest person (55,4% of cases), a brave person (26,2%) and a responsible person (6,6%); only in few cases there are negative opinions: who reports bribery is a stupid/naive person (1,1%), a spy (0,9%), a traitor (0,6%), inflexible (0,6%) and vengeful person (0,4%).

³⁵ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

In case the private party is forced by the public official to give or promise a bribe, this conduct constitutes the offense of “extortion by a public official” (concozione – see Section 317 of the ICC), for which only the public official is held criminally liable, with the private party being the victim of the crime.

However, following the recent reform of Italian anti-corruption legislation, a new offense has been introduced – that of “unlawful inducement to give or promise money or other benefits” (see Section 319-quarter of the ICC), which punishes the public official who, by abusing his or her position or authority, induces a person to give or promise unduly to him or her or a third person money or other benefits.

In such a case, the private party who gives or promises money or other benefits is punished as well (although the penalty applicable to the private party is less severe than the one for the public official).

Finally, the less serious offense of “inducement to bribery” (see Section 322 of the ICC) occurs when a private party offers or promises undue money or other advantages to a public official and the offer or promise is not accepted, or when the public official solicits an undue promise or giving of money or other advantages that is not carried out by the private party.

The definition of “public official” under the ICC is quite broad and includes any individual who performs a public function, “either legislative, judicial or administrative” (see Section 357, Paragraph 1 of the ICC).

For the same criminal purposes, “*an administrative function is public if it is regulated by public law provisions and by acts of a public authority, and is characterized by the forming and manifestation of the public administration’s will or by a procedure involving an authority’s powers or powers to certify*” (see Section 357, Paragraph 2 of the ICC). Examples of “public officials” are members of the Parliament, regional councillors, judges and their consultants, public notaries and police officers.

Under Italian Criminal law, bribery offenses apply to public officials as well as to persons in charge of a public service (*incaricato di pubblico servizio*), which are those who, under any title, perform a public service, namely, “*an activity governed by the same forms as the public function, but characterized by the lack of its typical powers, and with the exclusion of simple ordinary tasks and merely material work*” (see Section 358 of the ICC).

Examples of “persons in charge of a public service” are state and public administration employees lacking the typical powers of a public authority, such as electricity and gas men, security guards and the manager of a public landfill.

The consequences of bribery are as follows:

(a) For the individuals involved

A public official may be punished with imprisonment from one year to six years in the case of bribery for the exercise of his or her functions (see Section 318 of the ICC), and with imprisonment from six years to 10 years in the case of proper bribery (see Section 319 of the ICC).

The penalties described are reduced by not more than one-third in the case of bribery of persons in charge of a public service.

The briber faces the same criminal consequences as the public official or the person in charge of a public service to whom he or she gives, offers or promises money or any other undue advantage.

(b) For the company/legal entity

Under Section 25 of Legislative Decree No. 231, dated 8 June 2001 ("Decree 231"), the company is punishable with the following:

- a fine of up to 200 quotas in the case of bribery of a public official for the exercise of his or her functions under Section 318 of the ICC
- a fine from 200 to 600 quotas in the case of proper bribery under Section 319 of the ICC

The amount of a quota ranges from a minimum of EUR 258 to a maximum of EUR 1,549.

The following restraining measures may also be applied to the company:

- temporary suspension from conducting business
- suspension or revocation of any authorizations, licenses or permits held by the legal entity with respect to the business unit connected with the crime
- prohibition from negotiating and entering into contracts with public administration entities, except for contracts relating to public services
- exclusion from subsidies and contributions, or revocation of any subsidy and contribution already granted to the company
- prohibition from advertising the company's goods and/or services
- restraining measures may also be applied to the company as a pre-judgment remedy under certain circumstances.

The regulation concerning private contributions to political parties has been recently amended by Law Decree No. 149/2013; according to this decree, private contributions to political parties are allowed under the following restrictions:

- a natural person cannot donate money or contribute goods or services in favour of a single political party, in any form and in any way provided, even through a third person or controlled companies, for a total amount exceeding EUR 100,000 per year. Such limits do not apply to legacies to political parties.
- a legal entity / company cannot donate money or contribute goods or services, in any form and in any way provided, in favour of political parties for an amount exceeding EUR 100,000 per year. Such restriction does not apply to transfers of money or of capital in general between political parties.

Donations have to be made through a bank or post office or by any method that ensures their traceability.

Violations of the regulation concerning limits and modalities of private contributions to political parties are sanctioned with administrative fines, additionally, under Section 7 of Law No. 195, dated 2 May 1974, as recently amended by Law No. 96, dated 6 July 2012, private companies cannot, in any manner, directly or indirectly, finance or give contributions to any politician and political party, including their political-organizational structures and parliamentary groups, unless such financing/contributions have been deliberated on by the relevant managing body and duly registered in the balance sheet.

The violation of this provision is punishable with imprisonment from six months up to four years and a fine of up to three times the amounts paid in breach of the law.

For what concerns limitation applicable to hospitality expenses (gifts, travel, meals, entertainment, amongst others), Italian criminal law does not expressly prohibit or restrict the giving of gifts, travel expenses, meals or entertainment to public officials or persons in charge of a public service.

Reference is generally made to the Ethic or Deontologic Code (*Codice Etico* or *Codice Deontologico*) which every public office/institution has to adopt to give indications to the civil servants about does and donts in such cases (as an average issue, generally speaking clerks/civil servants/public managers cannot accept gifts or simial donations, depending of the position they have in the administration, from 50 to 250 euros).

However, those expenses may represent “undue advantage,” the giving/offering/promising or receiving/accepting of which is forbidden by the ICC; Italian law also does not expressly provide for currency limits generally applicable to gifts and hospitality.

However, according to case law, gifts of small value (*modico valore*) are not per se prohibited as they do not fall within the scope of anti-bribery offenses. Small- value gifts may be relevant under anti-bribery law in cases where they are offered and/or received repeatedly and in certain specific circumstances (for example, there is a pending negotiation between the parties, or a business decision is imminent).

The amount of this “small value” is not expressly set by law: some guidance on this aspect may be found in Italian case law; additionally, the Italian government recently enacted a regulation with a code of conduct for public employees (Presidential Decree no. 62 of 16 April 2013), which provides that a public employee shall not accept, for himself or herself or for others, gifts or other advantages.

However, an exception exists for public officials where the following conditions are met: (a) the gratuities do not exceed the value of EUR 150.

Lower limits to gratuities may be provided by the internal code of ethics of each public entity, and (b) such gratuities present no inducement and are given only for courtesy purposes.

As general principles, the following seem worth noting:

- the repeated offering/receiving of gifts and hospitality (i.e., to the benefit of the same person or provided on a regular basis) should generally be discouraged, irrespective of their value.
- gifts and hospitality, even of small value, should be discouraged in the context of pending negotiations, tenders or imminent business decisions between the parties and in general, in the event that under concrete circumstances, they may be capable of persuading the beneficiary to do or not do something in breach of the latter's duties.

The offense of private-to-private bribery is provided for under Section 2635 of the Italian Civil Code.

Section 2635 of the Italian Civil Code, as recently amended, introduces the offense of "corruption between private parties," which punishes the directors, general managers, executives entrusted with the preparation of the company's accounting documents, statutory auditors, liquidators or anyone subjected to their direction or supervision who, as a consequence of the giving or promising of money or other advantage, for their own or others' benefit, perform or omit to perform actions in violation of the obligations pertaining to their office or of their duty of loyalty, causing harm to their company.

In such a case, the person who gives or promises money or other advantages to the subjects indicated above is also punished.

The consequences of private-to-private bribery are as follows:

(a) For the individuals involved

Pursuant to Section 2635 of the Italian Civil Code, directors, general managers and executives entrusted with the preparation of the company's accounting documents, as well as statutory auditors and liquidators, may be charged with imprisonment from one year to three years.

The penalty for offenses committed by anyone subject to the direction or supervision of the above individuals is imprisonment for up to one year and six months.

The person who gives or promises money or other advantages to the subjects indicated above faces the same criminal consequences as the corrupted individual.

(b) For the company/legal entity

The company/entity that the person who gives or promises money or other advantages to the subjects set forth in Section 2635 of the Italian Civil Code belongs to may be held liable, pursuant to Decree 231.

Under Section 25-ter of Decree 231, the company/entity is punishable with a fine from 200 to 400 quotas.

In case the company/entity obtained a considerable profit as a result of the commission of the crime, the pecuniary sanction is increased by one-third.

For what concerns the limitation applicable to hospitality expenses (gifts, travel, meals, entertainment, amongst others), Italian criminal law does not expressly prohibit or restrict the giving of gifts, travel expenses, meals or entertainment to private persons. However, those expenses may represent undue advantage, the giving/offering/promising or receiving/accepting of which is forbidden by the ICC.

Italian law also does not expressly provide for currency limits generally applicable to gifts and hospitality. However, according to case law, gifts of small value (*modico valore*) are not per se prohibited as they do not fall within the scope of anti-bribery offenses.

Small- value gifts may be relevant under the anti-bribery law in cases where they are offered and/or received repeatedly and in certain specific circumstances (for example, there is a pending negotiation between the parties or a business decision is imminent).

The amount of this small value is not expressly set by law: some guidance on this aspect may be found in Italian case law, additionally, the Italian government recently enacted a regulation with a code of conduct for public employees (Presidential Decree no. 62 of 16 April 2013), which provides that a public employee shall not accept, for himself or herself or for others, gifts or other advantages.

However, as an exception, public officials are allowed to accept gifts or other advantages provided that the following conditions are met: (a) the gratuities do not exceed the value of EUR 150 and (b) such gratuities present no inducement and are given only for courtesy purposes; as general principles, the following seem worth noting:

- the repeated offering/receiving of gifts and hospitality (i.e., to the benefit of the same person or provided on a regular basis) should generally be discouraged, irrespective of their value.
- gifts and hospitality, even of small value, should be discouraged in the context of pending negotiations, tenders or imminent business decisions between the parties and in general, in the event that, under concrete circumstances, they may be capable of persuading the beneficiary to do or not do something in breach of the latter's duties.

Companies may be held directly liable for certain crimes listed under Decree 231 that are committed on behalf of, or for the benefit of, the company by individuals who have operational and/or representative authority. This category includes: (i) individuals who represent or manage the company or any relevant autonomous business unit or de facto manage and control the company ("Representatives"); and (ii) individuals who are subject to the direction and supervision of the Representatives.

A company's liability under Decree 231 is assessed by the criminal judge in the same trial for the prosecution of the individual who allegedly committed the crime, and the sanctions set forth by Decree 231 are usually applied to the company by the same criminal court's decision upon the request of the public prosecutor.

The relevant courts may apply, among others, the following relevant sanctions:

- temporary suspension from conducting business
- suspension or revocation of any authorizations, licenses or permits held by the legal entity with respect to the business unit connected with the crime
- prohibition from negotiating and entering into contracts with public administration entities, except for contracts relating to public services
- pecuniary fines quantified as quotas and ranging from a minimum of 100 quotas to a maximum of 1,000 quotas; since the amount of each quota ranges from a minimum of EUR 258 to a maximum of EUR 1,549, pursuant to Decree 231, the relevant Courts may therefore apply pecuniary fines ranging from a minimum of EUR 25,800 to a maximum of EUR 1,549,000.

Companies may avoid the risk of incurring liability pursuant to Decree 231, provided they adopt an effective compliance program, that is, a Model of Organisation, Management and Control that is able to prevent and detect the commission of crimes (the “Model”), and ensure that the Model and related internal procedures are actually implemented.

Therefore, the Model, if correctly implemented and constantly updated, would have the effect of exempting the company from liability arising from crimes committed by its Representatives: the Italian Criminal Code does not treat the absence of a compliance program (i.e., the Model) as a crime. However, companies that have not implemented a Model will not be able to benefit from the mentioned exemption from liability.

According to the relevant case law, industry codes and best practices, an effective Model must: (i) identify the risk activities or areas of activities within the company’s business; (ii) identify the modalities for handling financial resources suitable to prevent the commission of crimes; (iii) provide for specific protocols (policies) aimed at the formation and implementation of the company’s decisions with respect to the prevention of potential crimes; (iv) provide for the appointment of a monitoring body (*Organo di Vigilanza e Controllo*), with autonomous powers of control, in charge of monitoring the implementation of the Model and updating the Model; and (v) provide for mandatory notices and informational obligations to the monitoring body.

Moreover, after the adoption of the Model, the latter must be provided to each company manager, employee and representative, and the monitoring body must constantly oversee the proper application of the Model.

Provided that the above conditions are met, the company can benefit from the exemption from liability by demonstrating that whoever perpetrated a corruption-related crime did so by fraudulently violating or circumventing the company’s Model.

Taking also into account the role played by Supreme Audit Institutions in preventing and combating corruption, in particular with regard to promoting integrity, accountability, transparency and the proper management of public affairs and public property, as well as the efficient use of public resources, please note that in the Italian system, the members of supervisory and audit bodies of public

institutions have the duty to report any relevant fact to the Prosecution's Office of the *Corte dei Conti* concerning any loss and/or misuse of public finances and public property (Article 52, para. 2 of the Italian Code of Procedure for litigation before the *Corte dei Conti*).

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

Since 2017, several initiatives in the private sector have developed the diffusion of integrity and transparency in the business activities. Training of staff specifically devoted to anti-corruption and integrity has considerably increased.

These actions are coherent with the implementation of Legislative Decree n. 231/2001 that sets out the principle of liability of legal entities for acts of corruption committed to their advantage by persons who are either in senior executive positions or subject to the supervision or direction of the latter.

Private entities are exonerated from liability only if the organizational model they have implemented is proven to be adequate and actually implemented, according to appraisal of the criminal judge. Legislative Decree n. 231/2001 stems from the OECD Anti-Bribery Convention.

Italy has taken steps to help preventing corruption involving the private sector through collaborative programs between Public Administrations and Confindustria, the largest private sector association of businesses. Confindustria has adopted a Code of Ethics and Associative Values for its members and has worked on practical guidance for smaller businesses. It also engages awareness-raising activities and provides advice on governance models that promote high standards of compliance.

Confindustria promotes the development of a competitive culture, where anti-competitive behaviors are socially regarded with disrepute.

Confindustria recalls companies to the fundamental commitment to spreading efficient payment practices. In fact, punctual contractual times and punctual payments generate benefits for suppliers, on one hand; on the other, they strengthen both reputation and competitiveness on national and international markets.

In order to encourage companies to adopt responsible behaviors, Confindustria also carries out intense awareness-raising activities and advises companies that adopting organizational models and high legal standards is crucial both to prevent offences and to improve corporate governance.

In addition, Confindustria promotes initiatives aimed at enhancing the commitment of companies that voluntarily adopt these reinforced security measures (i.e. Legality Protocol with the Ministry of Interior; legality rating).

In terms of training and education for Italian companies, especially SMEs, the project "*Sportelli in rete*" (meaning Training Desks) has been set up by the majority of the

national enterprises' associations together with Consip - the Italian Central Purchasing Body - in order to support and train SMEs when using e-procurement.

Capacity building, education and training are core activities of the project, in addition to change management activities that have allowed to overcome the initial resistance shown by SMEs towards the use of electronic means of negotiation when dealing with public procurement.

There are more than 350 Training Desks operating all over the country, at local and regional level, providing free assistance and training to thousands of Italian small and micro- enterprises on the benefits of a clean and transparent public procurement system, achieved also through digitalization.

For more information:

<https://www.acquistinretepa.it/opencms/opencms/main/programma/servizi/Sportellirete/index.html>.

As far as the Chambers of Commerce are concerned, upon the initiative of Unioncamere network system they develop activities addressed to enterprises, particularly SMEs, with special focus on preventing corruption.

These activities include:

1) promoting awareness and providing information on anticorruption legislation and on corruption risk factors.

2) identifying the dynamics of corruption, its impact on the economic system and corruption risk prevention measures: (see ACTs project <http://www.acts-project.eu> and the C-Detector <http://www.c-detector.eu>). C-Detector is a digital self-assessment tool of corruption risks, created to support micro-SMEs operating in Europe in the implementation of appropriate measures to prevent and combat corruption.

Through a short questionnaire, C-Detector provides an assessment of corruption risks that the company could be exposed to; after the appraisal of the results, the test can provide useful guidelines in order to prevent corruption, as well as concrete suggestions on actions to be taken to mitigate the occurrence of corruptive acts.

3) carrying out research, development and validation of analytical tools for assessing corruption risk and criminal infiltration in the economic context.

4) educating on "legally-shaped economic environments", aimed also at strengthening ethical business principles among young people.

In this regard, the Chambers of Commerce have undersigned, together with the Ministry of Education, a "Charter of intents on education for economic legality", with a particular focus on anti-corruption, involving also other institutions.

These Guidelines are addressed to all Italian schools, with specific content and targets in terms of ethics and anti-corruption: https://www.bancaditalia.it/chisiamo/provvedimenti/CARTA_D_INTENTI.pdf.

The private sector is also developing dialogue and cooperation with the central Public Administrations such as the Ministry of Economic Development and the Ministry of

Foreign Affairs, in the latter case specifically with the Coordinator of international anti-corruption activities.

In this framework, since 2017 the Ministry of Foreign Affairs in conjunction with Transparency International-Italia and some of the major Italian companies operating abroad organizes annual editions of the "[Italian Business Integrity Day](#)" (IBID).

Three events, in coincidence with the National Anticorruption day (9 December), have been held to present the organizational models adopted by those companies to prevent corruption and promote integrity in their domestic and overseas business, stressing the importance of the multi-shareholder approach that calls companies upon to come to the fore in combating corruption.

C. LIABILITY OF LEGAL PERSONS³⁶

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

Since 2011, the law on corporate liability (Legislative Decree no. 231 of 2001) has undergone considerable amendments aimed at:

- broadening its scope of application, to enlarge the list of predicate offences,
- tightening up disqualification and pecuniary sanctions,
- widening the range of cases as well as the method of application of precautionary measures,
- introducing measures to protect whistle-blowers,
- making organisational models compulsory or encouraging their adoption,

³⁶ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

while referring for details to the updated version of the law in force in Annex 8 the most important changes to the legal framework on the liability of legal persons are as follows:

A) List of predicate offences

- LD n. 121 of 7 July 2011 (D. lgs. 121 del 7 Luglio 2011), article 2, which added environmental offences (article 25-undecies of Legislative Decree no. 231/2001) and the employment of illegally staying third country nationals (article 25 duodecies) to the range of violations giving rise to the administrative liability of legal persons.
- Law no. 69 of 27 May 2015, (Legge 69 del 27 maggio 2015), article 12 (1), amending article 25-ter of LD 231/2001 concerning corporate offences,
- LD no. 38 of 15 March 2017 (D. lgs. 38 del 15 Marzo 2017), article 6, replacing paragraph s-bis (on corruption among private parties) of article 25-ter of LD 231/2001,
- Law no. 167 of 20 November 2017 (L. 167 del 20 novembre 2017), article 5(2), (c), adding racism and xenophobia to the list of predicate offences (article 25-terdecies LD 231/2001), LD no. 124 of 26 October 2019 (D. lgs. 124 del 26 ottobre 2019), article 39, which supplemented LD 231/2001 with article 25-quinquiesdecies, widening the range of tax offences,
- LD no. 75 of 14 July 2020, which further broadens the range of predicate offences even beyond the provisions of EU PIF Directive, by amending articles 25, 25 quinquiesdecies and adding article 25 sexiesdecies;

B) Tightening up disqualification and pecuniary sanctions

- Law no. 68 of 22 May 2015 (L. 68 del 22 maggio 2015), article 1, on pecuniary and disqualification sanctions, amending article 25-undecies of LD 231/2001,
- Law no. 161 of 17 October 2017 (L. 161 del 17 ottobre 2017), article 30, which also introduces, into the matter of pecuniary sanctions, paragraphs from 1-bis to 1-quater of article 25-duodecies of LD 231/2001,
- Law no. 3 of 9 January 2019 (L. 3 del 9 gennaio 2019), article 1, which amended paragraph 1 of article 13, subparagraphs 5 and 5 bis of art. 25 and article 51 of LD 231/2001 on disqualification sanctions and subparagraph 1 of article 25 on pecuniary sanctions,

C) widening the range of cases and methods of application of precautionary measures

- Law no. 125 of 30 October 2013 (L. 125 del 30 ottobre 2013), which amended article 53 of LD 231/2001 into the matter of preventive seizures, Law no. 186 of 15 December 2014 (L. 186 del 15 dicembre 2014), article 3, paragraph 5, which amended subparagraph 1 of article 25-octies LD 231/2001, into the matter of preventive seizure,

D) Application of measures to protect whistle-blowers

- Law no. 179 of 30 November 2017 (L. 179 del 30 novembre 2017), article 2, which added paragraphs 2bis (on compliance models), 2-ter and 2-quater (on discriminatory measures against whistle-blowers) to article 6 of LD 231/2001,

E) Compulsory adoption of organisational models and relevant incentives

Under the legal framework on the liability of entities, the number of cases in which the adoption of organisational models is mandatory in terms of the capacity to act in certain sectors or to contract with the public administration has increased, notably with the aim of preventing corruption.

Noteworthy among the many measures taken in this field are:

- Resolution of the Competition and Marketing Authority (AGCM) of 5 June 2014 (implementing regulation on legality rating, article 3, subparagraph 2, letters a, c, d, f, g),
- Resolution no. 32 of 20 January 2016 of the National Anti-corruption Authority (Deliberazione dell'Autorità Nazionale Anticorruzione, n. 32 del 20 gennaio 2016) which lays down guidelines for the entrusting of services to third sector entities and social cooperatives (point 12.3)
- Document shared by the ministry of Economy and Finance and the National Anti-corruption Authority (Documento condiviso dal Ministero dell'Economia e delle Finanze e dall'Autorità Nazionale Anticorruzione) to strengthen the mechanisms for the prevention of corruption and transparency in companies owned and/or controlled by the Ministry of Economy and Finance of December 2014,
- Resolution no. 1134 of National Anti-corruption Authority of 8 November 2017 (Determinazione dell'Autorità Nazionale Anticorruzione ANAC n. 1134 del 8/11/2017) which lays down guidelines for the implementation of regulations on the prevention of corruption and transparency by companies and private law entities controlled and participated in by public administrations and public economic entities.

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

The provision laid down in article 8 of LD 231/2001 whereby Entities are liable even if the natural person who committed the offence has not been identified, or in cases

where the perpetrator of the offence is not punishable plays a pivotal role in preventing and countering offences committed in the framework of complex activities attributable to entities.

The legislation in place, therefore, serves an enhanced preventive function precisely in the highly complex area of economic crime, such as domestic or international bribery, by allowing criminal prosecution, in cases of organised unaccountability (which has as its output the anonymity of the natural person committing the offence).

Hence, the so-called organisational fault of the entity is highlighted, which is even more blatant when the perpetrator of a predicate offence cannot be identified: the so-called “organisational fault” arises from the failure to comply with the strict obligations to adopt precautionary measures aimed at preventing given offences from being committed and countering the inherent risks identified by the management and organisational models specifically designed to that purpose.

According to the Italian system set out in LD 231/2001 corporate liability is provided for both when the perpetrator of the predicate offence has not been identified at all and when he/she has been wrongly identified and acquitted. Corporate liability can also be ascertained where the perpetrator is not convicted for other reasons such as when the case becomes statute-barred.

This means that, in practice, a legal person can be held liable (for any offence), also where the natural person(s) involved could not be identified, prosecuted or convicted.

Judgment no. 28299 of the Court of Cassation, 6th division, dated 10 November 2015, is crystal clear in this respect. Likewise ruling no. 35818 of the Court Cassation of 2 September 2015, whereby corporate liability arises even when the perpetrator has not been identified or cannot be charged, and therefore when the natural person held liable for the predicate offence has been acquitted for not having committed the act.

Later on, see judgment no. 49056 of the Court of Cassation, 6th division, of 25 July 2017, according to which the acquittal of one of the defendants charged with the predicate offence does not automatically exclude corporate liability, since the judge is required to ascertain the predicate offence on the basis of the full charge of the offence levelled against the entity.

Along the same line, even beforehand, judgment no. 20060 of the Court of Cassation - 5th division - dated 4 April 2013, which explicitly admits the sufficiency of the evidence of the fact, claiming that the acquittal of the natural person accused of the predicate offence does not automatically entail the exclusion of corporate liability for its commission, in that such liability, in terms of article 8 of LD 231/2001, must be affirmed even if the perpetrator of the said offence has not been identified.

Finally, it is also worth recalling judgment no. 11626 of the Court of Cassation – 6th criminal division - 7 April 2020, whereby the administrative liability of legal persons is independent of the criminal liability of the perpetrator of the predicate offence and therefore not affected by the expiry of the limitation period for legal persons.

It should be noted that in one case of foreign bribery, corporate liability was established despite the fact that the natural persons who had committed the offence had not been prosecuted as the offence had become statute-barred.

It is the TSKJ case in which the Court of Appeal of Milan held a major Italian company liable for bribery of Nigerian public officials, imposed a fine of E 600,000 and ordered the confiscation of the profit of the offence amounting to Euro 24,530,580 (n. 11442, Court of Cassation, 12 February 2016).

In the case at issue, none of the persons charged with the offence of foreign bribery had been convicted due to the running of time limitation for the offence.

PILOSIO (Algeria)

By *patteggiamento* judgment rendered on 17 October 2019, final on 3 November 2019, the Judge for preliminary investigations of Udine imposed on (i) ROUSTAYAN Dario the sanction of 1 year, 1 month and 10 days of imprisonment; (ii) on SEMANI Nacim the sanction of 1 year, 4 months and 20 days of imprisonment.

The sanction imposed on ROUSTAYAN was determined by applying the special mitigating factor provided for under article 323 bis, par. 2, CC according to which a reduction of the sentence up to two thirds may be applied if the defendant effectively co-operates with the judicial authorities.

The sentence for both the defendants was further reduced by virtue of the *patteggiamento* procedure.

By *patteggiamento* judgment rendered on 5 April 2019, final on 27 April 2019, the Judge for preliminary investigations of Udine imposed on PILOSIO s.p.a. the sanction of the fine of Euro 20.000.

The fine was determined by applying: a reduction since the company adopted an appropriate organizational model after the offence and the advantage of the company was deemed to be limited.

A further reduction was granted by virtue of the *patteggiamento* procedure.

FRABEMAR (Congo)

By judgment rendered on 15 July 2020 (not final pending appeal) the first-instance Court of Genua imposed the following sanctions: on BERNARDINI Franco the sanction of 1 year and 8 months of imprisonment for two counts of foreign bribery; on BERNARDINI Massimo the sanction of 1 year and 6 months of imprisonment for one count of foreign bribery.

The sentence was determined taking into account the fact that both the defendant were first time offenders.

By the same judgment the Court imposed on the company FRABEMAR s.r.l. the sanction of Euro 25.800. The sanction was determined taking into consideration that the company adopted an appropriate organizational model after the criminal offence.

ENI (Congo - Brazzaville)

By *patteggiamento* judgment rendered on 25 March 2021 (not final yet) the Judge for preliminary hearing of Milan imposed on the legal person ENI s.p.a. the fine of Euro 826.134 in relation to the criminal offence of foreign bribery as provided for under articles 322 bis, par. 2, 319 *quater* CC, committed in Italy and Congo in July 2015. The final sanction was determined as follows. “Base” sanction; 1.236.200 Euro reduced of one-third by virtue of the *patteggiamento* procedure.

The judge explained in her reasoning that the maximum sanction was applied without any mitigating factor. The reduction of one-third was due to the *patteggiamento* procedure.

Moreover, the judge explained that the conditions for not applying disqualification sanctions were met; in this regard, it was emphasized that (i) the company had modified its compliance programmes in an appropriate fashion and had dismissed the individual who committed the criminal offence; (ii) the company had made available for confiscation the profits of the crime (11 million Euro).

In the Italian system, legal persons could also be found liable before the *Corte dei Conti* for any loss and/or misuse of public finances and public property.

According to the *Corte dei Conti*'s case-law, these cases occur when private entities fraudulently obtain funding on the pretext of carrying out projects or entrepreneurial initiatives in the public interest or divert the contribution they have been granted with this purpose; for instance, in several cases the *Corte dei Conti* recognized the liability of legal persons in relation with corruption facts.

See, for example, the judgment of the Second Chamber of Appeal, no. 123/2021, which has ascertained the damage to public resources deriving from the conducts of, among others, a Foundation in charge of health services which had diverted part of the funding received, in order to bribe public managers who originally approved and consented the public financing of health services rendered by the Foundation to citizens.

Moreover, when the loss occurs to finances deriving from the EU Budget, the Audit Chambers and the regional Prosecution Offices of the *Corte dei Conti* often carry out their investigations together with the OLAF – European Anti Fraud Office. The OLAF entered into an ongoing Cooperation Arrangement with the General Prosecutor's Office of the *Corte dei Conti*.

Having regard to the measures implementing the Next Generation EU Plan, as potential frauds could arise as a consequence of the expected massive release of money, the Italian institutions are paying a specific attention and defining countermeasures. With the aim of strengthening the prevention and the fight against such illicit behaviours and others, the General Prosecutor's Office of the *Corte dei Conti* is entering into a Working Arrangement with the EPPO – European Public Prosecutor's Office.

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures

to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

In order for the entity to be liable, the predicate offence must be committed by one of the following subjects (arts. 5, 6 and 7 of LD 231/2001):

- individuals who hold (even *de facto*) the position of representatives, directors or managers of the entity or of one of its organisational units that enjoys financial and functional independence, in addition to individuals who are responsible for the management or control of the entity (the so-called "top management"),
- individuals subject to the management or supervision of one of the persons/entities referred to above,
- subjects acting in the name and on behalf of the Entity by virtue of a mandate and/or any collaboration or assignment agreement.

A recent ruling of the 6th criminal division of the Court of Cassation, no. 54640 dated 6 December 2018, clearly highlighted that "*in particular, liability is incurred for offences committed in the interest or to the advantage or the organisation, pursuant to article 5 of LD 213/2001, by persons in a top management position of representation, administration or management, including of an organisational unit with autonomy, or by persons subject to the direction or supervision of the top management.*"

Drawing a distinction between offences committed by the top management and offences committed by subordinates, the Court of Cassation sitting *en banc* highlighted in judgment no. 38343 dated 24.4.2014 that:

a) as regards offences committed by persons in a leading position, article 6 applies, according to which entities, otherwise liable, may oppose in compliance with the choice made by the enabling legislator, evidence of: having adopted and implemented suitable organisational models aimed at preventing offences of the same sort as the one that has occurred, having entrusted the task of supervising the operation of and compliance with the models to a body of the entity endowed with autonomous powers, of fraudulent avoidance of the models, of lack of supervision or insufficient supervision;

b) *as regards offences committed by persons subject to management, liability ... is set out in article 7, whereby the entity is liable if the commission of the crime was possible due to failure to comply with direction and supervision obligations.*

The peculiar nature of the burden of proof in relation to the liability regime under LD 231/2001 derives from a distinction made as to the perpetrator of the crime: if the perpetrator is a person in a leading position there will evidently be a reversal of the burden of proof, while this factor will only have a minor impact if a subordinate is involved who is subject to other people's direction.

Article 6 of LD 231/2001 stipulates that, if a predicate offence is committed by a person holding a leading position, the defence shall prove that (i) the entity adopted and effectively implemented an organisational model designed to prevent the type of crimes committed and (ii) created a Supervisory Body with autonomous powers, (iii) this body has performed its tasks properly and (iv) the perpetrator fraudulently circumvented the organisational model. There needs to be "will" and "intention" to circumvent business procedures.

On the other hand, Article 7 of LD 231/2001 provides that, if an offence is committed by a person who does not hold a leading position but is subject to the direction of others, the defence shall only prove that the entity adopted and implemented an organisation model suitable to prevent crimes of the type committed.

The entity shall be held liable if the commission of the offence was made possible by non-compliance with duties of direction or supervision.

Therefore, the onus shall be on the prosecution to prove a lack of direction or supervision and the connection between this factor and the committed crime.

Article 4 of LD 231/2001 reads as follows: "*In the cases and under the conditions envisaged in Articles 7, 8, 9 and 10 of the criminal code (including domestic and foreign bribery), entities that have their head offices in the state are also liable to prosecution for crimes committed abroad, provided that the State where the act was committed does not intend to prosecute*".

Therefore, in any case where jurisdiction is established for an offence entirely committed abroad by natural persons, the entity is also liable.

In addition to the cases mentioned above, for which the entity is liable for offences committed entirely abroad, there is also a further case laid down in article 6(2) of the criminal code by virtue of which facts which are almost entirely committed abroad are also considered to have been committed in Italy. The provision reads: "*the offence shall be deemed to have been committed on the territory of the State when the act or the omission constituting the offence has been committed wholly or partly within the territory of the State, or if the event which is the consequence of the act or omission has occurred*".

For instance, the Court of Cassation, in the aforementioned judgment no. 11442 of 17.3.2016, in relation to the conviction of a leading Italian business group for foreign bribery following the payment of bribes to foreign government officials by its foreign

subsidiary for the award of a contract, confirmed the conviction of the Italian *holding* company, with the aggravating circumstance of having obtained a significant profit.

It is hardly questionable that a holding company is liable under LD 231/2001 for an offence committed in the interest or for the benefit of its subsidiary and vice versa, just as a subsidiary is liable for an offence committed in the interest or for the benefit of another subsidiary.

The case-law of the Court of Cassation has for years recognised the liability of a separate, associated, controlled or controlling legal person, whether within a group of companies or outside a group.

For these reasons, it is necessary to provide the holding company with an organisational model aimed at preventing also the crimes that can be committed in the other companies of the group; the 231 system in our country is based on the principle that, in abstract and general terms, there is no obligation to adopt organisational models and to appoint Supervisory Bodies.

However, LD 231/2001 envisages exemption from liability only if the company proves that:

a) the management body has adopted and effectively implemented, prior to the commission of the offence, management and control models capable of preventing the commission of the offence; b) it has entrusted an internal body (the Supervisory Body), endowed with autonomy and powers of initiative and control, with the task of supervising the operation and effective compliance with the organisational model, as well as of ensuring its update; c) the persons who committed the offence acted by fraudulently evading the controls provided for by the models; d) there was no omitted or insufficient supervision.

For entities to be exempt from corporate liability, the said models must meet the following requirements:

a) identify the areas in which there is a possibility that offences may be committed (sensitive activities or risk areas); b) introduce specific procedures for corporate decision making processes and their implementation aimed at crime prevention; c) identify methods of managing financial resources suitable for preventing the commission of crimes; d) introduce obligations to report to the body responsible for supervising the operation of and compliance with the Model; e) adopt a disciplinary system designed to punish failure to comply with the measures indicated in the Model.

The not mandatory reward system has already been subject to significant derogations over time due to a variety of reasons, subject to the general rule of freedom of self-regulation and control.

For instance, some regional laws stipulate the adoption of organisational models as a requirement for obtaining or maintaining accreditation in specific fields: (training, education, health, etc.).

The AGCM, for the purposes of the recognition of the score for the attribution of the so-called legality rating, has provided for the 231 model as an element of evaluation (See

the Regulation published on 14 November 2012, which has set criteria for the awarding of the so-called corporate legality rating, including the adoption and effective implementation of an organisational model pursuant to LD 231/01 and the absence of conviction for the offences referred to in LD 231/2001).

There has also been an attempt to exert pressure through case law on the directors of entities for them to adopt organisational models in compliance with LD 231, as they have to answer for *mala gestio* if liability is found for inadequate administrative activity with consequent obligations to make compensation for damage.

In this respect, the Court of Milan, by judgment no. 1774/2018, recognised a specific obligation imposed on the director of a company pursuant to the provisions of LD 231/2001. The Rules of procedure of the Italian Stock Exchange have introduced a mandatory adoption of an organisational, management and control model under Articles 6 and 7 of LD 231/2001 as one of the requirements for corporate governance to obtain a qualification as STAR (The STAR Segment – Securities Segment with High Requirements – is a dedicated portion of the stock exchange market for medium-sized enterprises with capitalisation not exceeding 1,000 million euros that, on a voluntary basis, undertake to comply with more stringent requirements in terms of information transparency, liquid assets and corporate governance.

The STAR was created in 2001 and more than 80 companies have joined it so far. In the last four years, the All Stars index has risen by 89%).

The National Anti-Corruption Authority has already expressed its opinion on this point by imposing a real obligation to adopt the «231 Model» for the entities of the third sector entrusted with social services.

Non-profit institutions that intend to acquire social services from public administrations shall introduce an organisational model for risk management pursuant to the provisions of LD 231/2001.

According to the principles laid down in Articles 6 and 7 of LD 231 2001, when making a decision on corporate criminal liability the court shall consider beforehand and concretely establish whether, before the commission of the crime, an entity adopted and effectively implemented an organisational and management model to be regarded as suitable for preventing crimes of the type then actually perpetrated.

Therefore, the finding of corporate liability under LD 231/2001 necessarily implies a test as to whether the organisational and management model adopted by the investigated company is actually effective, because otherwise a case of objective liability would come up only due to the commission of a predicate offence by the top management of a company, thus excluding the application of a defence for the exemption from liability as contemplated by Article 6 of the aforementioned decree.

Furthermore, this would frustrate the rewarding mechanism at the basis of the decree that is a strong motivation behind compliance.

A basic requirement for the adoption of a model to result in an exemption from corporate liability is that it is effectively implemented: a model may produce positive

effects for an entity only if it is actually suitable to prevent the commission of offences within the entity in respect of which it has been designed.

Therefore, the model shall be concrete, effective and dynamic, i.e. it shall necessarily take account of the sector in which the entity operates and its history (including its judicial history).

As it is a concrete model, it needs to be updated to keep up with the evolution and changes of risk factors connected to misconduct (see Court of Cassation, 6th Criminal Division, judgment no. 11442 dated 12 February).

A well-known and still topical judgment that has constantly been invoked in case law, which is why it is referred to as a decalogue decision, identified the main requirements of a model for it to give rise to exemption from liability (see Court of Milan, Pre-trial Investigation Judge, order of 20 September 2004).

A model:

1) shall be adopted starting from the specific and exhaustive mapping of risks connected to the commission of offences rather than from a repetitive description of law provisions,

2) shall provide for members of the supervisory body to be specifically skilled to carry out inspections and perform organisational roles,

3) shall include the existence of a judgment of conviction (or sentencing agreement) among the grounds for prohibiting a person to be elected as a member of the supervisory body,

4) shall make a distinction between the activities intended for the employees in general, for employees operating in specific risk areas, for the supervisory body and for the persons tasked with internal control,

5) shall make provision for the content of training courses, their attendance, the mandatory participation in such courses, attendance and quality controls on the content of programmes,

6) shall expressly contemplate the imposition of disciplinary sanctions on directors, general managers and compliance officers who were not able to detect and consequently eliminate misconduct and crimes due to negligence or unskillfulness,

7) shall define systematic search and risk identification procedures under particular circumstances (e.g. emergence of previous wrongdoings, high staff turn-over),

8) shall make provision for both routine and surprise inspections – in any case on a periodical basis - for sensitive business activities,

9) shall impose an obligation on the employees, managers, directors of a company to report any relevant news related to the entity's life, any breach of the model or commission of offences to the supervisory body. In particular, it shall provide clear

indications on how a person who gets to know of unlawful conduct may report to the supervisory body,

10) shall contain specific and concrete protocols and procedures».

Whether debarment decisions may be mitigated by the implementation of effective internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery.

Article 17 of Legislative Decree 231/2001 lays down cases of reparation of the consequences deriving from crimes which produce positive effects for entities in respect of sanctions.

There is a detailed set of rules in place:

1. without prejudice to the application of pecuniary sanctions, disqualification sanctions shall not apply when the following conditions are met upon commencement of a first-instance trial:

a) an entity has fully compensated for damage and eliminated the harmful or dangerous consequences of the crime or it has effectively endeavoured to achieve that objective,

b) an entity has eliminated the organisational loopholes that have caused the crime through the adoption and implementation of organisational models designed to prevent offences of the type committed,

c) an entity has made the profit obtained available for purposes of confiscation.

Therefore, the adoption and implementation of appropriate organisational models is (only) one of the conditions to avoid the application of disqualification measures: this aspect should be considered in conjunction with Article 65 of Legislative Decree 231/2001 stipulating that, still upon commencement of the trial, a company has the opportunity to ask for the suspension of the trial precisely to be able to carry out the activities referred to in Article 17 including full compensation for damage.

Lastly, it is worth pointing out that reparation is also relevant for the suspension and revocation of precautionary measures (Article 49) and for the monetary conversion of disqualification sanctions during the enforcement stage (Article 78).

The revocation of disqualification measures as a result of reparation has been dealt with in a recent judgment delivered by the Court of Cassation sitting *en banc* (judgment no. 51515, 27 September 2018, filed on 14 November 2018) in relation to a bribery offence, therefore a successful completion of the relevant tasks has been taken into account.

Self-reporting by entities also includes reports to the judicial authority that are particularly relevant because they could even prevent an offence from being perpetrated. Under Article 26 of LD 231/2001, liability shall be ruled out where an entity “voluntarily” prevents the completion of the action: the voluntary prevention definitely includes reporting as a disclosure of business misconduct to the outside world thus revealing it and preventing it from unfolding.

It should be emphasised that Article 26 enables and suggests the provision of a reporting duty to the judicial authority or other public authorities within organisational models; a company's decision to report offences produces positive effects also from a different perspective: by reporting one of its employees or top managers, the company acts *ab origine* as a person who suffered damage as a result of their conduct and as a civil party in the future.

Among the number of initiatives taken by Italy, it is worth mentioning that since December 2017, the Italian Ministry for Foreign Affairs, in cooperation with Transparency International, has hosted an awareness-raising event on corporate liability called the Italian Business Integrity Day (IBID).

This initiative includes high-level workshops with a view to introducing best integrity practices and compliance programmes designed by the largest Italian enterprises for corporate liability and particularly against corruption.

The events are hosted at Italian embassies to strengthen a culture of business legality and raise awareness of the risks of bribery and the available prevention tools within the economic environment: the companies' participation was made possible by a multi-stakeholder approach followed by the national platform of the Italian Business Integrity Forum (BIF) coordinated by Transparency International Italia.

As a matter of fact, in this context, the businesses belonging to the BIF have focussed their integrity initiatives on the application of tools and practices, going beyond law abidance while developing and testing innovative practices in the field of anti-corruption and integrity, such as the "due diligence" of third parties, anonymous platforms for whistleblowing, ad-hoc reporting tools for chains of suppliers, organisation of specific events to share expertise and know-how.

Other public entities also play active roles in the business integrity area, such as the Ministry of Economic Development acting as a national contact point for the implementation of the OECD Guidelines on multinational enterprises. Italy is a signatory to the OECD Declaration on International Investment and Multinational Enterprises and is actively engaged in promoting the OECD guidelines on multinational enterprises.

In the ITC sector, the Agency for Digital Italy (AGID) is also testing simplified tender procedures by encouraging creativity and suggestions by businesses so as to satisfy requests for public tenders and acquisition. While the general principles governing public tenders are outlined in the Code (Legislative Decree no. 50/2016), the tender process workflow has been streamlined and first and foremost it requires creative proposals by the enterprises participating in the relevant tender.

In this way, the market and the public sector may cooperate transparently through a dedicated online platform (<https://appaltinnovativi.gov.it>).

What is more, Unioncamere, the confederation of chambers of commerce, is cooperating with institutions and social and business organisations to promote integrity and transparency in the economic sector. Among the initiatives adopted by Unioncamere it is worth mentioning the partnership with the Italian Agency for Confiscated Assets and the setting up of a web portal called "Open Data Aziende

Confiscate” (<https://aziendeconfiscate.camcom.gov.it>), updated weekly with all data concerning businesses confiscated.

As to the role of the Ministry of Foreign Affairs, the development of a course of action of Legal Diplomacy and coordination of initiatives to counter corruption aims at raising the awareness of the other institutions concerned from the private sector and civil society with respect to the impact that standard rules and principles set out in multilateral frameworks may have on the Italian legal system. We should recognise the importance of legal diplomacy that has allowed for an exchange of best practices both at European and global level.

The awareness-raising efforts made at institutional level include the events to celebrate the International Anti-Corruption Day hosted at the Ministry of Foreign Affairs and also opened to accredited embassies. The various conferences also engage Law Enforcement, the Judiciary, private companies, State-owned companies, legal professions, the media and civil society.

The role of academia is worth mentioning, and this is reflected in high-level training on legality and the fight against corruption through first and second level master courses.

Upon celebration of the world anti-corruption day, on 18 December 2019 the Inspectorate General of the Ministry of Foreign Affairs hosted an event for all employees of MAECI on whistleblowing, transparency and their application to the Ministry.

The set of rules for any employee who reports misconduct (Article 54-bis of Legislative Decree no. 165/2001), the so-called "whistle-blower", introduces a protection measure aimed at allowing for the emergence of wrongdoings within administrations.

The rationale behind the set of rules on whistleblowing is to provide adequate safeguards for an employee who reports misconduct (of general interest) he/she has got knowledge of by virtue of his/her employment contract, thus avoiding any negative consequences that may arise based on such reporting; in case of “discriminatory measures”, such as unjustified disciplinary actions, harassment in the workplace and any other form of retaliation for one’s own working or personal life thus giving rise to intolerable working conditions, the onus is on the administration to prove that such measures are justified by reasons other than reporting.

Moreover, two years ago the National Anti-Corruption Authority (ANAC) has made the “Whistle-blower” electronic application available for the collection and processing of public employees’ reports of misconduct with confidentiality safeguards provided for by the law. The application is available at the following link: <https://github.com/anticorruzione/openwhistleblowing>.

This platform allows for filling in, sending and receiving reports of alleged misconduct. Furthermore, it enables the director in charge of bribery prevention and transparency who receives reports to confidentially communicate with whistle-blowers without being aware of their identity.

The software may be distributed to any person concerned in compliance with the EU Regulation on Public Licence, without any further authorisation by the ANAC. The system includes a report form made available by ANAC, but it can entirely be personalised by a final user; similarly, employees and collaborators of banks and

financial intermediaries supervised by the Bank of Italy may use the whistleblowing reporting channel to disclose any potential misconduct with a safeguard of confidentiality contemplated by the law.

As far as the private sector is concerned, the extension of the whistleblowing protection mechanism implies new specific requirements: consequently, the standard models of organisation and compliance programmes of enterprises (based on LD 231/2001) should contemplate one or more than one communication channel allowing for reporting in detail specific actions that may expose to basic offences; furthermore, the Law has introduced specific requirements for organisational models to prevent bribery.

The reporting systems within businesses shall include:

- one or more than one channel enabling employees to report misconduct or breaches of law with a view to protecting entities' integrity,
- at least one alternative reporting channel ensuring that whistle-blowers' identity is kept confidential,
- appropriate measures to protect whistle-blowers' identity,
- a prohibition to impose punitive measures against whistle-blowers for reasons directly or indirectly related to the reporting,
- the onus, which is on the employer, to prove that the adopted measures are not punitive in nature,
- sanctions to be imposed on those adopting punitive measures against whistle-blowers and on those reporting unsubstantiated facts with intent or gross negligence.
- private businesses shall prove that their compliance programmes include the following constituents:
 - a department/unit in charge of managing and preserving the internal whistleblowing system,
 - procedures clarifying who may be a whistle-blower, the contents of a report by a whistle-blower, the protection of confidentiality and corresponding sanctions for those who do not comply with such measures,
 - appropriate employees' communication and training in the matters specified above.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

Yes, the existing legal framework about the liability of legal persons (Legislative Decree 231/2001) offers in its articles 19 and 53 the possibility to trace, seize and confiscate the proceeds of crime committed through a legal entity.

A recent amendment to the law through the Legislative Decree 14.7.2020, nr. 75 has widen the number of predicate crimes the legal persons may be considered liable to, in compliance with the recent EU-Directives and Regulations that have introduced in the European Union the EPPO (European public Prosecutor’s Office), competent for pursuing crimes that affect the economic and financial interests of the Union itself.

Possible form of seizure and confiscation are the ordinary ones, aimed at confiscating assets linked to a specific crime, following a criminal conviction for that crime, or the “per equivalent/value confiscation”, so that assets of equivalent value can be confiscated as well, where specific criminal assets are outside the reach of investigators.

Non-conviction-based confiscation cannot be used in this case, except in “indirect cases” when it is directed against a physical person who owns quotes, stocks, etc. referred to a specific LP.

During 2020 Italian LEAs have confiscated following assets as proceeds of crimes:

	IMMOVABLES		REGISTERED MOVABLES		MOVABLES				TOTAL ASSETS	TOTAL VALUE
	apartments, villas, plots of land		cars, motorcycles, vessels		firms, stocks and shares, sums of money bank deposits		firms			
	NR	VALUE	NR	VALUE	NR	VALUE	NR	VALUE	NR	VALUE
TOTAL	2.640	690.782.870,00	391	5.699.803,00	1.856	1.433.495.198,00	235	781.003.777,00	4.887	2.129.977.871,00

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

It is hardly possible to set out cases of international cooperation extensively, but here we report a very recent one:

Operation “SWIFT MY CASH” (May 26, 2021)

Italian Guardia di Finanza’s Special Unit and the Public Prosecutor’s Office of Milan started an investigation against a local corporation, working closely with the French Gendarmerie and the Swiss Cantonal and Federal Police, through the European Investigation Order (EIO) process, on a large foreign bribery and money laundering case involving several legal persons based in the afore mentioned countries and in the USA; more than 1,2 million euros black money generated by tax evasion was used for corrupting two top managers of foreign companies to gain some valuable procurement abroad (20,000,000 euros).

The Italian corporation will be sued in compliance with the national Law on liability of legal persons (LD 231/2001) which provides for the applicability of financial penalties

in addition to the seizure of the profit of the committed bribery for its own benefit and advantage, whose amount has been evaluated in more than eleven million euros.

More info available here:

<https://www.breakinglatest.news/news/corruption-and-international-money-laundering-maxi-operation-between-italy-france-and-switzerland-two-professionals-arrested-kidnappings-for-15-million/>

JAPAN

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

During FY 2021, a new system will be launched in which certificates on the beneficial ownership of legal persons will be issued at the commercial registries upon application by the legal persons.

See the website of the Ministry of Justice Japan:
<http://www.moj.go.jp/content/001324013.pdf>

- A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement³⁷.**

Required information can be provided in the form of links to other reviews or published work.

【Mechanisms at Registry Offices】

A stock company must register names of its directors, a membership company must register names of its members, and a general incorporated association and a

³⁷ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

general incorporated foundation must register names etc. of the representative directors, at the location of its principle office at the time of its incorporation, respectively (Companies Act article 911 paragraph 3, articles 912 through 914, Act on General Incorporated Associations and General Incorporated Foundations article 301, paragraph 2, article 302, paragraph 2).

Therefore, if these persons are the beneficial owners, the information about them is available on the registry.

The registered information is available online to anyone. When a person needs certificate of registered information in order to submit it to a third party, the person may request each Legal Affairs Bureau for issuance of the certificate.

With regard to a corporation that can control another corporation by exercising voting rights, in addition to the articles of incorporation in which the names and addresses of the founders are described, it is required to attach a document that lists all the investors (Commercial Registration Act article 47, paragraph 2, Companies Act article 27 (v), article 59, paragraph 3 (i), etc.), and all the submitted documents are kept at the registry office.

After the initial registry for incorporation, if applying for the registration of change in registered matters for which a resolution of the shareholders meeting is required, List of Shareholders (a document stating the name, etc. of the superior shareholder until the number of the top ten voting rights holders or the number of voting rights holders reaches two-thirds of the total) shall be submitted to the registry office (Regulation on Commercial Registration article 61, paragraph 3).

The registry office promptly responds to inquiries from the competent authorities regarding matters related to investigations regarding the attached documents of the registration, including the List of shareholders, in accordance with laws and regulations.

- A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.**

Required information can be provided in the form of links to other reviews or published work.

【Tools provided by Registry Office】

See the answer to A2.

In the case where a representative director fails to complete a registration required under Companies Act and Act on General Incorporated Associations and General Incorporated Foundations, such director will be subject to civil fine of up to 1 million

yen (Companies Act article 976 (i), Act on General Incorporated Associations and General Incorporated Foundations article 342 (i)).

In addition, with regard to a corporation that can control a corporation by exercising their voting right, if applying for the registration of change for which a resolution of the shareholders meeting is required with regard to the information to be registered, the List of shareholders, which is an attachment document of the registration, shall be attached, otherwise the application for registration will be dismissed (Commercial Registration Act article 24 (vii)).

Therefore, the information kept at the registry office will be updated within a reasonable period of time due to change the registered matters with the change of controlling shareholder.

To ensure the credibility of the registration system and reduce the risk of misuse of legal persons through reselling of dormant companies or other means, Japan enforces the system of "Deemed Dissolution" against Stock Companies and General Incorporated Associations/Foundations, whose registration information has not been changed for a certain period of time and that are considered to have abolished the business. Registration of dissolution for these companies and associations/foundations are applied every year in accordance with the system which is based on the "Companies Act" and the "Act on General Incorporated Associations and General Incorporated Foundations.

【Other tools】

Under the Companies Act,

- a stock company shall prepare and keep its shareholder registry at its head quarter.
- a membership company shall (i) provide names and addresses of its members in its article of incorporation and (ii) register names and addresses of its members at the company registry.

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

In reference to the answers provided above, Japan does not face any challenges or impediments related to the exchange of reliable information on beneficial ownership per se, as a new system will be launched in which it strengthens its management on such registered information through which reliable information on beneficial ownership could be provided upon request.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY³⁸

- B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.**

Where applicable, this can be provided in the form of links to other reviews or published work.

With regard to foreign bribery, Japan published the revision of “Guidelines for the Prevention of Bribery of Foreign Public Officials” and “Guidance to Guidelines for the Prevention of Bribery of Foreign Public Officials” in May 2021 to respond recommendations and a commentary of the Phase 4 report. The Guidance explains main points of the Guidelines easily for SMEs.

The Guidelines (Japanese version):

https://www.meti.go.jp/policy/external_economy/zouwai/pdf/GaikokukoumuinzouwaiBoushiShishin20210512.pdf

The Guidance (Japanese version):

https://www.meti.go.jp/policy/external_economy/zouwai/pdf/zouwai_shishin_tebiki20210512.pdf

- B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?**

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Whistleblower Protection Act (the “Act”), enacted in 2004 and enforced in 2006, facilitates the reporting of violations of law by protecting people reporting the prescribed violations of law. The 2020 amendment of the Act, which fully come into effect by June 2022, strengthens the protection of whistleblowers and facilitates further reporting. For instance, the amendment of the Act adds officers, directors and other corporate management into the scope of persons protected under the Act and stipulates that those in charge of dealing with the report will be subject to criminal punishment, for leaking the information identifying the whistleblowers. Moreover, the Act allows to provide for administrative sanctions on companies that breach the obligation under the WPA to establish the

³⁸ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

appropriate framework for properly dealing with the reports.
In accordance with the amendment of the Act in 2020, new guidelines (the “Guidelines”) are to be formulated in 2021 and the Guidelines will expressly prohibit any discriminatory or disciplinary action against whistleblowers.

We provide the link of the published material describing the overview of 2020 amendment of the Act.

https://www.caa.go.jp/en/policy/consumer_system/assets/consumer_system_200714_0001.pdf

- B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively³⁹?**

Where applicable, this can be provided in the form of links to other reviews or published work.

Japan does not have specific law in this regard.

- B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.**

Where applicable, this can be provided in the form of links to other reviews or published work.

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C. LIABILITY OF LEGAL PERSONS⁴⁰

- C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.**

³⁹ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

⁴⁰ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Unfair Competition Prevention Act of Japan provides criminal sanctions, which are fines of up to three hundred million yen, on legal persons in case of active foreign bribery.

In Phase 4 report in 2019 under the OECD ABC, Japan was recommended to urgently review its legislation to ensure that Japan has nationality jurisdiction over foreign bribery offenses including when bribes by Japanese companies operating abroad are paid by non-Japanese employees with regard to corporate liability (recommendation 14(b)). Japan established a Study Group in Ministry of Economy, Trade and Industry and discussed if Japan should take steps to ensure its jurisdiction over the foreign employees and discussed issues when taking legal measures on it, while considering the current jurisdiction and recommendation 14 (b).

Phase 4 report:

<https://www.oecd.org/corruption/OECD-Japan-Phase-4-Report-ENG.pdf>

Information on the Study Group (Japanese version):

https://www.meti.go.jp/shingikai/economy/anti_bribery/index.html

There has been no amendment for laws related to domestic bribery.

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

There is a case of foreign bribery where staff of a railway company in Japan including its president provided money to staff of a public foreign railway company with the aim to enjoy special treatment. In this case, the staff and president of the Japanese company were sentenced to imprisonment, and the company itself was sentenced to fine.

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

With regard to foreign bribery offenses, the Unfair Competition Prevention Act (Article 22 (1)(iii)) provides that where the representative of a corporation, or the agent, employee or other worker of a corporation has committed a violation of Article 18 (1) (Prohibition against the Provision of Wrongful Gains to Foreign Public Officials) with regard to the business of the corporation, in addition to the offender being subject to punishment, the corporation is to be subject to the fine.

In addition, when foreign bribery offences are committed or suspected by a Japanese employee or intermediaries, including its associated corporation's foreign employees, in connection with an operation of a legal person, the person is subject to violation of the Unfair Competition Prevention Act (Article 18 (1) (Prohibition against the Provision of Wrongful Gains to Foreign Public Officials), and would be punished accordingly. This includes when the subject is in Japan or abroad, orchestrating/organizing such conducts of offering bribes through transferring money or promising bribery through emails or calls. Also, if a foreign bribery offence is committed by a Japanese personnel abroad, the person is subject to violation of the Unfair Competition Prevention Act (Article 18 (1) (Prohibition against the Provision of Wrongful Gains to Foreign Public Officials), and would be punished accordingly. However, whether the dual criminal liability provision under the above Article will be applied would be judged in light of the individual and specific circumstances.

Japan does not have any incentives to encourage the private sector to have integrity programs.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

Act on Punishment of Organized Crimes and Control of Crime Proceeds makes it possible to track and confiscate criminal proceeds obtained by legal persons.

Case examples

(1) The defendant company operated amusement businesses without permission and laundered its sales. The company was sentenced to confiscation of about 43.6 million yen (about USD 0.4 million) in total as criminal proceeds, which comprised of cash and deposits.

(2) The defendant company facilitated illegal employment through dispatching foreign workers illegally. The company was sentenced to confiscation and collection of about 16.5 million yen (about USD 0.18 million) as criminal proceeds.

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

Details of individual cases of mutual legal assistance are confidential in light of trust with requesting countries. However, there were cases in which mutual legal assistance was provided to detect location of people involved with legal persons and to make interviews for those people.

MEXICO

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

Answer: SFP⁴¹

1. Beneficial Ownership Leadership Group (BOLG)

BOLG was established in 2019 to promote the publication of beneficial ownership data in a free and open manner. By joining the Group (currently conformed by Armenia, Kenya, Latvia, Mexico and the Slovak Republic) each country subscribes to a set of Beneficial Ownership Transparency Disclosure Principles with the aim of having a public registry of beneficial owners by 2023, so that anyone can download, search and freely reuse without a fee, proprietary software or the need to register.

Further details can be consulted in the following link:

<https://www.opengovpartnership.org/es/beneficial-ownership-leadership-group/>

2. Towards the disclosure of the beneficial ownership

As part of the Fourth Action Plan (4PA) of Mexico in the Open Government Partnership⁴², a commitment is currently implemented with the aim of developing a National Action Plan to accomplish the Disclosure Principles and initiate the publication of data with a view to having a Register applicable to legal personas and civil entities throughout the country by 2023.

The agencies and entities of the Federal Public Administration that participate in this commitment are: Ministry of Public Administration (SFP), the Ministry of Finance and Public Credit (SHCP through the Financial Intelligence Unit and the Banking, Securities and Savings Unit), National Banking and Securities

⁴¹ **NOTE:** Throughout the document, the acronym “SFP” stands for *Secretaría de la Función Pública (Ministry of Public Administration)*.

⁴² Fourth Action Plan (4PA) of Mexico to the OGP 2019-2021 (in Spanish):

<https://descarga.storage.apps.funcionpublica.gob.mx/b31f9fd4-47cb-4050-8012-b259dae559d1>

Commission (CNBV), Ministry of Economy (SE) and Service of Tax Administration (SAT).

3. Community of Practice on Beneficial Ownership Transparency Policies in Latin America

Within the framework of the OGP a Community of practices on transparency policies for final beneficiaries in Latin America was created. The Community is integrated by Chile, Paraguay, Costa Rica and Mexico. Its aim is to contribute to the development of tangible actions to promote reforms on the transparency of beneficial ownerships, as well as to generate inter-institutional spaces for the coordination with civil society and other key actors.

The community of practice has planned two phases of exchange. The first phase focused on countries that have assumed commitments related to progress on beneficial ownership transparency policies of in their Action Plans (as mentioned, Mexico is currently promoting the commitment “Towards the beneficial ownership disclosure” in its 4PA). A second phase, which will look forward involving other regional countries in the discussion, in order to broaden and strengthen the community of practice.

4. Inter-institutional Group for the Beneficial Ownership Transparency

Led by the Financial Intelligence Unit, the Group is integrated by the Ministry of Public Administration (SFP), the Ministry of Finance and Public Credit, the Ministry of Economy (SE), the National Banking and Securities Commission (CNBV), and the Service of Tax Administration (SAT).

On March 23, 2021, the first meeting of the Inter-Institutional Group was held with the aim of reviewing key issues for the compliance of the FATF international standard R.24-25: Beneficial Ownership Transparency in Mexico.

Main topics addressed:

- International commitments on transparency of the beneficial ownership in Mexico:
 - a) Financial Action Task Force (FATF)
 - b) G20 HLP
 - c) Extractive Industries Transparency Initiative (EITI)
 - d) London Anti-Corruption Summit
 - e) Beneficial Ownership Transparency Disclosure Principles within the framework of the Open Government Partnership (OGP)
 - f) Global Forum on Transparency and Exchange of Information for Tax Purposes
 - g) OECD Existing systems and registries
 - h) Inter-institutional efforts
 - i) Actions taken
 - j) Progress made
 - k) UIPES Prospective
 - l) Priority actions

Answer UIF⁴³:

Based on FATF's Recommendations and Immediate Outcomes related to BO (R. 10, 22, 24 and 25, and I.O.5), Mexico has been actively participating in the project to modify Recommendations 24 and 25 to face more effectively the emerging challenges in terms of BO. Mexico strongly believes that the continuous review and strengthening of its Standards has allowed the FATF to address new risks and trends as they are presented. In this sense, the country will continue to work closely with the FATF and the delegations to achieve compliance and effectiveness regarding these international standards.

For said purpose, within the framework of the 4th Action Plan of Mexico with the Open Government Partnership (OGP), the country established the proactive commitment "Towards the disclosure of the Beneficial Ownership". This commitment, developed collaboratively with civil society and competent Mexican authorities such as the Ministry of Economy, the Ministry of Public Administration and the Ministry of Finance and Public Credit, will begin the implementation of the Beneficial Ownership Transparency Disclosure Principles, seeking to initiate the publication of BO data from companies in the hydrocarbon and mining sector and have, by 2023, a National Beneficial Ownership Register.

At the moment, the National BO Register is at an early stage, with the development of a pilot project.

A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement⁴⁴.

Required information can be provided in the form of links to other reviews or published work.

Answer: SFP

- Definition of the Beneficial Ownership, section XXIII of the 2nd; Identification of the Real Owner, Section VI of the 4th of the General Provisions referred to in article 115 of the Law of Credit Institutions.

⁴³ **NOTE:** Throughout the document, the acronym "UIF" stands for *Unidad de Inteligencia Financiera (Financial Intelligence Unit)*.

⁴⁴ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

- Guidelines for the identification of the Beneficial Ownership issued by the Ministry of Finance and Public Credit: <https://www.gob.mx/cnbv/acciones-y-programas/lineamientos-para-la-identificacion-del-propietario-real-119323>
- Article 73 of the General Law of Mercantile Companies establishes: *“the company will keep a special book of the partners, in which the name and address of each one will be registered, indicating their contributions and the transmission of the social parts. This will not take effect with respect to third parties but after registration. Regarding the registration referred to in the preceding paragraph, a notice shall be published in the electronic system established by the Ministry of Economy in accordance with the provisions of Article 50 Bis of the Commercial Code and the provisions for its operation.”*

Answer: UIF

In first place, all FIs must apply CDD and KYC measures, allowing competent authorities to maintain a registry of relevant information regarding BO.

Additionally, for companies, legal persons and natural persons, the Tax Administration Service holds their relevant information through the Registry of Federal Taxpayers.

On the other hand, all the companies, through registries that are managed by the Ministry of Economy, should follow a series of steps and provide certain information in order for them to be able to carry out their activities, such as Constitutive Acts, inform about the increase or decrease of fixed or variable capital, among other relevant information.

All these data are registered and archived on the registries mentioned in A.3.

A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

Answer: SFP

The Working Group of the commitment “Towards the Beneficial Ownership Disclosure in Mexico” of the 4PA has identified as relevant the following records for the identification of beneficial ownership:

1. Public Registry of Commerce
2. Public Property Registry
3. Federal Taxpayers Registry
4. National Registry of Securities
5. National Registry of Investments

6. Public Mining Registry
7. Trust Transparency and Control System
8. Registry of Public Officials of the Federal Public Administration who intervene in public procurement procedures, the granting of licenses, permits, concessions and authorizations, as well as in the alienation of movable assets of the federal public administration and in the assignment and issuance of Opinions on appraisals and income appraisal.
9. Registry of Sanctioned Public Officials
10. List of Politically Exposed Persons
11. List of Blocked Persons
12. Issuer Information
13. Electronic System of Publications of Commercial Companies

Answer: FGR⁴⁵

The Comprehensive Registry Management System (Sistema Integral de Gestión Registral, SIGER) has documents on the members and directors of private entities. This information can be publicly consulted on a case-by-case search.

https://rpc.economia.gob.mx/siger2/xhtml/login/login.xhtml;jsessionid=UKE_z31bqeuVMGxH6tH11oyLdwrahTYAo7pkQCi2A4JjyUS0XcT5!1084180793

Answer: UIF

Currently, several Mexican Ministries have registries that possess information regarding the BO of legal persons and legal arrangements. For instance, some of the existing registries are:

- Ministry of Economy (SE):
 1. Electronic System of Publications of Commercial Companies
 2. Comprehensive Registry Management System (SIGER) of the Public Registry of Commerce
- Ministry of Public Administration (SFP):
 1. Registry of Public Officials of the Federal Government
 2. Patrimonial and Interest Registry
- National Banking and Securities Commission (CNBV):
 1. Registry of Exchange Centres and Money Transmitters
 2. Report of Persons Exercising Control
 3. Report of Share Transfer for more than 2%
- Tax Administration Service (SAT):
 1. Registry of Federal Taxpayers
 2. Registry of Importers and Exporters
 3. Money Laundering Prevention Portal
- Financial Intelligence Unit (FIU):
 1. Financial Intelligence products

Despite the existence of those and other registries, the main challenge faced by the country is find a way to make them interoperate and develop a tool that enables prompter and timely access to accurate information, hence, the creation of the National BO Register is crucial.

⁴⁵ **NOTE:** Throughout the document, the acronym “FGR” stands for *Fiscalía General de la República* (Office of the Attorney General of the Republic).

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

Answer:SFP

Some challenges identified in Mexico are:

- Definition of the beneficial ownership

Within the financial sector in Mexico there are different terms and concepts for the beneficial ownership:

a. Beneficial Controller

Section III of article 3 of the Federal Law for the Prevention and Identification of Operations with Resources of Illicit Origin (LFPIORPI) establishes as Beneficial Controller the person or group of persons who:

- I. By means of another or any act obtains benefits derived from these and who ultimately exercises the rights of use, delight, enjoyment, and utilization of a good or a service.
- II. Controls of legal person who, as a client or user, carries out actions or operations with whom they carry out Vulnerable Activities.

b. Beneficial Ownership

Article 108 Bis of the Retirement Savings Systems Law and 91 of the Investment Companies Law define the beneficial ownership as that person who obtains through another the benefits derived from an operation. It also includes those that exercise the final effective control over a legal person or legal agreement.

c. Real Ownership

In the Guidelines of the Real Ownership derived from the Credit Institutions Law, a real ownership is defined as that natural person who obtains the benefits derived from an account, contract or operation through another or any act or mechanism, and finally is the true owner of the resources, having over these rights of use, enjoyment, exploitation, dispersal or disposal.

- Definition of thresholds

The need to review the issue of percentages and thresholds for the identification of beneficial ownership in Mexico was identified, including the reduction of 25%.

- Deadlines and sanctions for the notice of registration of partners and shareholders

On December 15, 2018, several provisions of the General Law of Mercantile Societies (LGSM) entered into force, for which the Ministry of Economy implemented in the System of Publications of Mercantile Societies the “Notice of registration in the special book of the partners or in the share register of the current shareholding structure”. However, no deadlines were established for making this notification to the registry, nor were sanctions established for failure to do so.

- Pilot implementation

Work is being done to define the technology requirements for the implementation of the pilot and defining the institutions that shall participate.

Answer: FGR

Mainly, that there are no international collaboration agreements related to the exchange of reliable information on beneficial ownership which the Prosecutor General’s Office (FGR) can use or is aware of.

Answer UIF:

As mentioned in question A.1., the national BO register is in an early stage, so the main challenges faced currently are:

- Defining the needs to achieve interoperability between the existing registries of the Ministries.
- The technology needed to make all the existing registries capable of interoperating between them.
- Guarantee the periodical update of the information that will make up the national register.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY⁴⁶

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

Answer: SFP

Mexico has made significant efforts to develop an accessible policy to all companies that are or want to become State’s suppliers, in order to provide them with support tools to be governed primarily by integrity rules within their organization to reduce the risks of corruption. The aforementioned in the terms of article 25 of

⁴⁶ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

the General Law of Administrative Responsibilities (GLAR), which provides the minimum elements of an integrity policy.

Therefore, best practices were compiled in a project of Guidelines for the creation, promotion, operation and monitoring of the Business Integrity Register⁴⁷, soon to be published, in which its preventive nature is emphasized as a voluntary practice where companies Participants commit to document, operate and manage an integrity policy within their organizations to prevent acts of corruption.

Participation has been proposed to be carried out through registration on a computer platform, in order to systematize and organize the monitoring of interested companies. Register consists in:

- Module 1: Information about the person who performs the registration, this must be the legal representative, the natural person with business activity or the person in charge on behalf of the company.
- Module 2: General information of the company that is registered, such as the profile, the company's profile, detailed information and data on participation in public contracts.
- Self-diagnosis of the Integrity Policy: It is intended to serve as a reference to know the level of implementation of the company's integrity policy and the requirements that it must cover.
- Module 3: Information is recorded on compliance with the elements of the integrity policy as defined in article 25 of the GLAR, as well as elements of environmental measures and commitment to sustainable development.
- Module 4: Employer obligations on job security, including those related to gender equity, inclusion and non-discrimination.
- Module 5: Compliance with regulations in the tax, social security, retirement and housing fields for the protection of employees.

B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

Answer: SFP

Public sector

⁴⁷ For further information visit (in Spanish): <https://padron.apps.funcionpublica.gob.mx/>

- the complaint channel and the procedure with collaborators, clients, suppliers, contractors, intermediaries and / or business partners.
- Reception, processing and resolution of the attention of complaints.

Yes. GLAR establishes that public officials who report an administrative offenses or are witnesses in the procedure may request protection measures.

The Guidelines for the Promotion and Operation of the System of Internal and External Corruption Alerting Citizens⁴⁸ establish as a right of the internal alerting person (public official) or external (citizen) to request and receive protection measures that avoid personal or familiar reprisals that affects their integrity, possessions and assets, as well as guaranteeing the enjoyment and exercise of his rights in order to avoid any impairment. The protection measures are determined after a risk assessment.

Furthermore, the Protection Protocol for Whistleblowers of Corruption is an instrument that establishes the methodology and procedures for the timely implementation of protection measures for the whistleblower, family, common-law couple or partner, friends, employment and possessions.

Regarding the mechanisms for reporting corruption and/or bribery, the System of Internal and External Corruption Alert Citizens is a tool for the effective and easy citizen participation in which it is possible to warn about bribery, embezzlement and peculation. The System has an informative brochure that guides citizens and public officials for the entry of an alert and has its normative foundation in the said Guidelines.

Private sector

Yes. The Business Integrity Register provides companies the tools that are a model and support to document, operate and manage an integrity policy within their organizations, including declaring on the compliance and characteristics of the integrity policy on a computer platform, which includes having adequate reporting systems, both within the organization and towards the competent authorities, as well as disciplinary processes and specific consequences for those who act contrary to internal regulations or Mexican legislation.

As part of the support tools of the Business Integrity Register, companies have access to a model document for the development and implementation of a reporting system of the organization, by which the company is asked to provide evidence on the documentation, operation and management of:

- Complaints system.
- Standards, practices and confidentiality of protection for whistleblowers.
- Classification in alerts / inquiries / complaints.

⁴⁸ Reference to the System of Internal and External Citizens Alerting Corruption and the respective publications in the Mexico's Official Gazette (in Spanish): <http://alertadores.funcionpublica.gob.mx>
https://www.dof.gob.mx/nota_detalle.php?codigo=5571543&fecha=06/09/2019
https://www.dof.gob.mx/nota_detalle.php?codigo=5594816&fecha=11/06/2020
https://www.dof.gob.mx/nota_detalle.php?codigo=5603032&fecha=19/10/2020

- Classification according to the types of complaints in non-serious/serious administrative offenses.
- Responses to alerts / queries / complaints through the means established in the organization.
- Requests for authorization to the ethics committee / governing body or similar to carry out investigations or hear the competent authority for complaints.
- Record of the results of the investigations.
- Present the results of the reporting system to the ethics committee / governing body / similar for decision-making.

SFP carries out the verification of the companies on the documentation, operation and management.

Answer UIF:

Regarding the framework to protect whistleblowers, the country has in place several mechanisms, that include:

- The Ministry of Public Administration's reporting system, called "System of Internal and External Corruption Alerting Citizens". The objective of this platform is to promote a safe channel for citizens to denounce cases of corruption, bribery, graft, diversion of resources, among other offences.
- The Federal Judicial Council's (CJF) mailbox, that allows persons to denounce several offences of public officials, including corruption.

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively⁴⁹?

Where applicable, this can be provided in the form of links to other reviews or published work.

Answer: SFP

The Business Integrity Register's *section III. Adequate and effective control, surveillance and audit systems, which constantly and periodically examine compliance with the integrity standards throughout the organization of article 25 of the General Law of Administrative Responsibilities (GLAR)* provides tools to companies applicable regardless of their size, that support them to document,

⁴⁹ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

operate and manage an integrity policy within their organizations and that aim to identify, plan and address corruption risks.

The tools "Risk Assessment" and "Risk Control and Treatment" are free of charge available to companies to carry out an analysis and identify vulnerable areas and processes of the organization of acts of corruption, in order to prevent, plan and address the possible acts of corruption determined in the GLAR, such as:

- Bribery (art. 66 of the LGRA)
- Unlawful participation in administrative proceedings (art. 67 of the LGRA)
- Influence peddling (art. 68 of the LGRA)
- Use of false information (art. 69 of the LGRA)
- Collusion (art. 70 of the LGRA)
- Misuse of public resources (art. 71 of the LGRA)
- Improper hiring of former public officials (art. 72 of the LGRA)

Moreover, among the characteristics of the Business Integrity Register within the framework of the integrity policy companies must have practices related to ethics and compliance, such as the procedures of the risk areas themselves that must be detailed with supporter documents on the online platform, for instance:

- Guide for the creation of an Organization and Procedures Manual: supporting in the description of the processes that are necessary to achieve the commercial objectives, documents how to carry them out and who is responsible for carrying them out.
- Code of behaviour: supporting the description of the guidelines of conduct that must run the ethical behaviour of all its managers, employees and business partners in their daily performance and in the relationships and interactions that the company maintains with all its stakeholders. In addition to the principles and values, as well as the work environment of the organization, they must describe and demonstrate the practices regarding their relationship with the laws and regulations on anti-corruption, conflicts of interest, gifts and entertainment, fair competition, performance from third parties, facilitation payments, money laundering, privacy and confidentiality of information.
- Control and Surveillance System: its purpose is supporting the methodology to evaluate the implementation and control of the integrity system in the organization.
- Integrity Handbook: supports the definition for the control of risk prevention, which contributes to mitigating the risk of crimes, unethical practices or regulatory breaches being committed, as well as the performance controls in the face of situations in which they incur in breaches of regulations and/or practices contrary to the established values and principles.

Answer UIF:

According to Article 25 of the General Law of Administrative Responsibility, legal entities are encouraged to have an integrity policy, which must contain, among other elements, a clear and complete organizations and procedures manual, in which the

functions and responsibilities of each of its areas are delimited, and that clearly specifies the different chains of command and leadership throughout the structure.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

Answer: SFP

Currently, Mexican government works jointly with the country's business self-regulation organizations and professional associations in order to establish a program for the dissemination of transparency and the adoption of an integrity policy through registration to the Business Integrity Register, independent of its size, as well as the mechanisms for citizen participation to alert serious acts of corruption through arrangements.

C. LIABILITY OF LEGAL PERSONS⁵⁰

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

Answer: SFP

⁵⁰ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

Administrative scope

General Law of Administrative Responsibilities (GLAR) was published on July 18, 2016, and entered into force on July 19, 2017, which empowers the Federal Court of Administrative Justice to impose administrative sanctions on behaviours considered as acts of corruption committed by legal persons, such as bribery, influence peddling, use of false information, collusion, improper use of resources and improper hiring of former public servants.

It is worth mentioning that before 2012, only legal entities in Mexico were sanctioned for breaches of public procurement procedures, for which the Ministry of Public Administration is the competent authority to impose sanctions such as fines and disqualifications, which to date continue to be effective in guaranteeing legality in public procurement.

Amendments

The first legislation in México to sanction acts of corruption committed by legal persons called “Federal Anticorruption Law in Public Procurement” was published on June 11, 2012. However, with the entry into force of the GLAR in 2017, said Federal Law was abolished, so currently a unified regulatory framework exists with which the administrative authorities were empowered to investigate, substantiate and sanction administrative offenses committed by both public officials and individuals, natural or legal persons, for acts of corruption.

Thus, Mexico sanctions legal persons who incur the offenses provided for in articles 66 to 72 of the GLAR through the Federal Administrative Court of Justice, with an economic sanction of up to two of the benefits obtained and in case of not having obtained them, a penalty for the equivalent of the amount of 1000 to 1,500,000 times the daily value of the Unit of Measurement and Update, temporary disqualification from 3 months to 10 years to participate in public procurements, leases, services or works, suspension of activities from 3 months to 3 years, dissolution of the company; and compensation for damages caused to the State.

Reference (in Spanish):
http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA_200521.pdf

International assessments

Mexico recently, March 2021, submitted its Phase 4 written Follow-Up Report of the OECD Working Group on Bribery, regarding the implementation of the Foreign Bribery Convention. The report outlined Mexico’s efforts to implement the 20 recommendations and to address the follow-up issues identified during its Phase 4 evaluation in October 2018. One of the issues to be evaluated during this Phase is the liability of legal persons.

For more information about the results of the Follow-up report please visit the following link: <https://www.oecd.org/daf/anti-bribery/mexico-phase-4-follow-up-report.pdf>

Answer: FGR

The criminal liability of legal persons (except for State institutions), including for acts of corruption, is established both in the Federal Criminal Code (CPF), in the articles 11 and 11 bis, and in the National Code of Criminal Procedures (CNPP), articles 421 and 422.

Article 11 bis of the CPF indicates, among others, the following offenses for which legal persons can be held liable are:

- Trading in influence
- Bribery
- Foreign bribery
- Concealment
- Money laundering

Article 422 of the CNPP establishes that one or more of the following legal consequences could be applicable for liable legal persons:

- Financial penalty or fine
- Forfeiture of instruments, objects or proceeds of crime
- Publication of the sentence
- Dissolution
- Others expressly determined by criminal laws in accordance with the principles established in this article.

It is also worth stressing that article 421 of the CNPP stipulates that the legal liability of the legal person is autonomous from the legal liability of the natural person.

These provisions have not been modified in the last 5 years with regard to the aforementioned offenses.

Answer UIF:

Currently, Article 11 Bis of the Federal Criminal Code establishes the following: "Article 11 Bis.- For the purposes of the provisions of Title X, Chapter II, of the National Code of Criminal Procedures, legal persons may be imposed some or several of the legal consequences when they have intervened in the commission of the following crimes:

V. Influence peddling provided for in Article 221;

VI. Bribery, provided for in Articles 222, Section II, and 222 Bis;

..."

That said, regarding the type of responsibility, it refers to a criminal responsibility according to Article 421 of the National Code of Criminal Procedures.

The type of sanctions that are foreseen, depending on the characteristics of the person and the activity, according to Article 422 of said National Code, are:

- I. Financial penalty or fine;
- II. Confiscation of instruments, objects or proceeds of crime;
- III. Publication of the judgment;

- IV. Dissolution;
- V. Suspension of its activities;
- VI. Closure of their premises or establishments;
- VII. Prohibition of carrying out in the future the activities in which exercises has been committed or participated in its commission;
- VIII. Temporary disqualification consisting of the suspension of rights to participate directly or through a third party in public sector contracting procedures;
- IX. Judicial intervention to safeguard the rights of workers or creditors, or;
- X. Public reprimand

On the other hand, Chapter III of the Title Three of the General Law of Administrative Responsibility establishes various acts of individuals linked to serious administrative offences that can be sanctioned, for example: bribery, illegal participation in administrative procedures, influence peddling, collusion, misuse of public resources (Art. 65-72). Sanctions are applicable both to individuals and legal entities (Art. 81 LGRA).

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

Answer: SFP

GLAR establishes that legal entities will be sanctioned when the acts attributed to them are committed by natural persons who act on behalf of the legal entity and seek to obtain benefits for said legal entity through such conduct.

Reference (in Spanish):

http://www.diputados.gob.mx/LeyesBiblio/pdf/1_280521.pdf

http://www.diputados.gob.mx/LeyesBiblio/pdf/LGRA_200521.pdf

Answer: FGR

a) Decisions are still pending on cases presented to the court by the Special Anti-Corruption Prosecutor's Office (SACP) of the FGR. There are still no rulings.

b) Yes. Proceedings against legal persons are separate and independent from proceedings against natural persons. However, it should be noted that the Federal Criminal Code does not consider that legal persons can be processed for bribery and illegal contracting.

- C.3. **Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; FGR Yes.**
where such a person directs or authorizes a lower-level person to commit the offence; FGR Yes.

where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures? FGR Yes.

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability? FGR Yes

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

FGR Yes. according to the article 4 of the Federal Criminal Code, Mexico has jurisdiction over offences committed abroad by a Mexican against foreigners, or by a foreigner against a Mexican, under the following conditions:

- That the accused is in national territory
- That the accused has not been definitely tried in the country where the offence occurred
- That the offence of which they are accused has the nature of an offence both in the country where it was executed and in Mexico

Answer UIF:

Yes, the mechanisms employed for these cases are international cooperation and information exchange.

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

Answer: SFP

In the administrative scope, GLAR provides the possibility of sanctioning those who act on their own behalf, but in the interest of another person who is legally impeded, intends to participate in a public procurement, as in the case of bribery, in which those who make use of intermediaries to offer some benefit in exchange for some undue advantage.

On the other hand, related to incentives to encourage the private sector to have integrity programs, the companies that receive the Badge (certification) for their registration in the Business Integrity Register, through the establishment of agreements of the Ministry of Public Administration with other agencies and entities of the Federal Public Administration, may obtain incentives such as simplification of procedures, access to credits, training and advice. Likewise, the definition of the parameters for measuring compliance with the integrity programs is contemplated.

As a new initiative, in addition to the benefits for their participation voluntarily in the Business Integrity Register, the Ministry of Public Administration considers that companies obtain the following:

- Added value.- The analysis required for registration allows generating valuable instruments for the planning and management of the company, generating added value by eliminating risks.
- Reliability and trust.- Having anti-corruption policies generates trust both within - with employees, and abroad - with suppliers and buyers - of the company.
- Integral development.- Having the Badge will also be an indicator of the integral development of the company's employees, since constant training is guaranteed, as well as the highest hiring standards.
- Positive impact.- Companies today more than ever have become part of the vital fabric of society. Ensuring the integrity of the company has the ability to cause a multiplier effect, resulting in the mutual benefit of both the company and the country.

Regarding the provisions to protect the rights of employees in the investigations, among the criteria for the development of a complaints system as part of the support tools of the Business Integrity Register, the Ministry of Public Administration carries out the verification of the companies on the documentation, operation and management, which include the mechanisms contained in the whistleblower protection standards, practices and confidentiality, additionally to those provided for this by other government agencies, entities or bodies.

Answer FGR

Our national legislation protects employee's rights as it does in general for all the people involved in internal investigations, including victims.

Answer UIF:

Yes, this FIU, in the event of a blockage or account freezing, grants a guarantee of hearing and amparo trial, if required.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

Answer: FGR Yes, in the Federal Law to Prevent and Identify Operations with Resources of Illegal Origin. The Law is available in the following link: http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPIORPI_200521.pdf

Answer UIF:

FIU Mexico, within its scope of competence and in accordance with international standards (FATF's Recommendation 4 and I.O.8), applies measures for the freezing of accounts allegedly linked to cases of ML predicated on bribery, corruption or other offences.

Additionally, there is a constant follow-up and communication with the Office of the Attorney General of the Republic (FGR) and other competent authorities regarding denounces.

Additionally, Article 40 of the Federal Criminal Code establishes the power of the jurisdictional body (by means of a sentence) to order the confiscation of property.

Likewise, confiscation is foreseen in crimes related to money laundering, terrorist financing, pornography, piracy, prohibited firearms and drug trafficking, among others.

On the other hand, the National Code of Criminal Procedures regulates confiscation in Article 250

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

Answer: FGR Mexico has cooperated with various countries through Mutual Legal Assistance requests, mainly in the framework of bribery and foreign bribery cases. In general, the collaboration has been effective.

Answer UIF:

Within its scope of competence and in relation to international cooperation, the FIU provides assistance through diverse mechanisms, such as financial intelligence products and developments, as well as information exchange through EGMONT's Group Secure Network.

In this sense, FIU Mexico uses this Secure Network to carry out information exchange processes with its international counterparts. Regarding corruption-related issues, from 2020 to 2021, FIU Mexico received three information requests, in which was

required information on natural persons and legal entities. Among the legal entities, the name of 26 companies were identified, which were used to hide resulting corruption-related transactions done on the countries of origin of the requests. FIU Mexico shared information found within our jurisdiction in a timely manner in order to be able to contribute to the location of the beneficial ownership involved in global corruption issues.

On the other hand, FIU Mexico, from 2020 to 2021, sent 75 information requests to its international counterparts that contained natural persons and legal entities, highlighting the request of 174 legal entities involved in hiding resources originated from possible acts of corruption occurred in Mexico. These entities carried out high amounts of international transfers considered as suspicious, the foregoing in order to try to identify beneficial ownership of the extensive networks used to hide the resources and prevent the tracking of the amounts operated in these corruption schemes.

Additionally, through MoU's, this FIU exchanges information with its counterparts in the region and worldwide to achieve success stories related to corruption and ML.

These actions reflect a high disposition from FIU Mexico to cooperate and fight these schemes used to cover up acts of corruption, that not only affect the countries where the crimes are generated, but also the global economy when capital of unknown origin enters the financial systems.

REPUBLIC OF KOREA

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

Korea has reported that AML/CFT (Anti-Money Laundering and Counter-Terrorism Financing) Regulation was amended to identify the business, ownership and control structure of the legal persons or organizations during CDD and conduct information identification of the settlor, the trustee, the trust administrator and the beneficiary of a trust (Article 37(3), Article 38(2)7 of the AML/CFT Regulation, 6.26.2019). Other than that, there has been no specific update since last reporting.

- A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement⁵¹.**

Required information can be provided in the form of links to other reviews or published work.

· Korea stipulates financial institutions, etc. shall verify information of beneficial owner according to Article 5-2, 10-5 of the Financial Transactions Reports Act.

⁵¹ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

- Also, in pursuant to the Act on Real Name Financial Transactions and Confidentiality of the Republic of Korea, a trader shall use his or her real name for financial transactions, such as stocks, beneficiary certificates and equity interests (contribution quotas), as well as money, and a financial company shall verify the trader's real name (Article 4). Furthermore, in order to enhance the effectiveness of an obligation in such a transaction using a real name, the Supreme Court upheld a principle of law, which states that if the real name is recorded on the company's shareholder registry upon the verification of the real name, beneficial owner (nominee shareholder) shall not claim rights to the company (Supreme Court en banc Decision 2015Da248342 Decided March 23, 2017【Revocation of Resolution of General Shareholders' Meeting】).
- In addition, the "Financial Investment Services and Capital Markets Act" stipulates that the beneficial ownership arrangements of a listed company shall be reported to the Securities and Futures Commission and the exchange and disclosed (Article 173). To be specific, an executive officer or significant shareholder of a listed company shall report the status of specific securities owned by his or her account, in whoever's name, within the five days from the day on which he or she became an executive officer or a significant shareholder and on which any change occurred in the status of specific securities owned by him or her, and the Securities and Futures Commission and the exchange shall disclose such information.

A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

- The above stock ownership status of a significant shareholder concerning the Financial Supervisory Service (FSS) of the Republic of Korea and the Korea Exchange (KRX) can be checked for on an electronic disclosure system (dart.fss.or.kr) operated by the FSS and an electronic disclosure system (kind.krx.co.kr) operated by the KRX.

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

- There has not been any authority which expressed impediments related to the exchange of reliable information on beneficial ownership.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY⁵²

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

- From 2017, ethical management education for businesses has been operating online to provide ethical management for business executives anytime anywhere.

* About 29 materials including videos and animated videos are posted on e-learning section of ACRC website.

(<https://www.acrc.go.kr/acrc/board.do?command=searchDetail&menuId=05050905>)

- From March 2021, the ACRC has worked to launch Ethics and Compliance Management Certification System* with an aim to strengthen global competitiveness and establish a culture of ethical management for state-owned companies and private companies. From June, the system will be launched on a pilot basis.

* More information on Ethics and Compliance Management Certification System can be found on the ACRC website, the press release dated on April 2, 2021, "The ACRC creates Guidelines for Ethical and Compliant Management and implements in public companies, including Korea Land & Housing Corporation, first"

(https://www.acrc.go.kr/acrc/board.do?command=searchDetail&menuId=05050102&method=searchDetailViewInc&boardNum=86781&currPageNo=1&confId=4&conConfId=4&conTabId=0&conSearchCol=BOARD_TITLE&conSearchText=%C0%B1%B8%AE%C1%D8%B9%FD&conSearchSort=A.BOARD_REG_DATE+DESC%2C+BOARD_NUM+DESC)

B.2.

⁵² It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

<Public Interest Whistleblower Protection System>

Protection for public interest whistleblowers and their supporters

(Prohibition of disadvantageous measures) No person shall take disadvantageous professional, administrative, or economic measures against a whistleblower, etc. by reason of having made a whistleblowing disclosure, etc.

- A person who takes any disadvantageous measures falling under subparagraph 6 (a) of Article 2 of the Protection of Public Interest Reporters Act against a whistleblower, etc., will face imprisonment for not more than three years or a fine not exceeding 30 million won. A person who takes disadvantageous measures falling under any of subparagraph 6 (b) through (g) of Article 2 against a whistleblower, etc. will face imprisonment for not more than two years or a fine not exceeding 20 million won.

(Decision on Protection Measures) If a public interest whistleblower faced disadvantageous measures, the ACRC may require protection measures within 30 days, such as reinstatement, payment of wages discriminately paid or unpaid, or cancelation or prohibition of other disadvantageous measures.

- The Commission can impose a charge for compelling compliance of less than 30 million won on a person who fails to take protective measures by the due date. The charge for compelling compliance can be imposed repetitively until the protective measures are taken.

(Decision on Special Protective Measures) Even though a whistleblowing is not legally construed as a public interest whistleblowing report, if it is reasonable to believe that an act detrimental to the public interest takes place at the time an insider whistleblower files a report, the Commission may decide to take protective measures.

Personal protection for whistleblower and their supporters

Where it is evident that a whistleblower, his or her relative or cohabitant has suffered or is likely to suffer serious harm to his or her life or body due to a whistleblowing disclosure, etc. he or she may request the ACRC to take necessary measures for personal protection.

- ※The ACRC may request the chief of a police station to take measures for personal protection.

Guaranteeing confidentiality of whistleblower and their supporters

(Guaranteeing Confidentiality) No person shall inform another person of the personal information about a whistleblower, or any fact from which one can readily infer that he or she is a whistleblower, although he or she knows the circumstances

※ Violation will lead to an imprisonment for five years or less or fine of 50 million won or less.

(Duty to disclose Content of report) The content of the report and personal information of the person reported must not be disclosed until investigation result confirmed an act infringing on public interests

※ Violation will lead to an imprisonment for five years or less and fine of 50 million won or less.

Other protection for whistleblowers and their supporters

Where a criminal act of a whistleblower is found in connection with a whistleblowing, the whistleblower may face reduced punishment or be exempt from the relevant punishment.

Where disciplinary action or unfavorable administrative measures were imposed against a whistleblower, by reason of an offense, etc. discovered in relation to a whistleblowing, the ACRC may request the person who has the authority to take disciplinary action or administrative measures to reduce such disciplinary action or administrative measures or exempt him or her from such disciplinary action or administrative measures.

Even where classified information in respect of a person's duties is included in the details of a whistleblowing disclosure, a whistleblower shall not be deemed to have violated his or her official duty to maintain confidentiality according to other statutes or regulations, a collective agreement, the rules of employment, etc.

※ Where provisions of a collective agreement, employment contract, supply contract, etc. prohibit or restrict a whistleblowing disclosure, etc., such provisions shall be invalidated.

Where a person reported suffers a loss due to a whistleblowing disclosure, he or she shall not claim damages against a whistleblower

Rewards, awards and relief for public interest whistleblowers

Monetary rewards

- If a whistleblowing disclosure leads to a direct recovery of or increase in revenues of the State or a local government through imposition falling under any of the following subparagraphs, or legal relationship thereof is confirmed, an insider whistleblower may request the ACRC to pay him or her monetary rewards:
- The amount of monetary rewards is set between four to 20 % of the administrative fines imposed.

Monetary awards

- Where a whistleblowing disclosure, etc. brings remarkable property benefits to the State or a local government, prevents loss, improves laws and regulations, or promotes the public interest, the ACRC may grant monetary awards

Monetary relief

- Where a whistleblower, his or her relative or cohabitant suffers a loss or pays any of the following expenses due to a whistleblowing disclosure, he or she may file an application for payment of relief funds with the ACRC:
- Where the government pays relief funds, a claim for damages held by a person who has received the relevant relief funds due to losses or expenses shall be subrogated within the extent of the amount paid.

<Report on corruption or bribery>

Anyone can report corruption and infringement of public interest to the ACRC via website (www.clean.go.kr), visit, or mail.

ACRC's corruption and public interest reporting site (clean.go.kr) allows people to easily report corruption and public interest infringement as well as apply for protection and compensations. The site provides anti-corruption policies of other government agencies in Korea and global and national anti-corruption policy and information.

The site is accessible through PCs or mobile phones. The site also provides information on evolution of cases such as reporting, consultation request, application for protection and compensations

- B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively⁵³?**

Where applicable, this can be provided in the form of links to other reviews or published work.

- Ethics and Compliance Management Certification System answered in Q. B1 requires state-owned companies to voluntarily adopt and adapt ethics and compliance program.
- The program guideline includes specific indices that should be implemented by each company and the development of such indices are being underway with focuses on risk management and compliance with corruption prevention laws and regulations.
- When the development is completed, state-owned companies will adopt the system first, and then the system will be expanded to private companies later.

- B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.**

Where applicable, this can be provided in the form of links to other reviews or published work.

- To remove corruption of state-owned companies, CEOs of 39 state-owned companies formed Transparent Society Council for State-owned Companies. The council drafted a report concerning success and challenges on anti-corruption management. The report compiled hiring procedure data of 39 state-owned companies and 24 best cases among them which were then distributed to all state-owned companies in Korea.

⁵³ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

- Among the 39 members, 36 state-owned companies are accredited ISO 37001. The council is providing training and consulting to those intending to receive the ISO 37001. The council will provide information on the ISO 37001 with all the partners and their subsidiaries.

C. LIABILITY OF LEGAL PERSONS⁵⁴

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

- Corruption committed domestically and overseas for which South Korea has criminal jurisdiction over is punished based on legal grounds such as Articles 129 and 134 (Bribery), and Chapter 40 (Embezzlement and Breach of Trust) of the Criminal Act, and Articles 2 and 4 (Aggravated Punishment for Bribery and Acceptance of Bribe for Mediation) of the Act On the Aggravated Punishment, etc. of Specific Crimes. However, unless there is special legislation provides for separate dual liability, in general a corporation is merely the agent of judicial obligations and its ability to commit a crime is not recognized. In this case, the natural person who manages the business on behalf of the corporation is the agent of the crime in question. Therefore, if legislation provides a dual liability clause, corporations may be held criminally liable and therefore punishable.
- With regards to foreign corruption offences, Korea enacted the Act On Combating Bribery of Foreign Public Officials in International Business Transactions as the implementing legislation for adopting the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. According to the Act On Combating Bribery of Foreign Public Officials in International Business Transactions, bribing foreign public official in relation to any international business transaction with intent to obtain any improper advantage for such transaction is punishable. The Act also contains a joint penalty provision (Article 4) a corporation along with the natural person who commits an offence are both punished and prescribes regulations for confiscation (Article 5). As per the joint penalty provision, the corporation shall be punished by a fine not exceeding one billion won and if the pecuniary advantage obtained by such offense exceeds 500 million won, the

⁵⁴ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

corporation shall be punished by a fine not exceeding an amount equivalent to double the pecuniary advantage.

- The Improper Solicitation and Graft Act, enacted on September 28, 2016, has a joint penalty provision, under which not only an employee who provided money to public officials in relation to his/her company but also the owner of the company who failed to pay a due attention to prevent such act will be punished.
- The Protection of Public Interest Reporters Act, which was designed to protect and support those who report an act infringing on public interests and their supporters in examination and investigation procedures, includes Act on Combatting Bribery of Foreign Public Officials in International Business Transactions in the laws subject to protection of public interest violation, and thereby enabling for protection for reporters of overseas bribery in relation to legal person's businesses. In addition, from January 25, 2016, a penal provision is enforced to punish not just the employee who committed an act of violation, but also the owner of business who did not pay a due attention and supervision on the employee.

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

- [Regarding to criminal court] As stated above, although Korea's legislative system does not recognize independent corporate criminal liability, if a special legislation prescribes dual liability, a corporate entity may also be punished. In this case, the corporation is punished independently based on the dual liability provision.
- Korea's Supreme Court ruled that "since a corporation acts through an institution, the legal effect of the corporation shall be attributed to the corporation as long as the corporation appoints a representative, and the corporation itself shall be responsible for the criminal acts of the representative. A corporate representative's violation of the law that can be seen as the corporation's own violation of the law constitutes the direct liability of the corporation (Supreme Court pronouncement September 30, 2020, Ruling 2009-Do-3876)", making it clear that corporate liability is a 'direct liability' imposed on corporate entities themselves, regardless of a lawsuit brought against a natural person or the results thereof.
- Therefore, under Korea's legal system, lawsuits may be brought against corporate entities regardless of whether a lawsuit has been filed against a natural person or the results thereof.
- [Regarding to civil court] Part III Company of the Commercial Act of the Republic of Korea

provides that if a director acted in violation of any statute or of the articles of incorporation or neglected his or her duties, he or she shall be liable for damage against the company (Article 399). Any shareholder who holds no less than 1/100 of the total number of issued and outstanding shares (including any shareholder who has continued to hold stocks equivalent to no less than 1/10,000 of the total number of issued and outstanding shares of a listed company for more than six months) may request that the company file a lawsuit against a director or file a lawsuit himself or herself against a director if the company does not comply under the representative suit system introduced in the Republic of Korea (Article 403, Article 542-6(6)).

- Furthermore, the Republic of Korea expressly introduced the multiple derivative suit system under which the shareholders of a parent company (a company that owns more than 50% of the total number of the subsidiary's issued and outstanding shares) can file a representative suit against a director of the subsidiary, by amending Part III Company of the Commercial Act on December 29, 2020,
- To be specific, any shareholder who holds no less than 1/100 of the total number of the company (parent company)'s issued and outstanding shares (including any shareholder who has continued to hold stocks equivalent to no less than 50/10,000 of the total number of issued and outstanding shares of a listed company for more than six months) may now request the subsidiary to file a lawsuit against the director holding him or her accountable and may, himself or herself, file a lawsuit against the director holding him or her accountable if the company does not file a suit (Article 406-2, Article 542-6(7)).

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

- Regarding dual liability, the Constitutional Court of Korea differentiates the nature of corporate liability depending on the status of criminal offenders. In other words, corporate liability for criminal offenses committed by a corporation's employees constitutes negligence in terms of appointment or oversight (negligence on part of the corporation of its responsibility to take due care or maintain oversight in relation to the duties in which the criminal acts occurred), but a corporation is held directly liable for its own intentional acts or negligence regarding offenses committed by the corporation's representatives. Therefore, if a corporate entity is punished as per a dual liability provision for offenses committed by its employees, the corporate entity may be punished in all the circumstances outlined in the question.
- Under Korea's legislative system, a dual liability clause is no longer effective once the corporate entity ceases to exist. However, even if a corporate entity is dissolved, it will continue to exist as a liquidated corporate entity pertaining to the purposes of liquidation until the liquidation procedure is complete, and therefore dual liability applies. Therefore, unless a corporate entity's liquidation procedure is complete, invention of an intermediary in criminal offenses committed by the corporation or changes to the governance structure or the corporation has no effect on corporate liability.
- Article 3 of Korea's Criminal Act states that "this Act shall apply to all Korean nationals who commit crimes outside the territory of the Republic of Korea" thereby prescribing the principle of nationality. Furthermore, Article 8 of the same Act states that "the general provisions of this Act shall also apply to such crimes as are provided by other Acts and subordinate statutes unless provided otherwise by such Acts and subordinate statutes", meaning that Article 3 applies to violators of not just the Criminal Act, but also other special legislations. Therefore, Korea maintains jurisdiction over domestic corporate entities that have committed crimes of corruption overseas.
- The ACRC is working to implement ethic and compliance management for the private sector such as state-owned companies and private companies. Also, the ACRC will check each company on whether its organizational structure is appropriate for compliance, whether it can identify and response risks, and whether it conducts monitoring and the result is reflected.
- The ACRC will consider giving support to companies best complying with the ethics and compliance in the form of government rewards, or in the area of exports and procurement.
- Reporters of violations against the Act On Combating Bribery of Foreign Public Officials in International Business Transactions are included under 'public interest reporters' set forth in the Protection of Public Interest Reporters Act and are therefore offered protection by maintaining confidentiality and personal protection. Therefore, if a corporation's employees report corrupt activities in an investigation or litigation against that corporation, those employees will be eligible to receive national protection as 'public interest reporters'.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

As stated above, the Act On Combating Bribery of Foreign Public Officials in International Business Transactions includes a joint penalty provision (Article 4), under which the corporate entity is also punished. In addition, according to Article 5 (Confiscation) of the Act any bribe given in the course of committing an offense and owned by the offender shall be confiscated.

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

- In the case where Ghana tax inspectors were bribed by five Korea Electric Power Corporation (KEPCO) employees around December 2013 in order to cover up the unpaid taxes to the Ghana Revenue Authority stemming from the thermoelectric power plant expansion project going on in Ghana, the prosecution collected evidence over two rounds between 2018 and 2020, assisted by international cooperation on criminal matters. In November 2020, the individuals were each prosecuted by the Seoul Central District Court under the Act On Combating Bribery of Foreign Public Officials in International Business Transactions and the first trial is underway (trial for this court is currently still ongoing, which means there has not been a guilty verdict and these offenses have yet to be proven).
- However, KEPCO was also investigated regarding this case, but was not prosecuted as the statute of limitations had run out.
- We ask for your understanding that other cases for which investigations are still in progress cannot be disclosed due to international cooperation on criminal matters, extradition treaties, and diplomatic practice.

RUSSIA

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

In accordance with FATF Recommendation 24 and the Interpretive Note to it, countries have the discretion to choose any of the methods listed in the Interpretive Note for obtaining information on beneficial owners (the registry approach, the mechanism involving sending requests to legal entities, and the use of available information obtained, for example, in the framework of CDD).

Thus, in accordance with the provisions of Articles 6.1 and 7 of Federal Law No. 115-FZ "On Counteracting the Legalization (Laundering) of Proceeds of Crime and the Financing of Terrorism" (hereinafter referred to as Federal Law No. 115-FZ) of 7 August 2001, the obligation to identify, store and submit to the competent authorities the information on the beneficial owners of legal entities is assigned to the legal entities themselves, organisations conducting transactions with cash or other property, as well as to the subjects of Article 7.1 of the above mentioned Federal Law (DNFBP).

This approach was evaluated within the framework of the 4th round of the FATF Mutual Evaluations, thus, in terms of compliance of the legislation of the Russian Federation with international standards it was rated "Significant compliance", and in terms of system efficiency – "Significant level of effectiveness" (www.fatf-gafi.org/publications/mutualevaluations/documents/mer-russian-federation-2019.html) (hereinafter – Mutual Evaluation Report, the MER of Russia).

At the same time, the Russian Federation is implementing the Action Plan for the Implementation by the Russian Federation of the Financial Action Task Force on Money Laundering Recommendations based on the results of the Fourth Round of Mutual Evaluations, approved in 2020 (hereinafter – the Action Plan).

The items of the Action Plan provide for supervisory measures aimed at increasing the level of understanding of the concept of beneficial ownership by reporting

entities. In general, the Action Plan also provides for regulatory and operational measures aimed at increasing the level of compliance with international AML/CFT standards and increasing the level of effectiveness of the national "anti-money laundering" system as a whole.

A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement⁵⁵.

Required information can be provided in the form of links to other reviews or published work.

As noted above, the Russian Federation has implemented a combination of a "request mechanism" and the use of available information. Thus, in accordance with Article 6.1 of Federal Law No. 115-FZ, legal entities are obliged to have information on their beneficial owners, to update, store and provide such information upon request of authorised bodies, which include Rosfinmonitoring and the FTS of Russia. In accordance with the proposed amendments to the Russian legislation, the obligations to establish, update, store and provide information to Rosfinmonitoring and the FTS of Russia will also apply to foreign legal entities and foreign structures without forming a legal entity, carrying out their activities in the territory of the Russian Federation.

In this case, a beneficial owner means a natural person who ultimately directly or indirectly (through third parties) owns (has a predominant interest of more than 25 percent in the capital) the legal person or has the ability to control its actions.

In addition, reporting entities are obliged to take reasonable and available measures under the current circumstances to identify the beneficial owner of their clients, which also includes verification. Thus, the mentioned wording reproduces the content of paragraph "b" of FATF Recommendation 10.

An exhaustive list of cases of failure to identify the beneficial owner is set forth in Article 7, paragraph 1, subparagraph 2, para. two to six of Federal Law No. 115-FZ and is applicable only to specific types of clients, which include, for example, public authorities, other government agencies, local authorities, institutions under their jurisdiction, state extra-budgetary funds, public corporations or organisations in which the Russian Federation, Russian Federation constituent entities or municipalities have more than 50 percent of shares (stakes) in the capital, as well as international organisations, foreign states or administrative and territorial units of foreign states with independent legal capacity.

⁵⁵ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

This list is exhaustive, therefore, in all other cases the identification of the beneficial owner is mandatory.

The law prescribes that information on the beneficial owners of a client must be updated at least once a year.

The information obtained by Rosfinmonitoring may be transmitted to law enforcement authorities for the purpose of conducting investigations and bringing to justice the organisers of dubious transactions potentially aimed at laundering of proceeds or transferring stolen funds abroad.

- A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.**

Required information can be provided in the form of links to other reviews or published work.

Please see the answer to question A2.

- A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels.**

Required information can be provided in the form of links to other reviews or published work.

The exchange of information on beneficial owners is carried out by Rosfinmonitoring with the state authorities of the Russian Federation, including law enforcement authorities on the basis of Article 8, paragraph two of Federal Law No. 115-FZ, as well as within the framework of interagency agreements. The effectiveness of the competent authorities' access to up-to-date and accurate information on the beneficial owners was assessed by the FATF under Immediate Outcome 5 and was rated "Significant level of effectiveness".

In order to ensure faster exchange of information at the international level, Rosfinmonitoring has concluded more than 100 cooperation agreements and can provide assistance within the framework of cooperation on the basis of reciprocity. Given that Rosfinmonitoring is a member of the Egmont Group, its secure network is also used for information exchange, along with other secure channels.

As noted in the MER of Russia, Rosfinmonitoring handles incoming requests in a constructive and timely manner. The information exchange process is regulated by the relevant departmental laws and regulations and instructions. Feedback from international partners is mostly positive. International cooperation is carried out in a constructive and timely manner.

Rosfinmonitoring sends a fairly large number of requests for assistance to its foreign partners, a significant part of which are requests for information regarding beneficial owners.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY⁵⁶

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

In 2020, the Ministry of Labor of Russia prepared a set of methodological materials aimed at preventing corruption in the procurement of goods, works and services. The document takes into account, in particular, the provisions of the G20 High-Level Principles on Private Sector Transparency and Integrity and inter alia stipulates the need to:

- implement in practice the "tone at the top" principle in terms of anti-corruption in the private sector;
- designate the structural unit or officials responsible for the prevention of corruption and other offences, based on the principles of independence, self-sustainability, sufficiency of resources, autonomy, etc., ensuring the effective functioning of such units or officials;
- regularly assess corruption risks, monitor, control and evaluate measures implemented in the organisation to prevent corruption;
- account for the applicable corruption risks, including in the interaction with state bodies and local authorities in terms of sponsorship, charity, political contributions, donations to political parties, as well as gifts and entertainment expenses, etc;
- maintain on the official website in the information and telecommunications network "Internet" a subsection dedicated to the prevention of corruption, which would unambiguously indicate intolerance to corrupt behavior, as well as contain local regulations describing anti-corruption activities conducted in the organisation, independently developed guidelines (brochures, memos, etc.) on anti-corruption topics, as well as information about the "hotline" and other applicable information;
- implement a set of measures aimed at identifying, preventing and resolving conflicts of interest in organisations;
- disseminate anti-corruption policy to a wide range of persons, including through the anti-corruption clause;

⁵⁶ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

- establish measures of responsibility for corruption offences against employees in the organisation, expressed, for example, in non-compliance with anti-corruption standards, as well as incentives for employees who have demonstrated a significant commitment to non-tolerance of corrupt practices;
- define protective measures for persons who have reported corruption;
- implement other anti-corruption measures (e.g. training and counseling of employees, testing of employees, participation in collective actions, etc.).

B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

Federal Law No. 119-FZ of 20 August 2004 "On the State Protection of Victims, Witnesses and Other Participants in Criminal Proceedings" establishes a system of state protection measures for the above mentioned persons, including security measures and measures of their social support, and defines the grounds and procedure for their application. Close relatives, relatives and close associates exposed to unlawful violence in order to influence the above mentioned persons, are also subject to state protection.

Articles 9 and 11.1 of Federal Law No. 273-FZ established the obligation of state and municipal employees, employees of the Central Bank of the Russian Federation, the employees who hold positions in public corporations and other categories of persons to notify the employer, prosecutors or other public authorities of all cases when they were approached by any person inducing them to commit corruption offences. A person who has notified of the address for the purpose of inciting him/her to commit a corruption offence, of committing corruption offences by other state or municipal employees, of failure to provide information or of submission of knowingly false or incomplete information on income, property and property obligations, is under protection of the state in accordance with the legislation of the Russian Federation.

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and

extortion? Are those areas applicable also to SMEs and, if yes, how extensively⁵⁷?

Where applicable, this can be provided in the form of links to other reviews or published work.

In order to counteract corruption, the Anti-Corruption Law establishes the following prohibitions and obligations for officials:

- obligation to take measures to prevent any possibility of a conflict of interest, to notify in writing, in the manner determined by the representative of the employer (employer) in accordance with the regulatory legal acts of the Russian Federation, about the conflict of interest that has arisen or the possibility of its arising, as soon as he/she becomes aware of it (Article 11, Parts 1 and 2);

- the obligation to transfer the securities owned, shares (stakes, interests in the charter (share) capitals of organisations) into trust management in accordance with the legislation of the Russian Federation (Article 11, Part 6) in order to prevent conflicts of interest;

- prohibition to engage in business activities personally or through proxies, to participate in the management of a commercial organisation or in the management of a non-profit organisation;

- prohibition to engage in other paid activities, except teaching, scientific and other creative activities; and others.

Gifts received in connection with protocol events, business trips and other official events are recognized to be the property of the Russian Federation, a constituent entity of the Russian Federation or a municipal entity, respectively, and are transferred by act to the corresponding state or municipal body, which the person may subsequently redeem in the prescribed manner.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Anti-Corruption Charter of Russian Business was signed in 2012 by the four largest business unions in Russia. The Charter aims to actively promote the voluntary implementation of special anti-corruption programs by Russian companies, including internal control procedures, waiver of preferences, open-bid procurement, financial control, training of and work with personnel, law enforcement assistance and other measures.

The Council of the Chamber of Commerce and Industry of the Russian Federation for the Development of Anti-Corruption Compliance and Business Ethics promotes compliance with anti-corruption laws (compliance) and the culture of business ethics in the Russian business community, supports the development and implementation of corporate programs to ensure anti-corruption compliance.

The Anti-Corruption Rating of Russian Business is a rating of companies with effective anti-corruption policies, compiled by the Russian Union of Industrialists and

⁵⁷ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

Entrepreneurs. It is based on an independent examination of documented evidence of compliance of companies' activities with international ISO standard 37001:2016 "Anti-Bribery Management Systems – Requirements and Recommendations for Use" and the provisions of the Anti-Corruption Charter of Russian Business.

The Moscow Chamber of Commerce and Industry (MCCI) organised the project "Compliance for Small and Medium-Sized Enterprises" in order to provide the MCCI member enterprises with the opportunity to receive an updated overview of Russian and international legislation on the prevention of corruption, to discuss the basic issues of legal, financial and organisational management of companies with experts, to use examples from the work of international companies in the Russian Federation and ways to protect business reputation.

The Russian Business Ethics Network is a professional community of leading Russian experts in the field of business ethics and corporate social responsibility, as well as business representatives who share the Association's values and are interested in its work. Its activities are aimed at researching and promoting the principles of ethical and socially responsible business, as well as the principles of sustainable development in Russia and worldwide.

C. LIABILITY OF LEGAL PERSONS⁵⁸

- C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption. Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.**

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

In the Russian Federation there is no criminal liability of legal entities for committing crimes. In this regard, an effective tool for countering corruption is bringing legal entities to administrative responsibility for corruption offences under Article 19.28 "Illegal Remuneration on behalf of a Legal Entity" of the Code of Administrative Offences of the Russian Federation.

- C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.**

⁵⁸ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

In 2020, procuratorial agencies initiated 382 cases involving administrative offences under Article 19.28 of the Code of Administrative Offences of the Russian Federation (392 in 2019). At the same time, according to the materials received from the Investigative Committee of the Russian Federation, 166 cases were initiated.

The decrease in the number of cases filed in 2020 is due to the application by prosecutors and courts of the note to Article 19.28 of the Code of Administrative Offences of the Russian Federation, under which a legal entity is exempt from liability for an administrative offence if it contributed to the detection of this offence, administrative investigation and (or) the detection, disclosure and investigation of the crime related to this offence, or if there was extortion against this entity. These provisions do not apply to administrative offences committed against foreign officials and officials of public international organisations in carrying out commercial transactions.

330 legal entities (343 in 2019) were held administratively liable by prosecutor's orders and were fined a total of 622 million rubles (613 million rubles in 2019).

In total, in 2020, the amount of fines collected in cases of this category was 264.8 million rubles, which is 43% of the fines imposed (289.7 million rubles in 2019, which is 47% of the fines imposed).

The most widespread are the cases of bribery of law enforcement and supervising bodies officials in order to stop verification activities, not to bring legal entities to justice, to provide state (municipal) services and implement registration and licensing procedures in violation of the established procedure. Administrative prosecution of legal entities for commercial bribery was initiated.

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

Please refer to the answers provided to the questionnaire on foreign bribery and the answers to the previous questions.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

Federal Law No. 298-FZ of 03 August 2018 supplemented the Code of Administrative Offences of the Russian Federation with a new Article 27.20 (seizure of property in order to enforce the decision to impose an administrative penalty for unlawful remuneration on behalf of a legal entity). In accordance with this regulation, the property of a legal entity may be seized if this legal entity has committed an administrative offence under Article 19.28 ("Illegal Remuneration on Behalf of a Legal Entity") of the Code of Administrative Offences of the Russian Federation. If a legal entity has no property, the money on its bank accounts will be seized. The value of the seized property of the legal entity cannot exceed the maximum amount of the fine which is up to one hundred times the amount of money, value of securities, other property, property services, other property rights, illegally transferred or rendered or promised or offered on behalf of the legal entity, but not less than 100 million rubles.

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

No information available.

SAUDI ARABIA

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

A.1 Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation

of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

The Saudi Central Bank “SAMA” issued guidance for combating money laundering and terrorist financing, which covers and fulfils the FATF’s BO requirements. Furthermore, the guidance addresses the necessity of assessing risks of beneficial ownership as part of the due diligence measures, which include identification verification by using the RBA. It also contains the risk factors associated with beneficiary ownership in order to mitigate risks of misuse of the legal person in ML/FT operations. In addition, SAMA issued a circular requiring all financial institutions to obtain a Legal Entity Identifier (LEI) from local operating units to enable the supervisory authorities to assess potential risks and maintain the stability of the financial sector by providing accurate and periodically-updated financial information on global legal entities to enhance the level of transparency. Moreover, the LEI helps financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) to assess risks effectively by allocating such information to identify and verify the beneficial owner.

The Implementing Regulations of the Law of Anti-Money Laundering in Saudi Arabia illustrates in Article (7/2) that, "Due diligence measures shall be based on risk and, at a minimum, comprise the following: [...] c. Identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using information and data obtained from a reliable source, such that the financial institution or designated non-financial business and profession is satisfied it knows who the beneficial owner is, as follows:

1. For a customer that is a legal person, a FI or DNFBP shall identify and take reasonable measures to verify the identity of the natural person who ultimately owns or controls 25% or more of the legal entity’s shares.
2. Where no controlling ownership interest exists as stipulated in the previous para (1), or there is doubt whether the controlling shareholder is not indeed the beneficial owner, the identity of the natural person exercising control of the legal person through other means; or, as a last means, the identity of the natural person who holds the position of senior managing official, and verify it.
3. For a customer that is a legal arrangement, a FI or DNFBP shall identify and take reasonable measures to verify the identity of the endower, beholder, the beneficiaries or classes of beneficiaries, and any other natural person exercising ultimate effective control over the legal arrangement."

Moreover, Article 3(d) of the Investment Accounts Instructions issued by the Board of the Capital Market Authority dated 3/4/2016, amended by its resolution dated 21/11/2018, states that, “The authorised person must verify the actual relationship between the clients and the natural persons who open or operate investment accounts on their behalf such as guardians, agents, trustees, or authorised signatories in accordance with the relevant provisions in the Anti-Money Laundering Law and its

Implementing Regulations, and the Combating-Terrorism Crimes and its Financing Law and its Implementing Regulations.”

Furthermore, FIs and DNFBPs shall identify, assess, and document their money laundering risks and keep them up to date, taking into account a wide range of risk factors, including those relating to its customers, countries or geographic areas, products, services, transactions and delivery channels, and provide risk assessment reports to the supervisory authorities upon request” as per article (5) of the updated Saudi Arabian Anti-Money Laundering Law which was published by Royal Decree No. (M / 20) dated 5/2/1439 AH, 25/10/2017.

In addition, the General Authority for AWQAF (Endowments) is a public body with legal personality that enjoys financial and administrative independence. The purpose for which the Authority was established is to enhance the role of endowments in economic and social development and social solidarity; the real beneficiaries of endowments vary according to the requirements made by donors. There are public endowments that serve different groups in society, and other specific endowments whose beneficiaries are the donor’s family and the like. Despite the fact that most endowments are donated to serve public interest, many of these endowments are disbursed to the beneficiaries through specialized institutions and charities, oversights and supervised by the Ministry of Human Resources and Social Development, in line with published regulations and requirements. The General Authority for Endowments, the regulatory and supervisory body for the endowment sector in Saudi Arabia, has taken several measures to promote transparency and identify the real-beneficiaries of endowments. For this purpose, the Authority recently conducted a comprehensive assessment to identify risks of the endowment sector being exploited by money-laundering and terrorist financing crimes, which resulted in recommendations for a management plan to be implemented within the Authority and other competent authorities. This would enhance transparency and identification of the real beneficiaries of such endowments. Considering the recommendations and risk management plan that emerged from the aforesaid assessment, the Authority has achieved the following:

- a- Published regulations governing the endowment sector, namely: "Principles governing endowments" and "Regulations governing the work of persons responsible for endowments" on 29/3/2021 AD. These regulations include requirements, controls, and principles that will promote transparency, oversight, disclosure, identification of real beneficiaries, and the keeping of records, information, and data related to the beneficiaries, including periodic updates of such information and data. Also, the aforesaid regulations outline requirements and principles aimed at governing the board of trustees and other related committees, as well as the importance of registering the endowment with the Authority, opening independent accounts for the endowment through which the dues are transferred to the beneficiaries, and notifying the Authority of financial statements periodically, as well as other requirements that enhance the organization and sustainability of the endowment and combat its exploitation pertaining to financial crimes.
- b- Endowments shall be registered with the General Authority for Endowments, from which the responsible persons on the endowments shall obtain a registration certificate issued by the Authority. In order to obtain the certificate, they have to provide data and information related to the endowments including information regarding the real beneficiaries, the donor, persons responsible for the endowments, geographical location, and the type and activity of the endowment.

According to the fifth update and amendments made to the rules governing bank accounts by the Saudi Central Bank, a bank account cannot be opened for the endowment unless a registration certificate, issued by the Authority, is submitted.

Also, there is a cooperation with the Central Bank on issuing a guide to identify and verify the real beneficiaries of the endowments, as one of the challenges faced by all countries when it comes to combating money laundering and terrorist financing crimes in such area, especially the identity of a legal person or a legal arrangement with a complex structure. The afore-mentioned guide aims to assist financial institutions in understanding the nature and concept of real beneficiary, related indicators, and regulatory requirements, to ensure that these institutions are implementing effective mechanisms and procedures aimed at identifying and verifying the real beneficiary of legal persons or arrangements with complex structures, to prevent their misuse in committing any of the afore-mentioned crimes.

Finally, it should be noted that, in 2019 Saudi Arabia conducted its Second Round Peer Review Report on the Exchange of Information on Request in the Global Forum on Transparency and Exchange of Information for Tax Purposes, whereby Saudi Corporate Law underwent a significant overhaul and modernisation with the passing of the new Companies Law (CL) in 2015, which came into force on 2 May 2016 and replaced the previous law established in 1965.

According to Article 3 of the CL, there are five possible commercial forms: (i) Unlimited Liability Company (ULC), (ii) Limited Partnership (LP), (iii) Partnership, (iv) Joint Stock Company (JSC), and (v) Limited Liability Company (LLC). This is a reduction of the number of possible forms included in the previous law. In addition, companies existing prior to the effective date of the CL were required to modify their status in accordance with the Law within one year from the effective date of the CL (CL, Art. 224). Also, the new law effectively prohibits the issuance of bearer shares by any entity.

All commercial entities (including partnerships) operating in the Kingdom must register with the Commercial Register administered by the Ministry of Commerce.

Further amendments to the Companies Law are in progress. The new law is expected to introduce further requirements to promote beneficial ownership transparency, including effective, proportionate, and dissuasive sanctions on companies that fail to provide accurate and up to date information on beneficial ownership.

References:

- <https://www.oecd.org/countries/saudi-arabia/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-saudi-arabia-2019-second-round-186f45ba-en.htm>
- <https://cma.org.sa/en/RulesRegulations/Regulations/Documents/InvestmentAccountsInstructionsEN.pdf>
- <http://www.aml.gov.sa/en-us/RulesAndRegulations/Anti-Money%20Laundering%20Law.pdf>
<http://www.aml.gov.sa/en-us/RulesAndRegulations/Implementing%20Regulations%20of%20the%20Law%20of%20Combating%20Terrorist%20Crimes%20and%20its%20Financing.pdf>

- <http://www.aml.gov.sa/en-us/RulesAndRegulations/Combating%20Terrorism%20and%20Financing%20of%20Terrorism%20Law.pdf>
- <https://hrsd.gov.sa/en/page/general-authority-awqaf>

A .2 Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement⁵⁹.

Required information can be provided in the form of links to other reviews or published work.

FIs are required, based on Article 7 of the Anti-Money Laundering Law and article 64 of the Law of Combating Terrorist Crimes and Its Financing, to apply due diligence measures to their customers. In addition, prior to opening an account or establishing a business relationship, FIs must verify the identity of the beneficial owner and take reasonable measures using documents, data, or information from a reliable and independent source (SAMA Rules to Implement the CFT Law Provisions). Furthermore, in regard to legal person information, the records of legal person are kept by the FIs, which update them based on the risk assessment of a legal person and its structural complexity through (KYC) requirements in an accurate and timely manner by different advanced channels.

With regard to the crime of commercial concealment and in line with the regulations issued in this regard, the Saudi Central Bank recently issued a circular which obligates Saudi banks to create a particular function concerned with combating commercial concealment, which aims to assess risks and analyze reporting of suspected cases. SAMA also obligates banks to provide all necessary resources, such as experienced and qualified experts in the areas of commercial cover-up, creating necessary policies, developing technical solutions, setting up specific scenarios of conducting commercial concealment activities, and training their employees regarding the risks of the misuse of banking services and products in commercial concealment.

Moreover, based on Investment Accounts Instructions of Article 13, FIs are required to establish a unified electronic database for investment accounts; the authorised person who holds investment accounts for clients must create an electronic record to link the investment account with all the information set out in the documents provided by the client to open the investment account. Furthermore, FIs are required, based on Article 16 (a) (2) of the Investment Accounts Instructions, when receiving a request from the Authority to disclose any information related to an investment account of any of its clients. The authorised person must provide the Authority with the requested

⁵⁹ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

information within a maximum period of three business days unless the Authority specifies otherwise.

To ensure that FIs comply with the above-mentioned requirement, the Saudi Arabian Capital Market Authority, based on Article 24 (a) of Anti-Money Laundering Law, collects information and other data from FIs as well as applying appropriate supervisory measures, including on-site inspections and off-site measures to review and evaluate FIs' mechanism to understand the procedures taken to identify the beneficial owners for each type of client specified in article 7(2) of the Implementing Regulations of the Law of Anti-Money Laundering and 17(3) of the Implementing Regulations of the Law of Combating Terrorist Crimes and its Financing.

In Saudi Arabia, a new site was launched by ELM, namely "Yakeen" which provides services by offering integrated digital solutions that help FIs to verify the data of customers or applicants from the National Information Center (NIC) database such as:

- Offering and obtaining updated data that conform to official records.
- Reducing time and effort in finalizing transactions.
- Reducing fraud and impersonation.
- Increasing the level of data quality.

Furthermore, the Qawaem system is a governmental platform which requires all accounting firms to upload their clients' (legal entities) financial statements. These consolidated financial statements can be used by FI's and governmental authorities without violating privacy. Qawaem has many different objectives, one of which is to automatically track and monitor many indicators that will raise instant red flags to assess deviations in enterprises' performance. Therefore, these systems accelerate providing relevant entities audited financial statements by requiring legal entities to submit accurate information in a timely manner, which ensures the identification of the natural person(s) who ultimately owns or controls a legal person or arrangement by Saudi banks.

References:

<https://cma.org.sa/en/RulesRegulations/Regulations/Documents/InvestmentAccountsInstructionsEN.pdf>

<http://www.aml.gov.sa/en-us/RulesAndRegulations/Anti-Money%20Laundering%20Law.pdf>

<http://www.aml.gov.sa/en-us/RulesAndRegulations/Implementing%20Regulations%20of%20the%20Law%20of%20Combating%20Terrorist%20Crimes%20and%20its%20Financing.pdf>

<http://www.aml.gov.sa/en-us/RulesAndRegulations/Combating%20Terrorism%20and%20Financing%20of%20Terrorism%20Law.pdf>

<https://www.elm.sa/en/e-services/pages/yakeen.aspx>

<https://qawaem.bc.gov.sa/en/About/Pages/default.aspx>

A.3 Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent

authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

In reference to the Saudi Arabian strategic objectives of combating money laundering and terrorist financing and the national action plan to achieve these goals, the Saudi Arabian Capital Market Authority has developed an electronic system (Makken) that helps competent authorities (domestic law enforcement agencies and prosecutorial authorities, supervisory authorities, and financial intelligence units) to gain timely access to adequate and accurate financial information from FIs under the Capital Market Authority supervision.

Article 65 of Companies Law in Saudi Arabia sets the mechanisms to verify the identities of shareholders and owners of stock companies and limited liability companies.⁶⁰

Furthermore, the Ministry of Commerce in Saudi Arabia issued its provision No. 17226 on March 17, 2020, which mandates stock companies to comply with article 109⁶¹ of Companies' Law and update their shareholders information. In addition, the Ministry of Commerce requires companies and financial institutions to upload the requested information to the Ministry database via the following link:

<https://mci.gov.sa/en/eservices/Pages/ServiceDetails.aspx?sID=66>

The General Authority for Awqaf (Endowments) works closely and effectively with other national competent authorities at a high-level of coordination, as there are many memorandums of understanding conducted between them. This is in line with the objectives outlined in the national strategic objectives for combating money laundering and financing of terrorism, under the Council of Ministers Resolution No. (42), which guides the exchange of data and information according to an agreed-upon mechanism between the concerned authorities. In addition, the Authority is one of those responsible for investigating financial crimes by providing information on endowments related to suspects involved in such crimes, which helps in the parallel investigation of money laundering and other related crimes, as per the Anti-Money Laundering Procedures Guide. Thus, the competent authorities will have

⁶⁰ Article 65 of the Companies Law:

“1-The Ministry shall issue a decision announcing the company’s incorporation, upon verifying the completion of all requirements set forth in the Law for the incorporation of a joint-stock company. Such decision shall be published on the Ministry’s website.

2- Board members shall, within 15 days from the date of issuance of the decision provided for in paragraph 1 of this Article, apply for registration of the company in the commercial register. Such registration shall contain the following:

- a- Company’s name, purpose, head office and term;
- b- Incorporators' names, places of residence, occupations and nationalities;
- c- Type, value and number of shares, as well as amount of paid-in capital;
- d- Number and date of the Ministry’s decision authorizing the company’s incorporation; and
- e- Number and date of the Ministry’s decision announcing the company’s incorporation.”

⁶¹ Article 109 of the companies law “Shares of unlisted companies shall be traded by entering the same into the shareholders' register, prepared by the company or outsourced, which includes shareholders' names, nationalities, places of residence, occupations, shares' numbers and paid amounts.”

quick and timely access to data and information related to the beneficiary and their ownership of endowments.

Moreover, there is a national plan for the competent authorities, through which they seek to be connected electronically and exchange information directly. Many authorities have cooperated by implementing the plan, taking into account their limits of competencies, in line with international standards and national laws and regulations.

<https://www.my.gov.sa/wps/portal/snp/aboutksa/digitaltransformation>

A.4 Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

At national level, there are several challenges related to:

- Chasing beneficial ownership information in more complex ownership structure inside or outside Saudi Arabia
- Cross-matching the information available on beneficial ownership to all government agencies.
- Identifying all forms of misuse of legal entities or legal arrangements

At international level, the beneficial ownership information available for exchange at the level of international counterparts is a concern. In the case of some non-resident companies, the timely availability of beneficial ownership information is very limited. Therefore, some banks are forced to reflect such concerns in their risk profiles to obtain, identify, and verify beneficial ownership information.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY⁶²

B.1 Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

⁶² It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Oversight and Anti-corruption Authority (Nazaha) has built a strategic relationship with the Council of Saudi Chambers. Through this partnership, Nazaha has conducted several anti-corruption training courses for the private sector, starting with professional enablers, such as lawyers, as they play an essential gatekeeping role in preventing, detecting, and reporting corruption. Nazaha has also organized industry-specific workshops dealing with such issues as how to address corruption risks in the health sector generally and the health insurance sector specifically .

Currently, Nazaha is working closely with the private sector to develop a compliance guide to promote good governance, effective internal controls and ethics in business. Also, Nazaha, in partnership with the Ministry of Human Resources and Social Development, has developed a regulation that governs the third Sector “NGOs”.

B.2 Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

Whistle-blowers in Saudi Arabia have been protected by Royal decree which provides adequate protection for any employee who submits a report against financial and administrative corruption practices. This ensures that there is no risk to the whistle-blower’s job or prejudice to his/her advantages or rights, and directs the Oversight and Anti-Corruption Authority to safeguard against disciplinary measures or violation of any of the whistle-blower’s rights or job benefits, if they submit a report to the competent authorities about corrupt practices therein.

The Oversight and Anti-Corruption Authority has provided many communication channels through which citizens and residents inside the Kingdom can submit reports of financial and administrative corruption, with complete confidentiality, including:

- Toll Free: 980
- WhatsApp: 0539980980
- Email: 980@nazaha.gov.sa
- Fax: 0114420057
- Submit the report in person,
- Send a telegram,
- Submit to a postal address, and
- The Authority’s website.

B.3 Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion?

Are those areas applicable also to SMEs and, if yes, how extensively⁶³?

Where applicable, this can be provided in the form of links to other reviews or published work.

The Anti-money Laundering Law and Anti-terrorist Financing Law in Saudi Arabia have very detailed requirements regarding risk assessments, customer due diligence (CDD), enhanced customer due diligence (ECDD), Politically Exposed Persons (PEPs), and suspicious transaction. FIs and DNFBPs, including accountants, are obliged to comply with these requirements. In addition, both laws include administrative and criminal sanctions.

Moreover, the Capital Market Authority in Saudi Arabia issued Corporate Governance Regulations pursuant to the Royal Decree No M/3 dated 28/1/1437H. The regulations aim to establish an effective legal framework to govern listed companies operating in the Kingdom to achieve transparency and impartiality and enhance the business environment and disclosure. Chapter 6 of the Regulations is dedicated to conflicts of interest and mandates companies and financial institutions to develop a written policy to remedy actual and potential conflicts of interest. Also, Article 86 in the Regulations mandates companies and financial institutions to develop a detailed policy for professional conduct and ethical values in the company. Reference:

https://cma.org.sa/en/RulesRegulations/Regulations/Documents/CGRegulations_en.pdf

As mentioned in B1, Nazaha is developing a compliance guide that promotes integrity and transparency in the private sector. The Guide takes into account that the compliance policy differs according to the size of the establishment, the varying risks of corruption that the establishment faces according to its locations and sectors in which it operates, the nature of its activities, and the extent of its complexity.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

⁶³ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

The Oversight and Anti-corruption Authority (Nazaha) collaborates with business organizations and professional associations. Its remit includes promoting integrity programs among professional practitioners, such as engineers, lawyers, and chartered accountants.

Also, Nazaha works with the General Authority for Small and Medium Enterprises “Monshaat” on promoting integrity in SMEs.

C. LIABILITY OF LEGAL PERSONS⁶⁴

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

Saudi Arabia’s legislation provides for the criminal liability of legal persons in Article 3&31 of the AML Law, and Article 8, (5) of the Anti-Bribery Law. When a legal person commits a money laundering offence a fine of no more than 50 million riyals and no less than the equivalent of double the full value of the funds that were the objects of the offence. On the other hand, the punishment imposed on legal persons for participation in bribery offences whereby the authority assigned to judge in criminal cases may inflict a fine no more than ten times as much as the bribe if its manager or any worker is convicted of committing any crime mentioned in the law. The Council of Ministers may reconsider the deprivation penalty, after at least five years of the verdict having been issued. Nevertheless, Company Law Article 217 “If a lawsuit cannot be brought against the perpetrator of an offence stipulated in Articles 211 and 212 of the Law, the Bureau of Investigation and Public Prosecution shall initiate a lawsuit against the company for imposition of the prescribed fine”.

Also, SAMA can take actions against the legal and the natural persons at the same time once they are under its supervision and control. For instance, Banking Control Law issued by royal decree No. (M/5) dated 22.2.1386H in articles 22, 23 and 24

⁶⁴ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

shows the actions that SAMA could take against individuals and institutions authorised based on it. In Finance Companies Control Law issued by royal decree No. (M/51) dated 13.8.1433H, articles 17 and 29 state the actions that SAMA could take against individuals and institutions authorised based on it. In Cooperative Insurance Companies Control Law issued by royal decree No. (M/32) dated 2.6.1424H, articles 7 and 19 state the actions that SAMA could take against individuals and institutions authorised based on it.

The Oversight and Anti-Corruption Authority is mandated by organizational structure and arrangements to take the necessary measures regarding financial and administrative corruption crimes, its perpetrators, and its parties, whether they are regular people or civil or military employees or those in their position or others, or other people with moral characters related to these crimes.

- C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.**

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

Please see our answer in C1.

- C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?**

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee’s rights in case of investigations (including internal investigations) and prosecution of legal persons?

The Anti-Money Laundering Law in Saudi Arabia states in Article 3 that “Legal person shall be criminally liable for money laundering if any act clarified in Article 2 was committed in its name or to its account. Criminal liability of a legal person shall not exclude criminal liability of the chairmen, members of boards of directors, owners, employees, authorized representatives, auditors or hired staff, or any other natural person who acted in the legal entity’s name or for its credit.”⁶⁵

The Law also provides sanctions in Article 31 which states that “(i) Without prejudice to the criminal liability of a natural person, any legal person that commits a money laundering offence shall be punished by a fine of no more than 50 million riyals and no less than the equivalent of double the full value of the funds that were the objects of the offence. (ii) A legal person may also be prohibited permanently or temporarily from engaging in certain

licensed activities, directly or indirectly, or be ordered to close down its offices, permanently or temporarily, that were used in conjunction with the commission of the offence, or an order be made to liquidate the business.”⁶⁶

The Saudi Oversight and Anti-Corruption Authority (Nazaha) has jurisdiction over investigating and prosecuting legal persons involved in bribery offences abroad. These offences are currently limited to bribery of foreign officials of public international organizations as explained in the Saudi Anti-bribery Law.

The Saudi Central Bank (SAMA) has issued several rules that regulate the institutions under its supervision and control. In addition, Commitment Principles for Commercial Banks that were issued on September 2020, aimed at enhancing the awareness of compliance to banks’ employees, including the board of directors. Overall, the rule clarifies the importance of compliance and the risks. It specifies that integrity and transparency must prevail in the banking environment. Moreover, in accordance with global principles issued by international organizations such as the Basel Committee on Banking Supervision, the Organization for Economic Co-operation and Development, the Islamic Financial Services Board (IFSB) and the World Bank, SAMA has issued Principles of Corporate Governance for Banks Operating in Saudi Arabia aimed at assisting banks in enhancing their corporate governance frameworks, and helping board members and senior managers to oversee the bank’s activities.

With regard to incentives to encourage the private sector to offer integrity programs, Nazaha encourages the business community to run compliance programs in order to avoid being banned from public tendering or from receiving fines.

⁶⁵ <http://www.aml.gov.sa/en-us/RulesAndRegulations/Anti-Money%20Laundering%20Law.pdf>

⁶⁶ <http://www.aml.gov.sa/en-us/RulesAndRegulations/Anti-Money%20Laundering%20Law.pdf>

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

Anti-Money Laundering Law

Article 1:

3. Proceeds: Any funds directly or indirectly obtained or acquired by committing a crime punishable pursuant to the provisions of Sharia or this Law, if such funds are transferred or converted wholly or partially into assets, properties or investment returns.

Art 26:

Without prejudice to the rights of bona fide third parties, a person who commits the offence of money laundering, provided for in Article 2 hereof, shall be punished with imprisonment not exceeding ten (10) years and a fine not exceeding five million (5,000,000) riyals, or either penalty in addition to the confiscation of funds, proceeds, and means subject of the offence. In case the funds and proceeds are commingled with funds acquired from legitimate sources, the said funds shall be subject to confiscation within the limits equivalent to the estimated value of the illegitimate proceeds.

Art 33. (3):

The competent court may invalidate or prohibit certain acts, whether contractual or otherwise, if one or more of the parties knows or ought to know that such acts could influence the ability of the competent authorities to recover the property subject to confiscation.

Art 39:

Upon request of a competent court or authority in another country which is a signatory with the Kingdom to a valid agreement or on the basis of reciprocity, the competent authority may provide mutual legal assistance in relation to money laundering and predicate offence investigations and prosecutions and procedures, including but not limited to assistance with the tracing, seizure, recovery and confiscation of funds, or proceeds of crime or instrumentalities related to money laundering crimes or predicate offences, or the controlled delivery, according to laws in force in the Kingdom. The Implementing Regulation shall further prescribe the types of assistance that may be granted, and conditions that must be agreed by the requesting country, and the procedures that must be applied. 67

Art 40:

A final judgment providing for the confiscation of funds, proceeds, or means relating to money laundering offences, issued by a competent court in another country that is a signatory to a valid agreement or treaty with the Kingdom of Saudi Arabia or on the basis of reciprocity, may be acknowledged and enforced if the funds, proceeds, or

⁶⁷ <http://www.aml.gov.sa/en-us/RulesAndRegulations/Anti-Money%20Laundering%20Law.pdf>

means subject of the judgment can be confiscated, according to laws applicable in the Kingdom of Saudi Arabia.

Anti-Bribery Law

Article 15: In all cases, the judgment shall order confiscation of property, privilege, or benefit that are the subject matter of the offence, where this is possible in practice.

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

After Royal Order No. (A/277) dated 12 December 2019 merged the Control and Investigation Board and the Administrative Investigations Authority, into the National Anti-Corruption Commission; and altering the merged bodies' name to be the Oversight and Anti-Corruption Authority – NAZAHA, Saudi Arabia became very active in investigating corruption cases involving legal persons. More information on these cases will be published once the investigations have been concluded.

SOUTH AFRICA

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

1. Amendment of the Financial Intelligence Act, 2001 (Act 38 of 2001)
The Financial Intelligence Act (FICA), 2001 (Act 38 of 2001), was amended and brought into operation through the FICA, 2017 (Act 1 of 2017). The key objective of this law is to improve the protection of the integrity of South Africa’s financial system and strengthen its ability to prevent and punish financial crimes like money laundering, illicit capital flows, tax evasion, corruption and bribery, and financing of terrorism. The law also introduced among other things, the following new concepts and approaches to the implementation of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001):
 - (a) Full range of customer due diligence (CDD) requirements which are focussed on understanding customers better rather than simply identifying and verifying their identities;
 - (b) Beneficial ownership, which requires institutions to know and understand the natural persons who ultimately own or exercise control over legal entities or structures;
 - (c) Prominent (Influential) Persons and “Politically Exposed Persons”, which requires institutions to better manage risks relating to relationships with prominent persons.
2. Proposed changes to the Companies Act, 2008 (Act 71 of 2008)
The Department of Trade, Industry and Competition is in the process of amending the Companies Act, 2008 to provide for the requirement for companies to disclose the ultimate natural person or persons who ultimately own or control a legal person (company) in with the Financial Action Task Force requirements.

In the meantime, the Companies and Intellectual Property Commission (CIPC) is working on implementing the Beneficial Ownership regime by making it mandatory

for companies to file such information periodically and when filing their annual returns.

The country is currently going through a mutual evaluation and the implementation of the BO regime in relation to legal persons has been one of the recommended actions in terms of the draft report of the mutual evaluation. The CIPC therefore continues to work with the Financial Intelligence Centre (FIC) and other competent authorities with the aim of ensuring that the BO regime is implemented and that relevant and specific risk assessments are conducted through the Inter-Departmental Working Group (IDWG) led by the FIC.

3. Open Government Partnership

South Africa is committed to the implementation of a Fourth National Action Plan (2020-2022) on reviving the Open government Partnership (OGP) Process in the Country (30 December 2020)⁶⁸. The 4th OGP NAP provides for three commitments including:

- Open Data;
- Fiscal Transparency and Open Contracting; and
- Beneficial Ownership Transparency.

Subsequent to the adoption of the South African Government OGP 4th NAP, an Independent Reporting Mechanism (IRM) Review has been undertaken (the results of which are currently under discussion) and a series of public and private sector, Multi-Stakeholders Forum Meetings, Conferences, High-Level Discussions, Technical Round Tables, Training Events and Webinars including Civil Society Organisations (CSOs) took place.

4. Fast-tracking the implementation of the UNCAC

South Africa is part of the eight countries in Southern Africa Region receiving technical assistance from the United Nations Office on Drugs and Crimes (UNODC) under the programme called “Fast-tracking the implementation of the UNCAC”. Through the programme, the UNODC developed a Regional Toolkit and Guide on the Implementation of Beneficial Ownership Transparency and screening mechanism for Politically Exposed Persons.

A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement⁶⁹.

Required information can be provided in the form of links to other reviews or published work.

⁶⁸ Available at: https://www.opengovpartnership.org/wp-content/uploads/2021/01/South-Africa_Action-Plan_2020-2022.pdf.

⁶⁹ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

The Financial Intelligence Centre Amendment Act, 2017, provides Guidance⁷⁰ on the establishment and verification of the identities of natural persons, legal persons, trusts and partnerships. Section 21 of the FIC Act (the requirement to establish and verify a client's identity) also applies to clients who are not natural persons acting in their personal capacity. Clients of this nature are referred to as corporate vehicles and include legal persons, trusts and partnerships. In addition to the obligation to establish and verify the identities of corporate vehicles, section 21B of the FIC Act also requires accountable institutions to apply additional due diligence measures namely to establish-

- the nature of the client's business;
- the ownership and control structure of the client;
- the beneficial ownership of clients, and
- take reasonable steps to verify the identity of the beneficial owners.

The requirements set out in sections 21 and 21B of the FIC Act apply whether the legal person, partnership or trust or similar arrangement between natural persons is incorporated or originated in South Africa or elsewhere. For additional reference please refer to:

<http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparencybeneficial-ownership.pdf>.

A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

Currently, South Africa does not have a register of beneficial owners in place, to share the information. The Companies and Intellectual Property Commission, however, shares basic ownership info with competent authorities (Financial Intelligence Centre and South African Revenue Service) via existing Memorandum of Understanding (MOU).

Furthermore, the Companies Act, 2008, requires companies to maintain security registers that reflect shareholders, holders of beneficial interests and the extent of interests in securities (section 50). The Act is being amended to allow for the implementation of a beneficial ownership register and to require companies to file information annually with the Companies and Intellectual Property Commission. As

⁷⁰ Guidance Note 7 ON THE IMPLEMENTATION OF VARIOUS ASPECTS OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (ACT 38 OF 2001) In collaboration with the National Treasury, South African Reserve Bank and Financial Services Board. Available at: https://stage.fic.gov.za/Documents/171002_FIC%20Guidance%20Note%2007.pdf .

a member of the G20 Anti-Corruption Working Group, South Africa has adopted the G20 High Level Principles on Beneficial Ownership Transparency.

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

Development of the registry for beneficial ownership transparency is a reform that takes time as it requires regulatory amendments, as well as practical changes like building IT systems for registries and data management. There is also a need for institutional and legislative harmonisation so as to avoid fragmentation and conflicting legislative frameworks. This calls for coordination and cooperation at the highest level of government and broad consultation processes, as there are many stakeholders involved. As identified in the risk assessment report, there is weak coordination in this area.

The upgrading and coordination of registries in relevant departments and agencies require additional financial resources that may not be easily available due to many competing priorities. The COVID-19 exacerbated the situation as available resources are channeled to the required responses to deal with the pandemic.

In countering the challenges, South Africa will as a start, establish a multi-pronged, tiered National Beneficial Ownership Framework comprising of: corporates and legal persons register held by the Companies and Intellectual Property Commission, trust register under the Master's office and register of other structures and / or assets that have an important link to BO data e.g. deeds register (Deeds office) and register of Non-Profit Organisations held by the Department of Social Development and other public benefit structures data held by the South African Revenue Service. The registries should use the same data model informed by a harmonised policy approach, allows for accessibility and sharing of data across the different registries in a way that could improve the quality of data held by each register. The data should also be easily and timely accessible to competent authorities and law enforcement agencies to speedily determine the BO concerning any structure or asset under investigation.

An Inter-Departmental Committee on Beneficial Ownership Transparency, under the leadership of the Department of Public Service and Administration and the Financial Intelligence Centre, has been established to coordinate different stakeholders in this area.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY⁷¹

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Companies Act, 2008 clearly stipulates how company directors must conduct themselves in running the companies for which they are stewards, as well as clear consequences should they be found to have contravened or abused their fiduciary capacity. For example, in section 75, the Companies Act prescribes compulsory disclosure of directors' personal interest. The Act also prescribes standards of directors' conduct in section 76, in particular:

A director of a company must—

(a) not use the position of director, or any information obtained while acting in the capacity of a director—

(i) to gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or

(ii) to knowingly cause harm to the company or a subsidiary of the company; and

(b) communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director—

(i) reasonably believes that the information is—

(aa) immaterial to the company; or

(bb) generally available to the public, or known to the other directors; or

(ii) is bound not to disclose that information by a legal or ethical obligation of confidentiality.

Furthermore, section 77 provides for directors' liability as follows:

A director of a company may be held liable—

(a) in accordance with the principles of the common law relating to breach of a fiduciary duty, for any loss, damages or costs sustained by the company as a consequence of any breach by the director of a duty contemplated in section 75, 76(2) or 76(3)(a) or (b); or

(b) in accordance with the principles of the common law relating to delict for any loss, damages or costs sustained by the company as a consequence of any breach by the director of—

(i) a duty contemplated in section 76(3)(c);

(ii) any provision of this Act not otherwise mentioned in this section; or

(iii) any provision of the company's Memorandum of Incorporation.

⁷¹ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

In addition, Section 22 of the Companies Act prohibits reckless trading and fraudulent activities by companies. Section 28 requires companies to keep and maintain accurate accounting records, which applies even when companies are not subjected to audit requirements based on their public interest scores. Contravention of the section is an offence pursuant to Section 214 and may attract the sanction of an administrative fine or imprisonment.

The Independent Regulatory Board of Auditors (IRBA) prescribes the *IRBA Code of Professional Conduct for Registered Auditors (RAs) (Revised November 2018)* (the IRBA Code) for all RAs in South Africa.

□ The IRBA Code is based on the International Ethics Standards Board for Accountant's Code, which was recently restructured and revised.

□ This revised and restructured IRBA Code, effective as of 15 June 2019 (with some exceptions) is accessible here: <https://www.irba.co.za/guidance-for-ras/ethics:-the-rules-and-the-code/the-irba-code-revised-2018>

□ The IRBA Code sets out fundamental principles of ethics for RAs, reflecting the profession's recognition of its public interest responsibility. These principles establish the standard of behaviour expected of a registered auditor. The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behavior.

□ The IRBA Code applies to all registered auditors (firms and individuals), regardless of whether their status is recorded in the IRBA's register as assurance or non-assurance.

B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Protected Disclosures Amendment Act, 2017 was assented to and signed by the President on 31 July 2017. Highlights of the Protected Disclosures Amendment Act include:

- Extending protection to non-permanent employees and workers,
- Providing civil and criminal protection,
- Increasing legal obligations on employers to keep whistleblowers informed, and
- Extending the bodies to which people can make protected disclosures.

Various South African companies have implemented specific measures to encourage whistleblowing, including through the establishment of internal hotlines,

many of which are monitored by third parties. Civil society has also been active in promoting whistleblowing and the establishment of whistle-blower protection mechanisms. Approximately 25 per cent of businesses listed on the Johannesburg Stock Exchange have whistle-blower policies in place.

The National Anti-Corruption Strategy adopted in November 2020, prioritised promotion of whistle-blowing among citizens and protection of those who report corruption and unethical behaviour. Whistle-blowing is one of the pillars of the strategy.

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively⁷²?

Where applicable, this can be provided in the form of links to other reviews or published work.

In terms of the Companies Act, 2008, the Minister has powers to prescribe companies or category of companies that must establish social and ethics committees. The social and ethics committees are meant to be subcommittees of boards. They report to the board and shareholders in meetings on social and ethical issues that can involve the company.

In line with regulation 43 of the Company Regulations, 2011, the following companies are required to establish a social and ethics committee:

- (i) All state owned companies;
- (ii) all listed public companies; and
- (iii) all companies that have, in any two of the previous five years, had a public interest score of at least 500 points.

Functions of the social and ethics committee include:

- (i) To monitor the company's activities with regard to -
 - social and economic development;
 - good corporate citizenship;
 - the environment, health and public safety;
 - consumer relationships; and
 - labour and employment.

⁷² Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

- (ii) to draw matters within its mandate to the attention of the Board...; and
- (iii) to report...to the shareholders...on the matters within its mandate.

The Companies and Intellectual Property Commission has issued a Guideline for Corporate Compliance Programme in terms of regulation 4 of the Companies Regulations, 2011, addressed to the Social and Ethics Committees of every state owned company, every listed company and any other company that has in any two of the previous years, scored above 500 points in terms of regulation 26(2).

- The Guideline can be found on the CIPC website at <http://www.cipc.co.za/index.php/news/guideline-corporate-compliance-programme/>
- The Guideline was also released on the Johannesburg Stock Exchange News Service (JSE SENS) on 21 November 2018 informing all publicly listed companies of the CIPC Guideline (A screenshot of the JSE SENS was provided).
- The CIPC also had a meeting with the King Committee on 29 April 2019, to discuss the CIPC Guideline 1 document and ways to use the Guideline document to strengthen Corporate Governance in South Africa.
- A copy of the Guideline has been forwarded to the Independent Regulatory Board for Auditors (IRBA) to circulate amongst its Registered Auditor members.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

The following institutions have been established under the Companies Act to support the private sector in the promotion of integrity:

1. Financial Reporting Standards Council (FRSC)

The Companies Act establishes the Financial Reporting Standards Council (FRSC) in terms of Chapter 8D (Section 203) of the Act. The main function of the FRSC is to issue financial reporting standards for the companies in South Africa.

2. The Companies and Intellectual Property Commission (CIPC)

The Companies and Intellectual Property Commission (CIPC) is also established through the Companies Act. It has the following functions:

- Registration of companies, co-operatives and intellectual property rights;
- Disclosure of information on its business registers;
- Promotion of compliance with relevant legislation (including education and awareness);

- Enforcement of relevant legislation;
- Monitoring compliance with and contravention of financial reporting standards, and making recommendations to the FRSC; and
- Licensing of business rescue practitioners.

The Commission has the following regulators as key and this assists in the execution of its functions; viz.

Regulator Name	Description
Independent Regulatory Board of Auditors	Administers, Enforces Auditing Profession Act
Financial Services Board (Capital Markets)	Financial Markets Act
Banking Regulator (Reserve Bank)	Disclosure regulations as required by Basel III
Johannesburg Stock Exchange	Administers Listing Requirements
STRATE (Shares Trading Totally Electronic)	Provide settlement services for Share Trades
Banking Association of South Africa	Membership enforces the FIC Act
South African Revenue Services	Annual Financial Statements
Department of Home Affairs	Provide Biometric Services for new registrations

Table 1: Regulators in terms of the Companies Act, 2008

3. Independent Regulatory Board of Auditors

The IRBA is mandated by the Auditing Profession Act, 2005 (No. 26 of 2005) (APA) (<https://www.irba.co.za/library/legislation>) to regulate registered auditors (RAs) who perform statutory audits. Its mission is to protect the financial interests of the South African public as well as those of local and international investors through the effective and appropriate regulation of auditors in accordance with internationally and locally recognised standards, codes and laws. The IRBA's vision is to be an internationally recognised, comprehensive and independent regulator of the accounting and auditing profession in South Africa.

C. LIABILITY OF LEGAL PERSONS⁷³

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

⁷³ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

Section 332 of the Criminal Procedure Act (CPA), 51 of 1977 makes provision for the prosecution of corporations and members of associations.

While the general rule is that only a natural person can perform a criminal act, a juristic person (including a corporation) can nevertheless be liable for the commission of a crime.

Section 332 provides that a corporate body may be held directly liable for any offence, whether under any law, be it at common law or statute, arising from:

- any act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or servant of that corporate body;
- and
- the omission, with or without a particular intent, of any act which ought to have been, but was not performed by or on instructions given by a director or servant of that corporate body, in the exercise of his powers or in the performance of his duties as such director or servant or in furthering or endeavoring to further the interests of the corporate body.

In such cases, the act or omission that gives rise to the offence shall be deemed to have been performed (and with the same intent, if any) by the corporate body.

In terms of Section 332(2) of the Criminal Procedure Act, a director or servant of the corporate body shall be cited as a representative of the corporate body in any prosecution and will be dealt with as if he were the person accused of the offence (although if the corporation is convicted, the liability will be imposed on the corporate, rather than the individual representative).

Section 332 of the CPA is applicable to any crime, including corruption and corruption-related offences.

Type of sanctions applicable to the company

In general terms, the sanctions imposed on a corporate body that is found to be criminally liable are fines or asset forfeiture. Fines may be imposed even if the

relevant law governing the offence for which the company is convicted makes no provision for a fine, in which case the court will have discretion over what level of fine to impose.

Where a corporation has benefitted financially from the crime and/or acquired assets from the proceeds of the crime, the Asset Forfeiture Unit may apply to the court for forfeiture of such assets.

South African companies convicted of bribery of foreign public officials may be barred from receiving public contracts in the Republic, and South African courts may order the conviction to be registered if it also constitutes an offence under the PRECCA.

PRECCA criminalises corruption in the public and private sectors, including attempted corruption, extortion, active and passive bribery, bribing a foreign public official, fraud, and money laundering, and it obliges public officials to report corrupt activities. It is a criminal offense to provide any form of “gratification” to an official if it is not lawfully due.

In May 2020, South African President Cyril Ramaphosa assented to an amendment of the Promotion of Access to Information Act 2000 (PAIA). The amendment provides that information on the private funding of political parties and independent candidates must be recorded, preserved and periodically published. The head of a political party is required to:

1. Create and keep records of donations exceeding a prescribed threshold (currently set at R100 000) that has been made to that political party in any given financial year;
2. Create and keep records of the identity of the persons or entities who made such donations; and
3. Make the records available on a quarterly basis and keep the records for a period of at least five years after creation.

Donations include donations in kind. A donation in kind means: Any money lent to the political party other than on commercial terms; any money paid on behalf of the political party for any expenses incurred directly or indirectly by that political party; the provision of assets, services or facilities for the use or benefit of a political party other than on commercial terms; or a sponsorship provided to the political party. It excludes services rendered personally by a volunteer.

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

An example of a company convicted of corruption in the media at:
<https://www.news24.com/news24/SouthAfrica/News/limpopo-company-found-guilty-of-fraud-corruption-for-its-part-in-prison-tender-scandal-20210331>

- C. Does your country provide for liability of legal persons in the following cases:
3. where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability? (A)

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons? (B)

(A) In the Public Service, the Public Service Commission issued Circular 1 of 2020: Reference Number 7/3/P, to advise employees, Heads of Department, and Executive Authorities regarding unlawful instructions. The purpose of this Circular is to advise EAs and Heads of Department (HoDs), as well as all public servants, regarding their responsibility to perform their duties within the confines of the legislative framework and to report irregularities as well as unlawful instructions to the relevant authorities. The circular is available at:
<http://www.psc.gov.za/documents/docs/guidelines/2020/Circular%20dd%2029%20Sept%202020%20re%20Unlawful%20Instructions.pdf>

Prevention and Combating of Corrupt Activities Act, 2004

Section 34 of the PRECCA, requires any person who holds a position of authority to report any suspicion of corruption, theft, fraud, extortion, forgery involving an amount of R100 000.00 or more, to the police.

(B) Prevention and Combating of Corrupt Activities Act, 2004

Section 18 of the Prevention and Combating of Corrupt Activities Act, 2004 (PRECCA) creates an offence of unacceptable conduct relating to a witness if any person directly or indirectly, intimidates or uses physical force, or improperly persuades or coerces another person with the intent to (a) influence, delay or prevent the testimony of that person or another person as a witness in a trial.

The Protected Disclosures Act 2000

The Protected Disclosures Act 2000 (Act No. 26 of 2000) provides protection for both public and private sector whistleblowers. The Act sets out procedures by which public and private sector employees may disclose information concerning unlawful or irregular conduct by an employer or an employee of that employer. The Act prohibits an employer from subjecting an employee to —occupational detrimentll on account of having made a protected disclosure. The PDA defines —disclosureell as including —any information regarding any conduct of an employer, or an employee of that employer, made by any employee who has reason to believe that the information concerned shows or tends to show... that a criminal offence has been committed, is being committed or is likely to be committed.ll The definition also includes information that shows or tends to show that such conduct —has been, is being or is likely to be deliberately concealed.ll The disclosure of information concerning the act of corruption - being a criminal offence - would therefore be covered by the PDA. The Act protects whistleblowers from being subjected to —occupational detrimentll which includes, inter alia, any disciplinary action; dismissal, suspension, demotion, harassment or intimidation; being transferred against his or her will; being refused a transfer or promotion or being threatened with any of such actions.

Section 23(1) of the Constitution of South Africa guarantees everyone of the right to fair labour practice. To give effect to this Constitutional right, section 185(b) of the Labour Relations Act, 1995 (Act no. 66 of 1995), provides that every employee has the right not to be subjected to unfair labour practice. The Act defines, in section 186(2), an unfair labour practice as:

“Unfair labour practice” means any unfair act or omission that arises between an employer and an employee involving - (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee; (b) unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee; (c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and (d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), on account of the employee having made a protected disclosure defined in that Act”

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

The Asset Forfeiture Unit (AFU) of South Africa has the capacity to trace and investigate the proceeds and instrumentalities of crime through a dedicated team of financial investigators that are stationed at the AFU head office and regional offices in each province of the Republic.

The primary function of the Financial Investigators is to conduct financial related investigations such as asset tracking and cash flow analysis.

Their functions further includes providing timeous assistance to requesting states seeking to recover assets. This function is performed irrespective of a formal MLA request or not.

The AFU Unit is also assisted by Police Financial Investigators who fall under the management of the South African Police Service: Directorate for Priority Crimes Investigations (DPCI).

Part 1 of Chapter 5 of the Prevention of Organised Crime Act, 1998 (POCA)

Part 1 of Chapter 5 of the POCA provides for the possibility of confiscating assets that constitute proceeds of unlawful activities or their financial equivalent. Section 1 of the POCA specifies that —proceeds of unlawful activitiesll means any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived.

Under section 18 of the POCA, whenever a defendant is convicted of an offence, the Court may, on application of the public prosecutor, order the defendant to pay any amount it considers appropriate, but not exceeding the value of the defendant's proceeds of the offence. It should be pointed out that the Court will look not only at benefits derived from offences of which the defendant has been convicted, but also from —any criminal activity which the Court finds to be sufficiently related to those offencesll. See section 18(1)(c) of POCA.

Section 19 of the POCA specifies that the value of the proceeds is determined as —the sum of the values of the property, services, advantages, benefits or rewards received or derived by him or her at any time in connection with the unlawful activity. The POCA also provides for the possibility of confiscating proceeds of crimes in the hands of third parties.

Section 1 provides that proceeds of unlawful activities means proceeds —derived, received or retained, directly or indirectly. In addition, section 14 provides for the confiscation of —any property held by the defendant concernedll, as well as —any property held by a person to whom that defendant has directly or indirectly made any affected gift.

Section 12(1)(i) *ibid* defines an —affected giftll as —any gift- (a) made by the defendant concerned not more than seven years before the fixed date (b) made by the defendant concerned at any time, if it was a gift (i) of property received by the

defendant in connection with an offence committed by him or her or any other person; or (ii) of property, or any part thereof, which directly or indirectly represented in that defendant's hands property received by him or her in that connection. Whether any such gift was made before or after the commencement of this Act; Section 16(1) of the POCA provides that: a defendant shall be deemed to have made a gift if he or she has transferred any property to any other person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration supplied by the defendant.

This would appear to offer the possibility to confiscate proceeds of crime in the hands of third parties, be they natural or legal persons, which may not have been convicted. In practice, these provisions have been successfully relied on and restraint orders are regularly made against property of persons who will not be prosecuted.

For case law relating to restraint orders against legal persons, see National Director of Public Prosecutions v Rautenbach and another [2005] 1 All SA 412 (SCA).

Proceedings on application for a confiscation order or a restraint order are civil proceedings. Consequently, the rules of evidence applicable in civil proceedings apply to proceedings on application for a confiscation order, and not the stricter rules of evidence applicable in criminal proceedings.

The confiscation provisions available under the POCA were also the case of S v Shaik and Others (Civil Appeal) [2007] 2 All SA 150 (SCA). In this case the Supreme Court of Appeal agreed, on most counts, with the High Court in its interpretation of the POCA provisions relating to confiscation of proceeds of unlawful activities, and confirmed:

- (i) That proceeds include benefits received directly or indirectly;
- (ii) That proceeds cover any advantage, benefit, or reward, including those which a shareholder may derive if a company is enriched by the crime; and
- (iii) That the same proceeds can be considered proceeds of criminal activity in the hands of each intermediary and there can therefore be a multiplicity of confiscation orders for the same proceeds.

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

- *Marsland v The Additional District Court Magistrate, Kempton Park and Another (162/2020) [2021] ZASCA 14: 2021 (1) SACR 454 (SCA)*

Mr Timothy Gordon Marsland was arrested in Johannesburg pursuant to the request for his provisional arrest and extradition by the Government of the Republic of Botswana. He was accused of obtaining funds by false pretences and money laundering. His extradition was based on the Southern African Development Community (SADC) Protocol on Extradition. The SADC Protocol in this instance was complemented by the bilateral treaty on extradition between both States as well as the Extradition Act.

Mr Marsland challenged his extradition to Botswana by approaching the High Court as well as the Supreme Court of Appeal. His appeal failed as it was held that the Act and the SADC Protocol worked in harmony and thus his surrender to Botswana is lawful.

- *State v Raseq Aderoju Raheem and Others*

Mr Raheem and 9 others were part of organised crime organisation operating in various countries. They defrauded numerous victims in a number of jurisdictions. The United States of America submitted a request for the accused's provisional arrest to South Africa. The extradition request followed within the 60 days period stipulated in the Treaty between the two countries.

The accused were found extraditable and were ultimately surrendered to stand trial in the USA after a protracted litigation challenging their extradition. The case illustrates the effectiveness of SA laws and processes on extradition.

- *Concurrent request for extradition: State v MC*

MC was a prominent politician who is accused of *inter alia* fraud and corruption. His arrest in Johannesburg was pursuant to a provisional arrest request by country A. Subsequent to the arrest, Country B also submitted a request for the surrender of the accused. After both requests were received by the Central Authority, the judicial phase of the extradition process instituted with both requests being presented in court. The Magistrate found that the accused is extraditable in both instances and it was left to the Minister to decide on the surrender.

SPAIN

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

The concept of beneficial owner is included in Spain’s anti-money laundering legislation. In the area of taxation, the international standard on tax information exchange, with which Spain is committed to comply as a member of the Global Forum on Fiscal Transparency and Exchange of Information for Tax Purposes, requires accurate and up-to-date information on the beneficial owner of entities (companies) and the beneficial owners of bank accounts to be exchanged for tax purposes with other countries and/or territories with which there is an international treaty providing for such exchange.

The obligation to identify the beneficial owner, as well as what is understood as such, are regulated in Law 10/2010, of 28 April, on the prevention of money laundering and terrorism financing, as implemented through Royal Decree 304/2014 of 5 May⁷⁴. The recently adopted Royal Decree Law 7/2021⁷⁵, of 27 April, implements into national Legislation the 5th EU Directive on Money Laundering and modifies Law 10/2010, of 28 April, on the prevention of money laundering and terrorist financing to reinforce the obligation to provide and record information on beneficial ownership.

Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls of cash entering and leaving the Union, with mandatory application from 3 June 2021, also establishes new obligations to be included in Law 10/2010 and determines a system of rules to facilitate the prevention, detection and investigation of criminal activities as defined in the EU Directive on Money Laundering. All the necessary changes are included in Royal Decree Law 7/2021.

⁷⁴ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-4742

⁷⁵ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-6872

In the area of exchange of information upon request, Spain was assessed by the Global Forum in 2018-2019, obtaining a rating of "largely compliant" with the international standard required by the Global Forum. As regards the recommendations included in this report, it should be noted that the appropriate modifications are being made to ensure the availability of beneficial ownership information in all cases.

Likewise, in the area of automatic exchange of information, Spain was assessed by the Global Forum in 2020, determining the conformity of the legal framework with the standard.

A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement⁷⁶.

Required information can be provided in the form of links to other reviews or published work.

As mentioned in the 2019 Accountability Report, the Financial Ownership File (in Spanish, "Fichero de Titularidades Financieras", FTF) is a database managed by the Executive Service of the Commission for the Prevention of Money Laundering, Spain's FIU (SEPBLAC). It collects ownership data, including data on beneficial ownership, for more than 157 million accounts and deposits in credit institutions in Spain, linked to almost 59 million different natural and legal persons⁷⁷. It was created to serve as a financial investigation tool to forestall and prevent money laundering/terrorist financing and it has been operational since May 2016. The access to it is strictly limited and subject to rigorous safeguards. Specifically, in addition to the SEPBLAC⁷⁸, which may consult it in the exercise of its functions, requests may also be made by judicial authorities, police authorities and the State Tax Administration Agency.

In line with Royal Decree 304/2014 of 5 May implementing Law 10/2010, the administrators of companies and other legal entities must obtain and maintain adequate, accurate and up-to-date information on the beneficial ownership of the companies. In order to comply with the obligation to identify and verify the identity of the beneficial owner, obliged parties may access the database of beneficial ownership of the General Council of Notaries upon conclusion of the corresponding formalisation agreement.

For their part, financial institutions are obliged to report to SEPBLAC information on holders, representatives or authorised persons of current accounts, savings accounts, securities accounts and time deposits. This information is included in the

⁷⁶ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

⁷⁷ Data as of December 31, 2020.

⁷⁸ In accordance with Article 43.3 of Law 10/2010, and Article 52 of its Regulations -Royal Decree 304/2014-

publicly owned FTF. In addition, by virtue of Ministerial Order JUS/319/2018 of 21 March, approving the new models for the filing with the Commercial Registry of the annual accounts of those obliged to publish them, all entities subject to the obligation to file annual accounts with the Commercial Registry must make a declaration of information on beneficial ownership when filing those annual accounts.

At present, in Spain, beneficial ownership data can be consulted in three ways:

- By directly requesting the notarial deed of actual ownership from the client.
- Through the Beneficial Ownership Database (BDTR, in Spanish) of the General Council of Notaries. Created in March 2012 and operational since May 2014, it is based on the notarial Single Computerized Index. It can be accessed by SEPBLAC, other judicial, police, tax and administrative authorities responsible for the prevention of money laundering, notaries, and other obliged entities. The BDTR was rated very positively by the FATF in the evaluation it carried out in 2014, and it is also mentioned as a model to be followed in its Guide of Recommendations for Legal Professionals published in July 2019⁷⁹.
- By using the register of beneficial ownership developed by the Association of Property and Mercantile Registrars, called RETIR⁸⁰, created in 2018 by Order JUS/319/2018, of 21 March, approving the new models for the submission to the Commercial Register of the annual accounts of those entities obliged to publish them⁸¹. This Order requires the identification of the beneficial owners of mercantile companies that file annual accounts, because it is precisely at the time of its approval by the General Meeting that the exact ownership structure of the companies is known. The RETIR provides the updated data recorded in the Mercantile Registers and has signed agreements for its use by judicial, police, tax and administrative authorities involved in the fight against money laundering. Likewise, it can be used by the entities obliged by the legislation to collaborate in the prevention of ML/TF.

Moreover, and as indicated in the answer to question A1, the recently adopted Royal Decree Law 7/2021⁸², of 27th April, implements into national Legislation the 5th EU Directive on Money Laundering and modifies Law 10/2010, of 28th April, on the prevention of money laundering and terrorist financing to reinforce the obligation to provide and record information on beneficial ownership. For instance, information on beneficial ownership of legal persons has to be kept for at least 10 years after the loss of the real owner condition, and the operative conditions of the FTF are also improved.

This Royal Decree Law includes the creation of a single Register of Beneficial Ownership of legal entities and trusts by the Ministry of Justice. This register will bring together the information available in the different existing registers (basically those of Registrars and Notaries), which will be supplemented by the direct capture of data from those entities and structures that are not obliged to file annual accounts or that do not carry out public acts before a notary that require this declaration.

⁷⁹ <https://www.fatf-gafi.org/media/fatf/documents/reports/Risk-Based-Approach-Legal-Professionals.pdf>

⁸⁰ <https://www.registradores.org/registro-de-titularidades-reales>

⁸¹ <https://www.boe.es/eli/es/o/2018/03/21/jus319>

⁸² https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-6872

Finally, the agreement between the General Directorate of the Civil Guard and the Association of Property and Mercantile Registrars of Spain allows for the formal publicity of the registries and the consultation of the beneficial ownership of mercantile companies through the Mercantile Registry, published by means of Resolution of March 10, 2021⁸³.

A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

In addition to the information already provided in question A2, we would like to highlight that the Spanish Tax Administration Agency works intensively to obtain information on the actual ownership of assets. To this end, it has different types of tools:

- Tax forms, such as form 036 (for the registration, modification and deregistration of employers and withholders), form 200 (in which the partners and directors of companies must declare their ownership) and form 720 (for the declaration of assets and rights located abroad), establish the legal obligation to declare beneficial ownership for the owners of entities.
- Requests for information from third parties: the Tax Agency is legally empowered to request information with tax implications from third parties. This includes the possibility of requesting information from public or private entities on matters of real ownership, such as, for example, the request for due diligence documentation.
- Collaboration agreements: in addition to the legal obligation to declare beneficial ownership by taxpayers, the Tax Agency has signed a substantial number of agreements with other administrations or public entities, which allow it to obtain contrasting information for the purpose of verifying the beneficial owners of different assets. These agreements include those with the Social Security, the General Council of Notaries, Registrars and SEPBLAC.

The agreement, dated 5 February 2020, signed with the General Council of Notaries, on the provision of information contained in the single computerised index, direct access to it and compliance with other legal reporting obligations, is a relevant source of information on ownership for both tax management and verification, allowing centralised collection of copies of public deeds.

The Tax Agency also has access to the ownership database maintained by the General Council of Notaries. Thus, notaries in Spain do not authorise any public deed involving a company without first identifying the beneficial owner of the

⁸³ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-4113

company. Access to this database is only available to the judicial, police, tax and administrative authorities responsible for the prevention of money laundering.

Registrars of property, as obliged entities, must also verify the beneficial ownership of legal persons. An agreement signed in 2008 with the Association of Property and Mercantile Registrars of Spain allows the Tax Agency to access the information contained in the databases of the Mercantile Registries, as well as telematic access to all the information and services offered by the system for issuing simple notes of the Property Registries. Article 365 of the Commercial Register Regulations establishes those who are obliged to fill financial statements. When the financial statements are approved, the exact composition of the shareholders in Public Limited Companies and those that hold ownership interests in Private Limited Companies becomes known, and therefore the individuals who actually own them, if any, become known.

This is set out in Order JUS/319/2018, of 21 March, which approved the new forms to be used by liable parties to file their financial statements at the Commercial Register Office, by creating the Beneficial Ownership Register (RETIR), which forms part of the Commercial Register.

- RETIR is continuously updated, at the request of the party concerned, and periodically, with an obligation to make an annual declaration when filing financial statements.
- RETIR can be adapted to new and upgraded EU requirements for combatting money laundering, and is interconnected with similar registers in other European commercial registers, thanks to the BRIS project.
- RETIR, which also provides information on the companies in the chain of control of other companies, presents data in a structured way. A web application has also been developed so that the relevant information is accessible to all organisations.
- Collaboration agreements have been signed with the Court of Auditors, the National Police, the Guardia Civil, the CNMV, the CNI, the Public Prosecutor's Office, the Independent Tax Authority, the Bank of Spain, the General Council of the Judiciary and the Treasury Departments of the various Autonomous Communities. The service is also provided to the Tax Agency, the Asset Recovery Office (ORGA) and SEPBLAC⁸⁴.
- RETIR is publicly accessible at <https://sede.registradores.org/retir/>.

For the purposes of obtaining information on the beneficial ownership of legal entities that are customers of the entity, or where the anti-money laundering legislation requires the beneficial owner to be known before a professional or business relationship can be established, the Commercial Register will provide the following services through the Association of Registrars:

- Consultation to determine the beneficial owner from the data in the Commercial Register with respect to legal entities that are already customers of the liable party.
- Consultation to determine the beneficial owner of legal entities that become, or may become, customers of the liable party in the future.

⁸⁴ Collaboration agreements with obliged entities pursuant to Article 2 of the AML/CFT Law allow them, solely for their internal use as liable parties, to access the information on beneficial owners held in the Commercial Register via the Association of Registrars, in order to comply with the provisions of Articles 4 of the AML/CDFT Law and 9 of its AML/CFT Regulation.

- Consultation to obtain the date of the most recent change of beneficial ownership of a legal entity whose beneficial ownership has previously been consulted by the liable party. If the beneficial ownership has been updated since the previous consultation, the reporting party may make another consultation.

Thus, the competent anti-money laundering authorities will have unrestricted access to the information; liable parties will be able to access it in order to comply with their due diligence obligations and any other obligations relating to the prevention of laundering and terrorist financing by virtue of their status as liable parties; and, finally, this information may be obtained by individuals provided that they can demonstrate legitimate interest.

The system of publicly available registered information is therefore restricted in these cases, and in order to obtain information on a beneficial owner, the person requesting it must always provide the registrar with proof of their legitimate interest, with the exceptions indicated above (authorities and liable parties in compliance with their anti-money laundering obligations). This is because it is important to protect the privacy not only of the beneficial owner whose identity is being revealed, but also that of the parties requesting such information, such as the competent authorities in the field of money laundering and liable parties complying with their obligations.

Besides the role of notaries and registrars of property and their databases, there are two additional tools to examine both financial and beneficial ownership: the Financial Ownership File (see question A1) and the single Register of Beneficial Ownership of legal entities and trusts (see question A2).

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

At the national level, the Tax Administration Agency continues to work on improving the obtainment of information on beneficial ownership in two areas:

- Strengthening the collection of information from third parties, increasing the channels of collaboration with existing actors, as well as with others that may arise as a result of future legislation.
- Increasing the quality of the information obtained or existing in current databases, checking the veracity or updating of the information received.

With regard to the international exchange of beneficial ownership information carried out by the Spanish tax authorities, a distinction should be made between the two frameworks or standards in which the concept of "beneficial owner" is

present: the exchange of information upon request (EOIR)⁸⁵ and the automatic exchange of information on financial accounts (AEOI).

Spain has an extensive network of legal instruments upon which it carries out the exchange of tax information, all of them in accordance with the standard approved by the Global Forum, which Spain currently chairs. It is also one of the countries party to the Convention on Mutual Administrative Assistance in Tax Matters.

From a practical standpoint, to date Spain has had no difficulty in providing information on the beneficial ownership of entities incorporated in Spain at the request of the competent authorities of other countries and jurisdictions within the established timeframe, such information having been available and accessible to the tax authority in all cases in the sources consulted.

On the other hand, in accordance with the transparency criteria established by the Global Forum, Spain automatically exchanges information on financial accounts with other countries (Common Reporting Standard - CRS) under the Multilateral Agreement between Competent Authorities on automatic exchange of financial account information and Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards the mandatory automatic exchange of information in the field of taxation.

Among the information that Spain exchanges automatically are the identification data of the person who is the account holder and, in the event that the account holder is an entity which, following the application of due diligence procedures in accordance with the Common Standard for the exchange of information, is identified as an entity in which one or more controlling persons are subject to disclosure, the name, address and TIN of the Entity and the name, address, TIN and place and date of birth of each controlling person subject to disclosure should be disclosed.

In order to comply with the relevant international commitments, Royal Decree 1021/2015, of 13 November 2015⁸⁶, establishes the obligation to identify the tax residence of persons who hold ownership or control of certain financial accounts and to report on them within the scope of mutual assistance. Its Annex sets out the due diligence rules to be followed by financial institutions to determine the ownership of accounts and identify their tax residence for the purpose of exchanging information. In its second additional provision, it states that the rules regarding the obligations of financial institutions shall be interpreted in accordance with the OECD Commentary on the Model Competent Authority Agreement and the Common Reporting Standard. Moreover, the Royal Decree also indicates that the term "Controlling Persons" should be interpreted in line with the Financial Action Task Force (FATF).

In order to help Spanish financial institutions to comply with the CRS Standard, the following documentation is published on the website of the Tax Authority Agency: <https://www.agenciatributaria.es/AEAT.internet/GI42/informacion.shtml>.

⁸⁵ The standard on transparency and exchange of information on request was updated in 2016 to include, among other issues, the availability, access and exchange of beneficial ownership information of incorporated entities in each jurisdiction.

⁸⁶ <https://www.boe.es/buscar/doc.php?id=BOE-A-2015-12399>

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY⁸⁷

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

The adoption of Royal Decree Law 7/2021, implementing the 5th EU Directive on Money Laundering, has the dual goal of improving mechanisms for the prevention of terrorism and enhancing the transparency and availability of information on the beneficial owners of legal persons and other entities without legal personality, thus also helping improve private sector transparency and integrity.

In addition, and even if its stated purpose is not preventing and tackling corruption and corruption related behaviours and/or offences, the recent agreement (pending formal ratification by the EU co-legislators) on a Directive on the disclosure of income tax information by certain undertakings and branches, commonly referred to as the public country-by-country reporting (CBCR) directive, can also help increase overall business transparency in tax-related matters, thus also indirectly discouraging the performance of potential illicit acts that could be linked to corruption.

In 2019, and with a view to highlighting the need to fight corruption in international economic transactions and the importance of coordinated action by the public and private sectors, the Ministry of Justice and the Ministry of Industry, Trade and Tourism made available a Spanish translation of the OECD Anti-Bribery Convention, complemented with a compendium of Spanish legislation on this subject. The document⁸⁸, which updates an earlier publication, is divided in two parts:

- A number of brief notes on the importance of corruption in international economic transactions and its harmful effects on them, as well as a quick overview of the OECD, the Anti-Bribery Convention and the situation in Spain in terms of compliance and legislation.
- The official translation of the OECD Anti-Bribery Convention, its commentary and the OECD Council Recommendations.

Finally, the Directorate-General for Procurement, Assets and Treasury in the Ministry of the Treasury (Ministerio de Hacienda) maintains the Official Register of

⁸⁷ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

⁸⁸

https://www.mjusticia.gob.es/en/AreaInternacional/ParticipacionMinisterioJusticia/Documents/1292429530548-Folleto_sobre_el_Convenio.PDF

Tenderers and Classified Companies of the State (POLECE). This public register includes all the prohibitions to contract with the public sector for private companies that have been sanctioned for committing unlawful acts (such as bribery offences).

B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

Royal Decree Law 11/2018, amending Law 10/2010, mentioned above, added an article 26 bis on *Internal procedures for reporting potential non-compliance*, that establishes the following:

- Obligated entities shall establish internal procedures so that their employees, managers or agents may communicate, even anonymously, relevant information on possible breaches. These procedures may be integrated into existing reporting systems.
- The provisions of the regulations on the protection of personal data for information systems for internal complaints shall be applicable to these systems and procedures.
- Obligated entities shall adopt measures to ensure that employees, managers or agents who report breaches committed within the entity are protected against reprisals, discrimination and any other type of unfair treatment.
- The obligation to establish the reporting procedure described in the previous paragraphs does not replace the necessary existence of specific and independent mechanisms for internal reporting of transactions suspected of being linked to money laundering or terrorist financing by employees.

Royal Decree Law 11/2018 also added new articles 63 and 65, on the reporting of offences and protection of individuals, describing the basic features of the whistleblowing channel to be used by employees of obliged entities, who shall report offences to SEPBLAC, as well as the applicable protection measures. They may file a claim to this regard. Even if this channel is not meant to communicate corruption/ bribery activities itself, it could imply these kinds of activities if they are allied with ML/TF activities as predicate offence.

Finally, Royal Decree Law 7/2021, of 27 April, also amending Law 10/2010, added a new paragraph 5 to Article 65 thereof, in the following sense:

Persons exposed to threats, hostile action or adverse employment action for communicating through internal channels or to the Commission's Executive Service communications on activities related to money laundering or terrorist financing may file a complaint with the Commission's Executive Service. By order of the head of the Ministry of Economic Affairs and Digital Transformation, the communication model and the system for

receiving communications shall be approved in order to guarantee their confidentiality and security.

Mention should also be made to Directive (EU) 2019/1937 of the European Parliament and of the Council, of 23 October 2019, on the protection of persons who report breaches of Union law⁸⁹. It aims to protect in particular those persons who work for a public or a private organization or are in contact with it in the context of their work-related activities and who are often the first ones to know about threats or harms to the public interest which arise in that context.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 December 2021. This Directive establishes common minimum standards to ensure effective protection for whistleblowers, through the existence of secure, anonymous and confidential channels to report possible infractions, irregularities or actions that threaten the general interest without fear of reprisals. This is without prejudice to Member States increasing these levels of protection with respect to specific acts and areas.

In Spain, the preliminary draft to transpose this Directive was subject to a public consultation process in January 2021, which was published on the Ministry of Justice's website⁹⁰. More than 40 inputs from different key actors, civil society organisations and citizens were received and it is foreseen that in the coming weeks and after a participative process, the bill will be adopted by the Council of Ministers and forwarded to the Parliament for adoption.

Finally, in Spain there are already channels for reporting illicit practices. Examples include:

- The mailbox of the Labour and Social Security Inspectorate, created in 2013 and through which, anonymously, reports can be made of situations that do not comply with labour regulations, including cases of discrimination in the workplace.
- The collaboration mailbox of the National Markets and Competition Commission (CNMC), in operation since 2014, which allows any company or citizen with information on anti-competitive practices to report them to the Supervisor. Although this communication does not constitute a formal complaint, it makes it easier - while guaranteeing the anonymity of the person providing the information - to report the existence of anti-competitive practices such as price fixing or other commercial conditions, market or customer sharing or the fraudulent distribution of tenders.

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and

⁸⁹ <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32019L1937&from=ES>

⁹⁰ <https://www.mjusticia.gob.es/es/AreaTematica/ActividadLegislativa/Documents/Consulta%20Publica%20Whistleblowers%205%20ENE%2021.pdf>

extortion? Are those areas applicable also to SMEs and, if yes, how extensively⁹¹?

Where applicable, this can be provided in the form of links to other reviews or published work.

Obligated entities are bound to fulfil the information, due diligence and politically exposed persons' obligations established in Law 10/2010, of 28 April, as amended, as well as the due diligence obligations contained in Royal Decree 304/2014, of 5 May.

In addition, Law 11/2018, of 28 December, which amends the Commercial Code, the revised text of the Capital Companies Act approved by Royal Legislative Decree 1/2010, of 2 July, and Law 22/2015, of 20 July, on the Auditing of Accounts, in matters of non-financial information and diversity⁹², requires certain organisations to report annually non-financial information. This could be i.e. environmental, social, personnel-related information, respect for human rights, the fight against corruption and bribery, and information on the company itself.

Since 1 January 2018, companies that meet the following requirements are obliged to present the non-financial information statement, either individually or on a consolidated basis:

- The average number of employees of the company or the group, as the case may be, during the financial year exceeds 500.
- Either they are considered to be public interest entities in accordance with auditing legislation or, for two consecutive financial years, they meet at the closing date of each of them, at individual or consolidated level, as the case may be, at least two of the following circumstances:
 - That the total of the asset items exceeds 20,000,000 euros.
 - That the net annual turnover exceeds 40,000,000 euros.
 - The average number of employees during the financial year exceeds 250.

From 2021, companies with more than 250 employees are also obliged to present the non-financial information statement.

Moreover, the Fund for the Internationalization of Businesses (FIEM) is an example of steps taken to encourage or require Spanish government agencies in charge of disbursing public money to consider actions against corruption and foreign bribery.

FIEM was created by the Law 11/2010, of 28 June⁹³, which aimed at reforming the financial support system for the internationalization of Spanish companies. It is now managed by the Ministry of Industry, Tourism and Commerce through the Secretary of State for Commerce.

Its main goal is to boost Spanish companies' exports and investments abroad by financing operations and projects of special interest for the internationalization strategy of the Spanish economy. Likewise, the technical assistance that these operations and projects require in both developed and developing countries can

⁹¹ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

⁹² <https://www.boe.es/eli/es/l/2018/12/28/11>

⁹³ <https://www.boe.es/buscar/act.php?id=BOE-A-2010-10313>

also be eligible for finance. Methods of financing can be loans, credits and lines of credit, although there are also non-refundable instruments, technical assistance and consultancies, as well as projects and operations when their special circumstances do require them.

In order to become a FIEM beneficiary, the Spanish company needs to fulfil and sign a questionnaire, which states the following terms:

“[...] according to the provisions of the Law 11/2010 of June 28 and the Royal Decree 1797/2010, of December 30, the Spanish companies that are selected for the execution of a project charged to the FIEM must certify as a prerequisite, and in order to be able to take part in the project, that they comply with the provisions of international agreements signed by Spain in matters of corporate responsibility, labour rights and gender equality, specifically, the agreements related to the fight against corruption. Compliance with the aforementioned agreements implies that companies that have contributed to the violation of human rights, that have participated in corrupt practices, that have violated the agreements on the rights of workers, children or others, cannot be beneficiaries, as they may follow ethical standards that go against international agreements ratified by Spain.

Similarly, in December 1997, the OECD countries signed the Convention to Combat Corruption of Foreign Public Officials in International Transactions, by virtue of which they committed to introduce in their respective national legal systems the necessary measures to pursue corruption of officials from third countries. In Spain, the full transposition of the Convention was finalized with Organic Law 3/2000, of January 11, which modifies Organic Law 10/1995 of November 23 of the Penal Code on the fight against corruption of foreign public agents in international business transactions.

After signing the Convention, the OECD Member States must request all applicants for official export support to present a Declaration indicating that they are not involved in any cause of corruption in accordance with the precepts established in such agreement.”

In the case of private buyers, the ultimate investor/agent involved in the transaction will also be identified when authorizing a FIEM credit to any Spanish company. The declaration to be fulfilled by the buyer will be provided to the exporter or investor as part of the FIEM questionnaire. The Spanish exporter or investor must attach this annex to the request, although the ultimate responsible person will be the foreign buyer or his representative. Such statement abides by Law 10/2010 of 28 April on prevention of money laundering and terrorist financing.

Apart from that, ICEX Spain Export and Investment (hereinafter, "ICEX") plays an important role when analysing corruption abroad. ICEX is a public business entity whose mission is to promote the internationalization of Spanish companies to contribute to their competitiveness and add value to the economy as a whole, as well as to attract foreign investment to Spain.

A fundamental principle for the proper functioning of the body is the prevention and fight against fraud. This commitment has been assumed by all members of the management team and has been included in the ICEX Code of Ethics and Conduct.

ICEX's fraud prevention and fight policy is applicable to all its personnel, both managers and employees, regardless of their physical location, as well as to

consultants, service contract holders and individual contractors who collaborate with ICEX. Its objective is to promote a culture that exerts a deterrent effect for any type of fraudulent activity that makes its prevention and detection possible, developing procedures that facilitate the investigation of fraud and crimes related to it.

Within the organizational structure of ICEX, the area responsible for prevention management and the fight against fraud is the General Secretariat and the Board of Directors, which, together with the different Directorates, ensure an efficient execution of the aforementioned policy.

The areas of action in the fight against fraud that ICEX examines are the following:

a) Prevention and training

ICEX considers that prevention constitutes the best defence against fraud. An adequate training policy together with a self-assessment of the exposure of the company to fraud risks will considerably limit the existence of fraudulent conduct. Likewise, ICEX has a set of measures whose objective is to maintain an adequate level of internal control.

The exercise of self-assessment against fraud is carried out by ICEX following the guidelines established in the methodology and the tool proposed by the European Commission for the 2014-2020 programming period on fraud risk assessment and effective and proportionate anti-fraud measures (Document [EGESIF 14-0021-00 of 06/16/2014](#)).

The risk self-assessment team is appointed by the CEO of ICEX and is made up of people with relevant responsibilities in the management processes of activities and programs co-financed with European funds. This team checks, for each evaluated activity or group of activities, the risks included in the tool and analyses whether or not they are applicable to ICEX. In addition, the existence of additional risks to those proposed by the tool is also analysed. In this way, for each risk identified in the management of the program, the impact and the probability that it takes place are assessed and the controls that exist in ICEX are subsequently analysed to mitigate those risks. If necessary, an action plan may be established to reduce the level of risk, which may consist in including new controls in the management process or rethinking the existing ones.

The risk self-assessment result is endorsed by the entire team and sent to the ICEX's CEO for approval. ICEX, as indicated by the European Commission, updates the risk self-assessments' procedure every two years.

ICEX has drawn up a list of red flags (alarm signals, clues or signs of possible fraud) based primarily on the Information Note on fraud indicators for the ERDF, ESF and CF (COCOF 09/0003/00 of 18.02.2009) of the European Commission, adapting it to all its activities. The detection of a red flag does not necessarily imply the existence of fraud, but it does indicate that a certain area of the activity or program management needs specific attention. Below is a list of red flags:

a) Unjustified acquisitions from a single source (direct award of contract):

- There is a concatenation in time of small size contracts.
- Contracts are no longer competitive.
- There exists a division of acquisitions into different groups to avoid the economic threshold set in competitive biddings.

b) Specifications agreed in favour of a bidder:

- The submission of a single bidder or an abnormally low number of bidders.
- The specifications of the bidding documents and the product or service of the winning bidder are remarkably similar.
- Specifications with stricter or more general specifications than those used in previous similar tenders.
- The bidding documents include a product of a specific brand instead of a generic product.

c) Conflict of interest in the award of a tender:

- The bidding authority benefits from unrevealed or unusual favours.
- The bidding authority repeatedly accepts high prices or low quality work.

d) Submission of wrong documents:

- Potential beneficiaries submit invoices justifying non-bankable expenses.
- Potential beneficiaries submit incorrect declarations to meet eligibility criteria.
- False claims submitted by other applicants.

b) Detection, notification and complaint

Notifications and complaints of any irregularity or suspected fraud in the development of ICEX activities can be filed through a complaints channel. ICEX will be in charge of communicating with the competent bodies, in particular, the European Anti-Fraud Office (OLAF) or the National Anti-Fraud Office.

c) Investigation, correction and prosecution

Once the existence of a possible fraudulent practice is known, precautionary measures will be applied. They can be confirmed or modified depending on the result of the investigation which has been carried out and sanctions can be established.

In conclusion, ICEX has adopted a policy of zero tolerance for fraud and a complete internal control system designed to prevent and detect, as far as possible, any fraudulent action and, where appropriate, correct its consequences.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

When analysing how business organisations and professional associations support the private sector in the promotion of transparency and integrity, one should take into account the role of the Spanish National Contact Point (NCP).

The Spanish NCP was created to guarantee the correct implementation of the OECD Guidelines for Multinational Enterprises. These Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The Guidelines are the only multilaterally agreed and comprehensive code of Responsible Business Conduct that governments have committed to promoting.

Business organisations and professional associations are key actors in the implementation of these Guidelines. The Spanish NCP is managed by a Secretariat which is currently located in the Support Unit of the Directorate General of International Trade and Investments of the Ministry of Industry, Trade and Tourism. An Advisory Committee supervises the activity of the Secretariat. As stated in Ministerial Order PRE/2167/2014 of 11 November 2014 to contribute to the effective functioning of the NCP, its members are:

- Two representatives of business associations: One representative of CEOE and another one of Consejo Superior de Cámaras de Comercio, Industria y Navegación en España.
- One representative of those trade unions that are members of TUAC (ODCE) and are present at a national level: Unión General de Trabajadores (UGT), Confederación Sindical de Comisiones Obreras (CCOO) and Union Sindical Obrera (USO).
- Two representatives of NGOs Transparencia Internacional and Observatorio de RSC.

Other relevant experts or university professors can also join Advisory Committee meetings.

Therefore, business organizations and professional associations play an important part in the decisions taken at the Spanish National Contact Point, consequently promoting business integrity and transparency.

Regarding SMEs, we should point out that the Guidelines are in principle addressed to multinational enterprises. Nevertheless, the role of SMEs in relation to the Guidelines is changing. SMEs are becoming more aware of the importance of responsible business conduct. In addition, we should bear in mind that when multinationals change their policies to adapt them to the Guidelines, it could have an impact on those SMEs which are part of their supply chain. Hence, while the Guidelines are not directly addressed to SMEs, they may have an indirect impact on them. Moreover, an intense debate is currently taking place at the Working Party on Responsible Business Conduct in relation to a possible change in the scope of the Guidelines. This change in its scope could mean broadening it, including SMEs.

In sum, we can conclude that the Spanish NCP contributes to supporting the private sector in the promotion of transparency and integrity.

C. LIABILITY OF LEGAL PERSONS⁹⁴

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

In Spain, the criminal liability of legal persons was introduced as such for the first time by Organic Law 5/2010, in Article 31 bis of the Penal Code (PC). By means of this, the Spanish legislator regulated the direct and independent criminal liability of legal persons with respect to the company's own administrators or managers.

Law 37/2011, of 10 October, on procedural streamlining measures, regulated the way in which legal persons should intervene in criminal proceedings derived from Organic Law 5/2010; and Organic Law 7/2012 amended Article 31 bis PC to also include political parties and trade unions as criminally liable.

Further to Organic Law 1/2015, the criminal liability of legal persons is regulated in articles 31 bis to 31 quinquies PC.

Article 31 bis

1. In the cases foreseen in this Code, legal persons shall be held criminally liable for:

a) The criminal offences committed in their name or on their behalf, and to their direct or indirect benefit, by its legal representatives or those that acting either individually or as members of a body of the legal person authorised to take decisions in the name of the legal person or that possess organisation and control powers over such legal person.

b) Legal persons shall be criminally liable for the criminal offences committed when carrying out their corporate activities and on their account and to their direct or indirect benefit, by those who, being subject to the authority of the natural persons mentioned in the preceding Paragraph, were able to perpetrate the deeds because the duties of supervision, surveillance and

⁹⁴ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

control of their activities were gravely breached by the natural persons mentioned in the preceding Paragraph, in view of the specific circumstances of the case.

2. If the criminal offence were perpetrated by the persons indicated in Paragraph a) of the previous Section, the legal person shall be exempt from liability if the following conditions are fulfilled:

1. The management body has adopted and effectively implemented, before the perpetration of the criminal offence, organisational and management models that include measures of surveillance and control appropriate to prevent criminal offences of that same nature or to significantly reduce the risk of perpetration thereof.

2. The supervision of the functioning of and of compliance with the prevention model implemented has been entrusted to a body of the legal person with self-governing powers of initiative and control or has been entrusted legally with the function of supervising the effectiveness of the legal person's internal controls.

3. The individual offenders have perpetrated the criminal offence fraudulently eluding the organisational and prevention models; and

4. An omission or insufficient exercise of the function of supervision, surveillance and control on the part of the body to which the second condition refers has not occurred.

In those cases where only partial evidence of compliance with the preceding circumstances is available, this shall be considered to reduce the penalty.

3. In the case of a legal person of small size, the functions of supervision to which the second condition of Section 2 refers may be taken on directly by the management body. For these purposes, legal persons of small size shall be deemed those that, pursuant to the applicable legislation, are authorised to submit an abbreviated profit and loss statement.

4. If the criminal offence were perpetrated by the persons indicated in Sub-Paragraph b) of Section 1, the legal person shall be exempt from liability if, before the perpetration of the criminal offence, it has adopted and effectively implemented an organisational and management model adequate to prevent criminal offences of the nature of the one perpetrated or to reduce in a significant way the risk of the perpetration thereof.

In these cases, the attenuation foreseen in the second Paragraph of Section of this Article shall also be applicable.

5. The organisational and management model to which the First condition of Section 2 and the previous Section refer shall comply with the following requirements:

1.st Identifying the spheres of activities where the criminal offences to be prevented may be perpetrated;

2.nd Establishing the protocols or procedures detailing the procedure for determining the will of the legal person, the adoption of decisions and the implementation thereof in relation to such protocols or procedures;

3.rd Possessing management models for financial assets adequate to prevent the perpetration of the criminal offences that are to be prevented;

4.th Imposing the obligation of notifying of possible risks and cases of noncompliance to the body entrusted with the surveillance of the functioning of and compliance with the prevention model;

5.th Establishing a disciplinary regime to adequately punish not complying with the measures established in the model;

6.th Carrying out a periodic audits of the model and, eventually, the amendment thereof whenever material violations of its provisions occur or when changes in the organisation, control structure or the activity carried occur making this necessary.

Article 31 ter.

1. The criminal liability of legal persons shall be applicable whenever there is record of a criminal offence being committed by a person who holds office or carries out the duties referred to in the preceding Article, even if the specific natural person responsible has not been individually identified, or it has not been possible to prosecute that person. When fines are handed down to both as a consequence of these deeds, the Judges or Courts of Law shall modulate the respective amounts, so the resulting sum is not disproportionate in relation to the seriousness of such deeds.

2. Concurrence, in the persons who have materially perpetrated the deeds or those who have made these possible due to not having exercised due control, of circumstances that affect the culpability of the accused or aggravate his responsibility, or the fact that those persons have died or have escaped the action of justice, shall not exclude or modify the criminal liability of legal persons, without prejudice to what is set forth in the following Article.

Article 31 quarter

Circumstances that mitigate criminal liability of a legal person may only be deemed to concur when, after the criminal offence is perpetrated, the legal persons carries out the following activities through its legal representatives:

a) Having proceeded, prior to having knowledge of judicial proceedings being brought against it, to confess the criminal offences to the authorities;

b) Having collaborated in the investigation of the deeds, providing evidence, at any moment of the proceedings, that is new and decisive to clarify the criminal liabilities arising from the deeds;

c) Having proceeded at any time during the proceedings, and prior to the trial itself, to repair or decrease the damage caused by the criminal offence;

d) Having established, prior to the trial itself, measures that are effective to prevent and discover criminal offences that might be committed in the future using the means or under the coverage of the legal person.

Article 31 quinquies

1. The provisions related to criminal liability of legal persons shall not be applicable to the State, to the territorial and institutional Public Administrations, to the Regulatory Bodies, to Public Agencies and Corporate

Entities, to international organisations under Public Law, or to others that exercise public powers of sovereignty or administration.

2. In the case of State Mercantile Companies that implement public policies or provide services of general economic interest, only the penalties foreseen in Sub-Paragraphs a) and g) of Section 7 of Article 33 may be imposed. This limitation shall not be applicable when the Judge or Court considers that the legal form was established by the promoters, founders, managers or representatives thereof with the aim of eluding a possible criminal liability.

Moreover, Organic Law 1/2019, which amended the Penal Code in order to transpose European Union Directives in the financial and terrorism fields, and to address international issues, increased the number of criminal offences for which legal persons may be liable and modified the punitive regime applicable to legal persons in some cases.

Legal persons may be criminally liable only for offences for which the Penal Code expressly so provides (Article 31 bis PC).

Legal persons can be liable for the offence of foreign bribery in accordance with Article 288 PC in relation to Article 286 ter PC, which wording was added by Organic Law 1/2015 of 30 March 2015.

Article 286 ter

1. Whoever, through offers, promises or granting of any undue benefit or advantage, either pecuniary or of any other kind, bribes or tries to bribe, whether directly or through intermediaries, an authority or public official, for their benefit or for the benefit of a third party, or whoever agrees with their demands in that respect, so that they act or refrain from acting in relation to the performance of official duties in order to obtain or retain a contract, business or other competitive advantage in the conduct of international business, shall be sanctioned, except if already punished with a more severe penalty under another precept of this Code, with three to six years' imprisonment and fine from twelve to twenty-four months, unless the benefit obtained exceeds the resulting sum, in which case the fine will be from one to three times the value the profit obtained.

Besides the aforementioned penalties, the liable person shall be punished with debarment from future contracts with Public Administration, from the possibility of receiving subsidies and public aids and from the right to enjoy tax and National Insurance benefits and incentives, as well as from taking part in commercial transactions of public interest for a period from seven to twelve years.

2. For the purposes of this Article public official shall be considered those mentioned under Articles 24 and 427.

Article 288

In the cases foreseen in the preceding Articles, publication of the judgment in the official journals shall be provided and, if requested by the offended, the Judge or Court of Law may order full or partial reproduction thereof in any other informative medium, at the expense of the convict.

If, pursuant to the terms established in Article 31 bis, a legal person is responsible for the criminal offences defined in this Chapter, it shall have the following penalties imposed thereon:

1. In the case of the criminal offences foreseen in Articles 270, 271, 273, 274, 275, 276, 283, 285 and 286:

a) Fine of two to four times the profit obtained, or that could have been obtained, if the punishment foreseen for the criminal offence committed by a natural person is a prison sentence exceeding two years;

b) Fine of two to three times the profit obtained or favoured, or that could have been obtained, in the rest of the cases.

In the case of the criminal offences foreseen in Articles 277, 278, 279, 280, 281, 282, 282 bis., 284 and 286 bis. to 286 quinquies:

a) Fine of two to five years, or three to five times the profit obtained, or that could have been obtained if this amount is higher, if the punishment foreseen for the criminal offence committed by a natural person is a prison sentence exceeding two years;

b) Fine of six months to two years, or one to two times the profit obtained, or that could have been obtained if this amount is higher, in the rest of the cases.

Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Paragraphs b) to g) of Section 7 of Article 33.

In relation to the interpretation of these provisions, Circular 1/2016 of the Prosecutor General's Office on the criminal liability of legal persons was issued: <https://www.boe.es/buscar/doc.php?id=FIS-C-2016-00001>

C2.2 Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

In 2017, the National High Court (*Audiencia Nacional*) issued the first sentence on a case of foreign bribery in Spain. Four people were accused, two of them (a natural person and a legal person) were acquitted, and the other two (natural persons) were convicted. The judgement was not appealed and therefore the ruling became final. The acquittal of one of the natural person and the legal person was due to the lack of enough evidence regarding their participation. Therefore, proceedings were carried together for legal and natural persons.

The text of the judgment is accessible in the following link:

<https://www.poderjudicial.es/search/indexAN.jsp>

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

Further to the answer given to question C1, in Spain, the *de facto* or legal administrator may be criminally liable in three different ways:

1. By way of Article 31 PC: as the perpetrator of the offences committed in the exercise of his position, even if the conditions, qualities or relationships required by the offence to be an active subject of the offence do not exist therein, but they do participate in the company of which he is the legal representative.
2. By way of Article 11 PC (commission by omission): he/she is criminally liable as the perpetrator of the crimes committed in the company, provided that he/she expressly holds a guarantor position. This position entails a special duty to control the criminal risks arising from the company's activity. This position is held by the administrator from the moment it constitutes the company and carries out the activity for which it was created, i.e. from the assumption of position (in the case of the law administrator) or when it performs its own functions as administrator (in the case of a *de facto* administrator).
3. By way of Articles 28 and 29 PC: the administrator may be liable as a participant by omission of an offence committed by a member of the company in an area where he does not have a special duty of guarantee but specific duties of compliance and control. For example, those arising from administrative law providing for performance obligations for managers in certain activities (e.g. on the stock market, security of workers, money laundering, including Article 31 bis PC).

In addition, administrators may incur in civil liability for their acts or omissions contrary to the law or the statutes or for those performed in breach of the duties inherent in the performance of the post (Article 236 Royal Legislative Decree 1/2010 of 2 July approving the revised text of the Capital Companies Act⁹⁵).

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

Yes. Article 127 bis of the Penal Code establishes the following:

1. The judge or court shall also order the confiscation of goods, effects and proceeds belonging to a person convicted of any of the following offences when it decides, on the basis of well-founded objective indications, that the goods or effects derive from criminal activity, and their lawful origin is not proven: (...)

g) Corruption offences in business. (...)

2. For the purposes of the provisions of paragraph 1 of this article, the following indications, among others, shall be assessed in particular:

1º The disproportion between the value of the property and effects in question and the income of lawful origin of the convicted person.

2º Concealment of ownership or of any power of disposal over the assets or effects through the use of interposed natural or legal persons or unincorporated entities, or tax havens or territories of zero taxation which conceal or make it difficult to determine the true ownership of the assets.

3º The transfer of the goods or effects by means of operations which make it difficult or impossible to locate or use them and which lack a valid legal or economic justification.

3. In these cases, the provisions of section 3 of the previous Article shall also be applicable.

4. If the convicted person is subsequently convicted for similar criminal acts committed previously, the judge or court shall assess the scope of the previously agreed confiscation when deciding on the confiscation in the new proceedings.

5. The confiscation referred to in this Article shall not be ordered when the criminal activities from which the property or effects originate are time-barred or have already been the subject of criminal proceedings that have been resolved by a judgement of acquittal or a decision of acquittal with the effects of res judicata.

⁹⁵ <https://www.boe.es/eli/es/rdlg/2010/07/02/1/con>

The Spanish system establishes the criminal liability of legal persons related to the offences mentioned in the indicated provision.

As referred to in question A1 of the 2020 Accountability Report, the Asset Recovery and Management Office was created in October 2015. Information on this office in English can be obtained in the following link:

https://www.mjusticia.gob.es/es/AreaTematica/OficinaRecuperacion/Documents/1292430614963-Triptico_ORGA_en_ingles.PDF

Moreover, the action plan (available only in Spanish) is available here:

<https://www.mjusticia.gob.es/es/AreaTematica/OficinaRecuperacion/Documents/1292430615201->

[Plan de Accion 20182020 de la Oficina de Recuperacion y Gestion de Activos.PDF](#)

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

Spain cooperates with its EU and international partners notably through its Intelligence Centre against Terrorism and Organised Crime (CITCO), which depends from the Ministry of the Interior. CITCO receives and processes requests from other asset recovery offices in the European Union and the Asset Recovery Network (RRAG) of the Financial Action Task Force against Money Laundering in Latin America (GAFILAT), as well as requests from Spain to the aforementioned networks. We can thus provide data corresponding to the past year 2020:

- 88 requests issued to the Informal Platform of EU Asset Recovery Offices and the RRAG, concerning 70 legal persons and 294 natural persons.
- 443 applications received from the Informal Platform of EU Asset Recovery Offices and the RRAG concerning 508 legal entities and 1416 natural persons.

ANNEX

Additional information regarding beneficial ownership in Spain

For the purposes of determining control, the criteria established in Article 42 of the Commercial Code shall apply, among others.

Except for companies that are listed on a regulated market and that are subject to information requirements in accordance with Union law or equivalent international standards that guarantee adequate transparency of property information, control indicators used include those provided for in Article 22 (1) to (5) of Directive 2013/34/EU on the annual financial statements, the consolidated financial statements and other related reports of certain types of companies, which amends Directive 2006/43/EC and repeals Directives 78/660/EEC and 83/349/EEC.

When there is no natural person who owns or controls, directly or indirectly, a percentage greater than 25 percent of the capital or voting rights of the legal person, or who by other means exercises direct or indirect control, of the legal person, the administrator or administrators shall be deemed to exercise said control. When the designated administrator is a legal person, it will be understood that control is exercised by the natural person appointed by the legal person administrator. Obligated subjects will verify their identity and record the measures taken and the difficulties encountered during the verification process.

In the case of trusts, such as the Anglo-Saxon trust model, all the following persons will be considered real owners: (1) the settlor or settlors; (2) the trustee or trustees; (3) the protector or protectors, if any; (4) the beneficiaries or, when they have yet to be designated, the category of persons for the benefit of which the legal structure has been created or operates; and (5) any other natural person who ultimately exercises control of the trust through direct or indirect ownership or through other means. In the case of legal instruments analogous to a trust, the obliged subjects will identify and adopt appropriate measures in order to verify the identity of the persons who occupy positions equivalent or similar to those cited above.

Notaries and registrars of property, trade and personal property are considered obliged entities, so they play a key role when it comes to identifying the beneficial owner in economic and financial transactions.

Obligated subjects will collect information from clients to determine whether they act on their own account or on behalf of third parties. When there are indications or certainty that the clients are not acting on their own behalf, the obliged subjects will collect the precise information in order to know the identity of the people on whose behalf they act. Obligated subjects shall also adopt adequate measures for the purpose of determining the ownership and control structure of legal persons, legal structures without personality, trusts and any other similar structure.

Obligated subjects shall not establish or maintain business relationships with legal persons, or legal structures without personality, whose ownership and control structure could not be determined. In the case of companies whose shares are represented by bearer titles, the previous prohibition will apply unless the obliged subject determines by other means the

ownership and control structure. This prohibition shall not apply to the conversion of bearer securities into registered securities or book entries.

In addition to the obligation to identify, the information that must be provided is the following:

- Without prejudice to the obligations that may be required by their regulatory regulations, commercial companies, foundations, associations and any legal persons are subject to the obligation to declare their beneficial ownership, constituted in accordance with Spanish legislation or with registered office or branch. In Spain, they are obliged to obtain, keep and update the information of the beneficial owner or owners of that legal entity. The information of the beneficial owners will be kept for a period of 10 years to count from the cessation of their condition of beneficial owner in the terms established by regulation.
- When they establish business relationships or carry out occasional operations, the relevant entities will have the information at the disposal of the obliged subjects, in order to comply with the obligations in terms of prevention of money laundering and terrorist financing.

All natural persons who have the status of beneficial owners will have the obligation to supply immediately, from the moment they become aware of this fact, their status as beneficial owners.

Natural or legal persons resident or established in Spain who act as trustees, managing or administering trusts such as the Anglo-Saxon trust and other types of similar legal instruments with activities in Spain, are obliged to obtain, keep and update the information of the beneficial owners. The information of the beneficial owners will be kept for a period of 10 years from the end of their status as beneficial owners. When they establish business relationships or carry out occasional operations, the trustees or persons occupying an equivalent position must inform the obligated subjects of the condition in which they act.

Natural persons who have the status of beneficial owners will have the obligation to immediately supply, from the moment they become aware of this fact, to the trustees or people who occupy an equivalent position, their status as beneficial owners.

TURKEY

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.**

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

In relation to beneficial ownership transparency (BOT) was provided in our previous contribution to the Accountability Report Questionnaire 2018. In this context, detailed information was submitted about following issues:

- Beneficial owner definition (Article 3(l)(h) of the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism -RoM)
- Identification of Beneficial Owner (Article 17/A of the RoM)
- Customer identification of those acting for the benefit of others (Article 17 of the RoM)
- Other relevant measures that need to be taken (Article 19 of the RoM)
- Guidance on Identification of beneficial owner (2016)
(<https://ms.hmb.gov.tr/upload/sites/12/2021/02/GERCEK-FAYDALANICI-REHBERI.pdf>)

Recent Developments:

In order to prevent misuse of bearer shares as it mentioned both in FATF Recommendation No. 24 and article 10 of G20 High Level Principles on Beneficial Ownership Transparency, Turkey introduced a new approach. With the Law on Prevention of Distribution and Financing of Weapons of Mass Destruction numbered 7262 dated 31 December 2020; Turkish Commercial Code has been amended and a reporting obligation has been brought for bearer shareholders. According to new provisions, bearer shares and bearer shareholders in joint stock companies are obliged to be notified and recorded to the Central Registry Agency (Merkezi Kayıt Kuruluşu - MKK). When new bearer share certificates issued by companies, the company obliged to register these shares and the holders in MKK before delivering to shareholders. In share transfers, the transferee is obliged to

make notification to MKK. Shareholders will not be entitled to use rights attached to bearer shares until the notification is made to MKK. In order to carry out the notification and registration processes "Bearer Share Registry System" has been established by Central Registry Agency.

In addition to that, Communiqué On Notifying And Registering Bearer Share Certificates To The Central Registry Agency was published on Official Gazette dated 6 April, numbered 31446 by Ministry of Trade.

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- Turkish Commercial Code (TCC)
- As above mentined, Articles 64(4), 486 (1) and 489 of Turkish Commercial Code (TCC) are amended as follows:

- A)Book keeping and inventory
- I-The obligation of book keeping

ARTICLE 64(4) - (4) Books which are not related to the company's accounting such as share books, executive board minutes books, and general assembly meeting and discussion books shall also be commercial books. The Ministry of Trade may make it obligatory to keep share books, executive board minutes books, and general assembly meeting and negotiation books in electronic environment. Provisions of Capital Market Law shall be reserved.

II - Issuance of Share Certificates

ARTICLE 486- (1) ...

(2) If share is bearer share, the executive board shall issue and distribute share certificates to shareholders within three months following the date on which the whole share price is paid. The executive board's decision to issue bearer share certificates shall be registered and announced, and also published in the company's web site. Information regarding bearer share holders and the share that they hold shall be reported to the Central Securities Depository before share certificates are distributed to shareholders. Certificate may be issued until share certificates are issued. Provisions regarding registered nominative share certificates shall apply by analogy to certificates.

B) Transfer of bearer share certificates

ARTICLE 489- (1) Transfer of bearer share certificates shall only be applicable for the company and third parties through the transfer of holding and through reporting to the Central Securities Depository. In the event that it is not reported to the Central Securities Depository, holders of bearer shares cannot use their rights of shares emerging from this Law until the required reporting is made.

(2) In claiming the rights of bearer share certificates before the company and third parties, the date on which reporting is made to the Central Securities Depository shall be taken as basis.

(3) Records of bearer share certificates kept by the Central Securities Depository shall be shared with authorities which are authorised by relevant laws.

(4) Principles and procedures regarding reporting bearer share certificates to the Central Securities Depository and their recording and relevant fees shall be defined by the Ministry of Trade through a Communiqué.

Through the above mentioned amendments, companies and holders of the shares are obliged to notify MKK and Ministry of Trade is authorized to obligate companies

to keep their books in electronic environment. In other words, Turkey has adopted a mechanism to monitor bearer share holder information through MKK. Previously, this mechanism was in force only for joint stock companies the shares of which are exchanged through stock market (Borsa İstanbul). Thanks to the amendments made in articles 486 and 489 of TCC, shares of all joint stock companies are required to be registered to MKK. Please note that no other company types are allowed to issue bearer shares in Turkey.

Furthermore with the amendment of Article 489 of TCC, records of bearer share certificates kept by the MKK will also be accessible to competent authorities. It should also be noted that sanctions imposed in case of violations increased as shown in the table below:

	2018* TRY	2020 TRY
TCC Article 33/2: Obligation of Calling for Registry**	1.707	2.343
TCC Article 38: Obligation of False Statement on Registry and Records	3.092	4.688
TCC Article 64-65: Obligation of Keeping Commercial Books	6.190	9.387
TCC Article 562/13-a: Obligation of Notification to the MKK before the Share Certificates are distributed to the Owners	N/A	20.000
TCC Article 562/13-b: Notification of the transfer of bearer shares to MKK by the buyer.	N/A	5.000 The legal rights connected to the ownership of the shares cannot be used without proper notification to MKK

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- *The amounts of administrative fines to be applied are updated every year.
- ** Registry to Trade Registry is obligatory in order to establish a company. If the registration is not made, director of trade registry calls on the concerned persons to carry out the legal obligations.
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With regards to AML, thanks to the amendments made on article 13(1) of the Law no 5549 (AML Law), obliged parties who violate Identification of beneficial ownership information set out in article 17 and 17/A of the RoM will be subject to an administrative fine of 30.000 TL (It was 12.152 TL in 2019). Moreover, the sanction would be doubled (ie 60.000 TL) for financial institutions. As mentioned

above, information obtained from the obliged parties are among the primary information sources of beneficial ownership in Turkey. It should be noted that this fine is imposed per each transaction. If an obliged party persistently violates this obligation; it will be subject to administrative fines aggravated by the number of breaches. It should also be noted that the amounts of administrative fines to be imposed are updated every year.

A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement⁹⁶.

Required information can be provided in the form of links to other reviews or published work.

- Turkey uses a number of mechanisms to obtain beneficial ownership information such as;
 - Information gathered by obliged parties in accordance with AML/CFT legislation,
 - Trade registries,
 - Central Trade Registry System - MERSİS),
 - Revenue Administration's records,
 - MASAK's authority granted by the AML Law No.5594 to request every kind of information including beneficial ownership from every natural and legal persons.
- Detailed information on abovementioned mechanisms in place in Turkey was submitted in previous contribution to the Accountability Report Questionnaire 2018.
- In addition to abovementioned mechanisms, Central Securities Depository (MKK) is also used (for information regarding bearer share holders and the share that they hold to be reported to the Central Securities Depository before share certificates are distributed to share holders)
- It should be noted that relevant information was provided in relation to mechanisms used to prevent bearer shares of misusing to conceal the true ownership structure of legal persons.

⁹⁶ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

All registrations made in the trade register are published in Turkey Trade Registry Gazette. This gazette is published Online at "ticaretsicil.gov.tr" and publicly available. By making several consecutive inquiries through this gazette, it is possible to trace beneficial owner information of legal persons. In addition, the data stored in MERSİS is shared with the competent authorities such as MASAK, tax administration, social security administration via the electronic integrations. Besides, the data requests of the relevant law enforcement units and other relevant institutions are also quickly met whenever requested from the Ministry of Trade.

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

At the national level, MASAK can get benefit from the mechanisms mentioned above to obtain beneficial ownership information. In addition, it has the authority to request all kinds of information and documents from public institutions and organizations, natural and legal persons, and unincorporated organizations pursuant to Article 231(I)(n) of the Presidential Decree No.I. When requested by MASAK or examiners, public institutions and organizations, natural and legal persons, and unincorporated organizations must fully and accurately provide all kinds of information, documents and related records in every type of environment, any kind of information and passwords necessary for accessing to or making these records decipherable, and render necessary convenience (Article 7(1) of the Law No.5549 - AML Law) Other relevant investigative authorities have also similar authority to get beneficial ownership information. At the international level, MASAK is the main authority in Turkey which exchanges beneficial ownership information with foreign counterparts. MASAK has clarified the dedicated mechanism for evaluating the quality of assistance received including beneficial ownership information and providing feedback to foreign units.

Since 2018, MASAK has sent 130 requests for basic and beneficial ownership information of a company to other countries. The evaluation of all requests revealed that in 71 of the requests provided information has been actively used. Furthermore, MASAK has requested additional information in one of the cases. In general, no major challenge or impediment have been observed related to the exchange of reliable information on beneficial ownership.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY⁹⁷

- B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.**

Where applicable, this can be provided in the form of links to other reviews or published work.

N/A

- B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?**

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

By the Article 3 titled “Offences requiring witness protection measures” of the Law No. 5726 on Witness Protection, it is stated that the witness protecting measures can be implemented within the scope of the offences requiring aggravated life imprisonment, life imprisonment and imprisonment for which the lower limit is ten years or more, listed in Turkish Penal Code numbered 5237 and in special laws including criminal provisions and offences requiring imprisonment, for which the lower limit is two years or more and committed within the framework of the activities of an organization established for the purpose of committing acts regarded as crime

⁹⁷ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

in the law, and offences committed within the framework of the activities of a terrorist organization. Besides, specific regulations regarding the protection of the whistleblowers are available in many laws. For instance:

-Article 18 of the Law No. 3628 on Declaration of Property and Fight with Bribe and Corruption prescribes that, "The identities of whistleblowers shall not be disclosed without their consent."

-Article 18 of the Labor Law prescribes the following, "The employer, who terminates the contract of an employee engaged for an indefinite period, who is employed in an establishment with thirty or more workers and who meets a minimum seniority of six months, must depend on a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the establishment or service." Within this scope, an employee denouncing the bribery offense will not be a valid reason for the employer to terminate the contract of the employee.

-"If the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation to be not less than the employee's four months' wages and not more than his eight months' wages shall be paid to him by the employer" (Labor Law, Article 21/1)

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively⁹⁸?

Where applicable, this can be provided in the form of links to other reviews or published work.

PUBLIC SECTOR

Law No. 5018 on Public Financial Management and Control which entered into force in 2005 has made revolutionary regulations in public financial management with concepts such as fiscal transparency, accountability, strategic planning, budgetary principles, internal control, internal audit, and external audit. Along with the secondary legislation such as "Rules and Procedures on Internal Control and Ex-ante Controls", "Communiqué On Public Internal Control Standards", "Public Internal Control Manual", "Strategic Planning Manual for Public Administrations", it has introduced public administrations to policies, principles, standards, procedures on fiscal transparency, accountability and control.

Internal Control Systems of Public Entities and Standards on Internal Control, Ethics, and Fraud

⁹⁸ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

Internal control systems have established and implemented in public entities for more than 15 years according to principles set by Ministry of Treasury and Finance. The Ministry has developed these principles by adapting COSO's "Internal Control— Integrated Framework" and "Enterprise Risk Management — Integrated Framework". As known, the COSO's frameworks include principles on integrity, ethical values, the potential for fraud in assessing risks and competencies of all personnel etc. In this regard in Turkey, there are compulsory 73 standards regulating various topics including Ethical values and integrity (standard 1), competence and performance of personnel (standard 3), Delegation of authority (standard 4), Control strategies and methods (standard 7), Segregation of duties (standard 9), Hierarchical controls (standard 10) etc.

Articles 63-67 of Law No 5018 sets out the overall scope of the internal audit system and the professional framework has been established with the secondary legislation. Activities and transactions of all the units of public administrations including those abroad and in the countryside, have been undergoing internal audit in line with audit standards within the scope of risk based audit plans and programs using a systematic, consistent and well-disciplined approach.

External Audit, Oversight Role of It on Internal Control Systems and Compliance With Pre-set Rules, Principles, Procedures and Standards

Law No 6085 The Turkish Court of Accounts (TCA) regulates the establishment of Turkish Court of Accounts, its functioning, audit and judicial procedures and other topics related to the Court, staff and audit. According to the Law, audit activities have been performed on behalf of the Turkish Grand National Assembly, to take final decision on the accounts and transactions of those responsible, to carry out the duties of examining, auditing and taking final decision stemming from laws, in the framework of accountability and fiscal transparency in the public sector, to ensure that public administrations function effectively, economically, efficiently and in compliance with laws and that public resources are acquired, preserved and utilized in accordance with foreseen purposes, targets, laws and other legal arrangements.

The TCA's mandate is very broad, it carries out performance audit and regulatory audit. Regularity Audit covers assessing financial management and internal control systems along with other two elements related to compliance and financial audit. Assessing financial management and internal control systems has an oversight role on the public entities' internal control systems' effectiveness and efficiency. In this way, the audited entities can be followed by external audit agency whether they perform their activities in compliance with pre-set policies, principles, rules and standards such as those of internal control and ethical values and integrity.

Ethical Values and Integrity

Regarding ethical values and integrity, "Law No. 5176 on the Establishment of Civil Servants Ethical Board and Making Amendments on Some Laws" determines the establishment, duty and working principles and procedures for Civil Servant Ethical Board to determine and monitor the implementation of such ethical values that civil servants must observe as transparency, impartiality, accountability and observing public interests.

Civil Servants Ethical Board is authorised and responsible for determination of ethical behaviour principles through the legislations it will prepare, conduction of the relevant ex-officio examinations and investigations as well as conduction of examinations and investigations upon applications on ethical behaviour violations and notification of the results to the relevant authorities, carrying out studies to

settle ethical behaviours in a community and supporting studies to be carried out in this field.

According to “Legislation on Civil Servants Ethical Behaviour Principles and Application Procedures”, civil servants are liable to observe ethical behaviour principles while fulfilling their duties and sign the Ethical Contract document. Authorised appraisal managers in administrations and institutions assess the performance and employment records of personnel in terms of compliance to ethical values.

Whistleblowing Of Failures, Irregularities And Fraud

Internal Control Standard 16: Notification of faults, irregularities and corruptions

The administrations shall develop methods which will ensure that the faults, irregularities and corruptions are notified in a specific order.

In the framework of the “Public Internal Control Standards” mentioned above, organizations must have systems to enable employees to communicate of failures irregularities and frauds with the authorities.

One of the most important elements of accountability and transparency is the existence of a mechanism that ensures that staff and stakeholders are able to effectively express their concerns.

Article 279 of Turkish Penal Code states that if a civil servant learns by means of the position he holds that a crime which necessitates investigation and prosecution was committed and neglects or delays notifying the competent authorities of this crime, he will be punished.

There are three basic types of whistleblowing and complaints in public administrations:

- Those regarding the violation of ethical values;
- Those regarding faults, irregularities and fraud;
- Complaints by civil servants regarding administrative actions and processes implemented against them by managers or administrations.

For more information please see:

- Public Financial Management and Control Law (Law No. 5018), <https://ms.hmb.gov.tr/uploads/2019/01/Public-Financial-Management-and-Control-Law-No.-5018.pdf>
- Procedures and Principles on Internal Control and Ex-Ante Financial Control, <https://ms.hmb.gov.tr/uploads/sites/2/2019/09/5380proceduresanprinciples.pdf.pdf>
- Regulation On The Working Procedures And Principles Of The Strategy Development Units, <https://ms.hmb.gov.tr/uploads/sites/2/2019/09/5381sdupdf.pdf>
- By-Law On The Preparation Of Accountability Reports Of Public Administrations, <https://ms.hmb.gov.tr/uploads/sites/2/2019/09/6540by-law-on-the-preparation-of-accountability-reports-of-public-admin....pdf>

- Communiqué On Public Internal Control Standards, https://ms.hmb.gov.tr/uploads/sites/2/2019/09/commun%C4%B1que_on_public%C4%B1c_%C4%B1nternal_control_standards.pdf
- Financial Management and Control Manual, <https://ms.hmb.gov.tr/uploads/sites/2/2019/09/6543tr-fmc-manual-consolidated-en-final-draft-april-01-2011.pdf>

PRIVATE SECTOR

There are special regulations regarding the internal controls within publicly traded companies, which include Capital Markets Board (CMB) Corporate Governance Principles, legal regulations regarding the banking sector and Turkish Commercial Code (Law No. 6102).

On the other side, Public Oversight, Accounting and Auditing Standards Authority (KGK) sets accounting and auditing standards in compliance with international standards. Within the scope of its responsibility to set national accounting and auditing standards in compliance with international standards and Turkey's commitment to harmonize accounting and auditing legislation with related EU acquis, KGK signed copyright agreements both with International Accounting Standards Board (IASB) and with International Federation of Accountants (IFAC). In terms of auditing standards, KGK has published 37 independent auditing standards (BDS), 1 quality control standard (KKS), 2 review engagement standards, 4 assurance engagement standards, 2 related services standards (in compliance with the international standards set by International Auditing and Assurance Standards Board (IAASB)) and 1 Code of Ethics for Auditors (in compliance with the International Code of Ethics for Professional Accountants set by International Ethics Standards Board for Accountants (IESBA)).

There are many provisions regarding the responsibility of auditors for responding to corruption (regarded as a type of non-compliance with laws and regulations) (in Code of Ethics-Section 225 and in BDS 250-paragraph 6, 29, A6, A28-A31). In some circumstances, auditors must report related bodies for corruption. Moreover, since auditors are required to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to corruption (regarded as a type of fraud) or error (according to BDS 200-paragraph 5), they should maintain professional skepticism throughout the audit, recognizing the possibility that a material misstatement due to corruption could exist (BDS 240-paragraph 12).

An independent auditor must conduct audit in accordance with the provisions of By-Law, BDSs and Code of Ethics. Administrative sanctions (warning, suspension of approval or withdrawal of approval) will be applied those auditors who violate provisions of By-Law, BDSs and Code of Ethics (according to article 25 of Decree and article 38-39 of By-Law).

The legal framework governing the establishment and application of accounting principles in Turkey is mainly overseen under the authority of the KGK and the Ministry of Treasury and Finance.

Currently, there are different accounting principles for different size of entities in Turkey which are Turkish Financial Reporting Standards (TFRSs), Financial Reporting Standard for Large and Medium Sized Entities (BOBI FRS) and Communiqués of Accounting System Application and there is a strong relationship

between which financial reporting framework an entity will apply and whether it is subject to audit.

IFRSs are incorporated into Turkish legislation as TFRSs by the KGK and they are in full compliance with the IFRSs issued by the IASB. TFRSs are regularly updated in accordance with the amendments made by the IASB with the effective dates as originally pronounced by the IASB preserved.

Turkey has adopted IFRSs for the financial statements of all public interest entities (PIEs). Entities whose securities are traded in a regulated market, intermediary institutions, and portfolio management companies were permitted to use IFRSs as of 2003 voluntarily and have been required to use IFRSs since 2005. Banks have been required to use IFRSs since 2006. Financial lease companies, factoring companies and financing companies have been required to use IFRSs since 2007. Insurance, reinsurance and pension companies have been required to use IFRS since 2008.

KGK developed the Financial Reporting Standard for Large and Medium Sized Entities (BOBI FRS) based on the requirements in the EU Accounting Directive, the IFRS for SMEs, FRS 102 -The Financial Reporting Standard applicable in the UK and Republic of Ireland- and local Turkish GAAP (Communiqués of Accounting System Application tax laws and regulations) and published it in the Official Gazette on 29 July 2017. BOBI FRS is effective from the reporting periods beginning on or after 1 January 2018. BOBI FRS is the financial reporting framework for entities, which are not required to apply TFRSs but are within the scope of entities subject to audit. BOBI FRS was designed to meet the financial reporting needs of large and medium-sized entities and is a standalone standard with 27 sections and less than 240 pages. It provides a cost-effective way of financial reporting for medium-sized entities and additional obligations were introduced for large-sized entities in line with the "think small first" approach in the EU Accounting Directive.

Entities, which are not required to apply TFRSs or BOBI FRS are required to apply the Communiqués of Accounting System Application. Those Communiqués have been published by the Ministry of Finance in accordance with the European Union's 4th Directive and 7th Directive.

All those standards and regulations are in place to ensure true and fair view of the financial statements.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

Public Oversight, Accounting and Auditing Standards Authority (KGK) inspects audit firms and auditors and inspections are carried out in accordance with annual inspection plan prepared by the KGK by considering the opinions of relevant authorities.

Audit firms which audit PIEs should be inspected at least once in every 3 years, and other firms should be inspected at least once in every 6 years. Inspections of auditors are carried out when deemed necessary by the KGK.

Inspections of the audit firms cover the following topics:

- Review of the audit work within the frame of relevant legislations,
- Regulatory compliance of audit firms' activities,
- Quality and quantity of resources spent in audits,
- The audit fees charged,
- Internal control system of the audit firms.

Results of inspections shall be announced to the public every year with a general inspection report.

In addition to the planned inspections, the KGK reserves the right of performing inspections in case of a warning, complaint, notification and in other cases considered necessary.

KGK has also the right and authority to take appropriate action (enforcement authority) against the auditors and audit firms that violate statutory audit provisions and KGK's regulations.

Depending on the violations detected, the following sanctions are applied against auditors and audit firms:

- Warning;
- Suspension of approval; and
- Withdrawal of approval.

KGK shall also impose administrative fine against audit firms that violate statutory audit provisions and KGK's regulations.

Below are the inspection findings related to audit file reviews by years:

	2016	2017	2018	2019	2020
Number of Auditors and Audit Firms Inspected	32	69	86	75	83

C. LIABILITY OF LEGAL PERSONS⁹⁹

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

Within the scope of the G20 High Level Principles on Liability of Legal Persons for Corruption, the amendments were made on the provisions regulating the liabilities of the legal persons on 27/12/2020 in Turkey in accordance with Article 26 of the United Nations Convention against Corruption and the works of the Organization for Economic Co-Operation and Development (OECD).

Within this framework, by the amendment made on the Article 43/A of the Misdemeanors Law, not only the scope of the legal persons' liabilities was broadened but also the amount of fine was increased.

The amended version of the Article 43/A of the Misdemeanors Law is as follows:

“(1) Where the act does not constitute a misdemeanor which requires more severe administrative fines; in the case that an organ or a representative of a private legal person; or; a person, who is not the organ or representative but undertakes a duty within the scope of that legal person`s operational framework commits the following offences to the benefit of that legal person, the legal person shall also be sentenced to an administrative fine of ten thousand Turkish Liras to fifty million Turkish Liras. However, the administrative fine shall not be less than twice the advantage, which is the subject of the procedure or action:

a) Offences stated in the Criminal Code of Turkey No. 5237:

- 1) Fraud (theft by deception) defined in Articles 157 and 158,
- 2) Production and trade of narcotics or psychotropic substances defined in Article 188,
- 3) Bid rigging defined in Article 235,
- 4) Fraud during the discharge of contractual obligations defined in Article 236,
- 5) Bribery defined in Article 252,
- 6) Laundering of assets acquired from an offence defined in Article 282,

⁹⁹ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

b) Offence of embezzlement defined in Article 160 of the Banking Code, dated 19/10/2005 and numbered 5411,
c) Offences of smuggling defined in the Anti-Smuggling Law, dated 21/3/2007 and numbered 5607,
ç) Offence defined in Appendix article 5 of the Oil Market Law, dated 4/12/2003 and numbered 5015,
d) Offence of financing of terrorism defined in Article 4 of The Law No. 6415 on the Prevention of the Financing of Terrorism dated 7/2/2013.
(2) The court which is commissioned to try the offences stated in paragraph one, has the jurisdiction over verdicts on administrative fines in accordance with this Article.”
(3) If the offences listed in paragraph one are committed to the benefit of a legal person, the completion of an investigation or prosecution against the person, who committed the act, shall not be awaited in order to impose an administrative fine to that legal person. If, at the end of the investigation or prosecution, it is understood that the act was not committed to the benefit of that legal person, the administrative fine shall be lifted and the amount shall be returned, if collected already.”

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

Statistics on corruption offences in Turkey are kept by the Directorate General of Criminal Records and Statistics of the Ministry of Justice and these statistics are published annually in Turkish and English according to the Official Statistics Program. Regarding these statistics, the book “Judicial Statistics” has also been prepared specifically for service, and book and news bulletin studies related with special topics constituting agenda are carried out.
Aforesaid statistics can be accessed via the official website “www.adlisicil.adalet.gov.tr”.

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including

through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

In Turkey, responsibility of legal persons was regulated separately from the responsibility of natural persons. In case there is a sufficient suspicion on the fact that any natural person committed an offence, investigation shall be launched by the Public Prosecutors. Besides, in the Article 43/A of the Misdemeanours Law, it is stated that where the act does not constitute a misdemeanour; in the case that an organ or a representative of a civil legal person; or; a person, who is not the organ or representative but undertakes a duty within the scope of that legal person`s operational framework commits the offences to the benefit of private person, the legal person shall also be penalized with an administrative fine of ten thousand Turkish Lira to fifty million Turkish Lira.

Moreover, in case that the offences indicated in the said article is committed to the benefit of a legal person, for the rendering of decision on administrative judicial fine about the legal person, it shall not be waited for the completion of the investigation or prosecution conducted about the person who committed the act.

Investigation in Turkey of the corruption offences committed abroad is possible within the framework of territorial scope the authorization rules of the Turkish Penal Code. For instance:

Bribery of foreign public officials and officials of public international organizations is addressed under Article 252 of the Turkish Penal Code dated September 26, 2004 and numbered 5237. Article 252 of the TPC refers to bribery of both public officials and certain private sector actors.

According to the Paragraph 9 of the Article 252 of the Turkish Penal Code: "The provisions of this Article shall also apply to:

- a) public officials elected or appointed in a foreign country;
- b) judges, jury members or other officials who work at international or supranational courts or foreign state courts;
- c) members of the international or supranational parliaments;
- d) individuals who carry out a public duty for a foreign country, including public institutions or public enterprises;

- e) citizens or foreign arbitrators who have been appointed in an arbitration process, initiated to resolve a legal dispute; and
 - f) officials or representatives working at international or supranational organizations that have been established based on an international agreement;
- if an undue advantage is provided, offered or promised directly or via intermediaries, or if the respective individuals request or accept such undue advantage directly or via intermediaries, in relation to the execution of that individual's duty to perform or not to perform, with the purpose of carrying out an international commercial procedure or obtaining or keeping an unlawful benefit.

According to the Paragraph 10 of the Article 252 of the Turkish Penal Code: "If the bribery of foreign public officials under paragraph nine is committed abroad by a foreigner and if this type of bribery is committed to perform or not to perform an activity or in relation to a dispute, which:

- a) Turkey;
- b) a public institution in Turkey;
- c) a private legal person incorporated pursuant to Turkish laws; or
- d) a Turkish citizen;

is a party to, or in relation to an authority or individuals, then an ex officio investigation and prosecution will be conducted in respect of those individuals who give, offer or promise bribe; who receive, request, offer bribe, accept the bribe offer or promise; who intermediate for these; and who ensure benefit for themselves due to bribe relation.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

The fundamental provisions in relation to confiscation are laid down in Turkish Criminal Code and Criminal Procedure Code. Article 54 of Turkish Criminal Code entitled "Confiscation of Property" sets out that "On the condition that the property does not belong to any third party acting in good faith, property that is used for committing an intentional offence or is allocated for the purpose of committing an offence, or property that has emerged as a result of an offence shall be confiscated. Property that is prepared for the purpose of committing a crime shall be confiscated, if it endangers the public security, public health or public morality. In the event that a restricted right in rem which has been allocated to the third parties acting in good faith is available on the property, this decision of confiscation shall be rendered reserving the related right." Also, article 55 of Turkish Criminal Code entitled "Confiscation of Proceeds" states that "For the confiscation of the property which falls in the scope of this article, the person who has obtained the property afterwards should not be availing of the provisions of Turkish Civil Code concerning the protection of the good faith," and thus, it is regulated

that the property which has been acquired from an offence, except the property or proceeds belonging to the third parties acting in good faith, may be confiscated.

In Turkish law practice, the criminal court hearing the lawsuit decides for the confiscation when it is required to confiscate the property. If any criminal case has not been initiated concerning the incident or initiated but no decision for confiscation has been rendered, the Public Prosecutor or the intervener may apply to the competent court for the confiscation decision. If the property which is requested to be confiscated is not subject to any offence, but it is a property which is subjected to confiscation itself, then, the application may be brought before criminal court of peace.

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

N/A

UNITED KINGDOM

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

- A.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

Domestic

The 2018 Financial Action Task Force (FATF) Mutual Evaluation Report on the UK’s measures to combat money laundering and terrorist financing sets out the UK approach to beneficial ownership transparency in detail. It found the UK to have the strongest overall AML/CTF regime of over 60 countries assessed to date.

Since the 2018 Accountability Report, a post-implementation review of the People with Significant Control (PSC) Register, published in October 2019, concluded that the register is meeting its objectives and that the costs to business have been proportionate and in line with original estimates. The register is widely used, has a positive economic effect and contributes to the fight against criminal use of companies.

In September 2020, in its response to the Corporate Transparency and Register Reform consultation, the Government announced a range of proposals to improve the reliability and accuracy of information on the Companies Register. This was followed by the launch of three further consultations in December 2020, which contain a range of detailed proposals that will further help tackle opaque corporate structures favoured by corrupt actors.

A draft bill to establish a public register of beneficial ownership of overseas legal entities that own UK property, was published in July 2018 and we will legislate when parliamentary time allows.

In December 2020, the Government launched a consultation on proposed changes to public procurement in a Green Paper on Transforming Public Procurement. Proposed changes include the introduction of a number of grounds for exclusion

from contracting, including the non-disclosure by suppliers of their beneficial owners when requested by a contracting authority.

International

The UK is promoting beneficial ownership transparency through its 2021 G7 Presidency, building on previous G7 commitments, and the agendas for the Finance and Interior Tracks include beneficial ownership transparency priorities. Please see the G7 Finance Ministers' Communique and supporting G7 Beneficial Ownership factsheet.

The UK also continues to spearhead an international campaign that aims to make beneficial ownership transparency a global norm by 2023, and has highlighted the importance of beneficial ownership transparency through participation in webinars and other events.

- A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to identify the natural person(s) who ultimately owns or controls a legal person or arrangement¹⁰⁰.**

Required information can be provided in the form of links to other reviews or published work.

The UK's People with Significant Control (PSC) register was established in June 2016 to enhance the transparency of ultimate beneficial ownership of UK companies. In 2017, the scope of the PSC was extended to cover Scottish Limited Partnerships.

UK companies and partnerships in scope are required to keep a register of their beneficial owners and to report this information to Companies House. The information is published online by Companies House, is free and publicly accessible: Companies House service (company-information.service.gov.uk)

- A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate**

¹⁰⁰ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

information regarding the beneficial ownership of legal persons and legal arrangements.

Required information can be provided in the form of links to other reviews or published work.

UK

The UK's People with Significant Control (PSC) register was established in June 2016 to enhance the transparency of ultimate beneficial ownership of UK companies. In 2017, the scope of the PSC was extended to cover Scottish Limited Partnerships.

UK companies and partnerships in scope are required to keep a register of their beneficial owners and to report this information to Companies House. The information is published online by Companies House, is free and publicly accessible: [Companies House service \(company-information.service.gov.uk\)](https://company-information.service.gov.uk)

In addition, financial institutions and designated non-financial businesses or professions (DNFBPs) as part of their obligations under the Money Laundering Regulations, also have to record and maintain up-to-date basic and beneficial ownership information of companies they provide services to. Competent authorities can request this information directly from financial institutions and DNFBPs.

Crown Dependencies and Overseas Territories

The UK continues to monitor implementation of the 2017 Exchange of Notes (EoN) arrangements, under which the Crown Dependencies (CDs) and the six Overseas Territories (OTs) with financial centres share company beneficial ownership information with UK law enforcement agencies. In June 2019, the UK published a Statutory Review which covered the first 18 months of the arrangements' operation. The Review found that they have been extremely useful in supporting investigations. They have provided UK law enforcement agencies with rapid access to beneficial ownership information on over half a million legal entities, representing 87% of the businesses in scope. The Review found that 296 requests for information had been requested, approximating to nearly four requests a week, and that 118 asked for multiple pieces of information in a single request. 99% of the information requested was provided within the required time frame. All the participants in the EoN continue to report that the arrangements are a useful tool in progressing complex criminal investigations.

All the CDs and the inhabited OTs have publicly committed to implementing publicly accessible registers of company beneficial ownership information. In December 2020 the UK published the draft Order in Council it was required to prepare under the Sanctions and Anti-Money Laundering Act 2018. This sets out the minimum requirements of what the UK Government deems to be compliant publicly accessible registers in the OTs.

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

The UK operates one of the most transparent corporate regimes globally. As most basic and beneficial ownership information on UK corporate bodies is publicly available, the data is searchable and downloadable, making data exchange fast, easy and efficient. The corporate information published by Companies House is accessed billions of times a year by national and international searchers. Independent research carried out for the government in 2019 estimated the value of this data to the UK economy as between £1 billion and £3 billion a year.

To increase transparency, access to information, and mitigate accuracy problems with a particular source, UK authorities employ a multi-pronged approach to beneficial ownership information, which means they are able to access basic and beneficial ownership information on legal persons and arrangements from the different registries, from obliged financial institutions and designated non-financial businesses or professions (DNFBPs), or from the legal entity itself (i.e. the person(s) obliged to hold and provide such information in relation to the legal person or arrangement). This is an example of the 'multi-pronged approach' to rapidly accessing adequate and accurate beneficial ownership information, recognised by the Financial Action Task Force as best practice in its 2019 best practices paper on beneficial ownership transparency for legal persons, and in its assessment of the UK in 2018.

Requests for information beyond what is on the public record are company or person focussed and do not single out beneficial ownership information. They can be made on a case by case basis under the Data Protection Act by any specified national authority with the requisite powers showing due cause. Most requests are from UK Law Enforcement and HMRC.

As awareness of the abilities of Companies House to make links between company records and to analyse data patterns has grown, UK Law Enforcement requests to Companies House for information and support has grown exponentially. In the first three years after the UK's public register of beneficial ownership was active (2017 – 2020) request numbers tripled from 120 to 350 a month.

In addition to the information supplied by companies to Companies House, UK authorities can access data held by other parties on the management, ownership and operations of UK corporate bodies. For example, data held by those bodies required under the UK Anti-Money Laundering regulations to carry out customer due diligence on their clients.

Lastly, law enforcement agencies may request basic beneficial ownership information directly from companies and partnerships, which have an obligation to file this information with Companies House, but also maintain their own records on members, shareholders and partners.

Foreign requests for basic and beneficial ownership information on legal persons/arrangements are common. Where relevant, the relevant agencies or authorities will direct requests for information on legal persons to the public registry. Where the requested information is not publicly available on the registry, it can be obtained through a request to Companies House (for information on legal persons), to HMRC (for information on trusts), or to the relevant law enforcement agency (for information held by FIs or DNFBPs where available).

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY¹⁰¹

B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

It was a UK Anti-Corruption Strategy commitment to update the Financial Reporting Council (FRC) Guidance on the Strategic Report to include guidance for disclosures on anti-corruption and bribery. The guidance is a best practice statement for directors when preparing annual reports for shareholders. The updated FRC guidance was published in July 2018 and now includes guidance on what anti-corruption and bribery matters should be reported, including:

- How does the entity's business model ensure adequate regard is given to anti-corruption and anti-bribery requirements?
- How does the entity's culture ensure that this is effective throughout the organisation?
- What are the areas of risk to the entity?
- How does this vary in the different geographical locations in which the entity operates and the different sectors in which it operates?

In March 2021, the Government launched a consultation on wide-ranging reforms to modernise the UK's audit and corporate governance regime, including proposals to set out how:

- companies should report on their governance and finances;
- reports should be audited;
- audit and the audit market should change; and
- these should be overseen by a new regulator.

¹⁰¹ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

Legal framework to protect whistleblowers

Employment Law is a reserved area except in Northern Ireland where it is devolved.

The Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998) provides employment protection for ‘workers’ in all sectors who have blown the whistle. It enables them to seek redress if they are dismissed or suffer detriment at the hands of the employer because they have made a ‘protected disclosure’.

To be covered by employment protection for whistleblowers, a worker must have made a ‘qualifying disclosure’. This is any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the ‘public interest’ and tends to show that one or more of the following has occurred, is occurring or is likely to occur:

- a criminal offence (this may include, for example, types of financial impropriety such as fraud);
- a breach of a legal obligation;
- a miscarriage of justice;
- danger to the health or safety of any individual;
- damage to the environment; or
- the deliberate covering up of wrongdoing in the above categories.

For a qualifying disclosure to be protected, it must generally be made by a worker to:

- the employer or other person responsible for the matter;
- a Minister of the Crown, in relation to certain public bodies;
- a Prescribed Person; or
- a legal adviser.

Other disclosures may be protected where they meet various additional criteria, including reasonableness, and special provision is made for disclosures relating to exceptionally serious problems (which may allow for disclosure to the press, for example).

If a protected disclosure is made and the worker suffers detriment or is dismissed as a result, the worker has a right to uncapped redress through an employment tribunal.

The legislation is intended to build openness and trust in workplaces by ensuring that workers who hold their employers to account are treated fairly and are compensated for any detriment they suffer.

Whistleblowing reporting mechanisms

As described above, there are multiple avenues through which workers are able to blow the whistle.

Whistleblowers in Great Britain can make a protected disclosure to, amongst others, their employers and prescribed persons. Prescribed persons are most often organisations with a regulatory responsibility for the sector in which the worker works, or for the type of wrongdoing that is being disclosed. Prescribed persons have been given their legal status because of their ability to take action in respect of a disclosure made to them, as they have extensive knowledge and understanding of the subject matter and, in some cases, regulatory oversight of the sector.

In so far as their statutory functions beyond the whistleblowing legislation permit, prescribed persons can look into a disclosure and recommend how an employer could rectify the problems it finds, either in relation to the employer's whistleblowing policies and procedures or in relation to the issues which form the substance of the whistleblowing disclosure. Some prescribed persons may be able to take enforcement action should they find evidence of wrongdoing in relation to their statutory powers.

The Government regularly reviews, updates and publishes the list of prescribed persons in Great Britain, making it easier for whistleblowers to contact the relevant body.

Whistleblowing transparency and guidance

In response to a call for evidence and subsequent consultation, the Government introduced a requirement for certain prescribed persons to publish an annual report.

These Regulations required prescribed persons to publish certain information such as the number of disclosures they had received and the further action they had taken. This change aimed to increase transparency in the way that whistleblowing disclosures are dealt with and raise confidence among whistleblowers that their disclosures are taken seriously. Requiring prescribed persons to produce reports highlighting the number of qualifying disclosures received and how they were taken forward was intended to assure individuals who blow the whistle that action is taken in respect of their disclosures. The reporting duty also sought to improve consistency across different bodies in the way they respond to disclosures.

The Government has also published comprehensive guidance to facilitate the whistleblowing process. This includes:

- guidance for whistleblowers, providing advice on how to make disclosures while preserving their employment protections, who they can make a disclosure to and their rights if they are treated unfairly;

- guidance for prescribed persons (published in 2015 and updated in 2017), describing their role in the whistleblowing process and providing advice on complying with legal requirements and good practice beyond the whistleblowing legislation; and
- guidance and a code of practice for employers (published in 2015), detailing their responsibilities and providing advice on creating a whistleblowing policy that creates an environment where disclosures in the public interest are encouraged.

Public corruption reporting mechanism

The UK is piloting a new bribery and corruption reporting mechanism the summer of 2021, with a full roll out to follow. The pilot mechanism is an online system where the public can report allegations of bribery and corruption; it will be in addition to the offer currently available on the current online system for reporting allegations of crime.

Please also see 'public reporting' under the UK UNCAC Phase 2 report: [UNODC Country review report of the United Kingdom of Great Britain and Northern Ireland \(publishing.service.gov.uk\)](#)

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively¹⁰²?

Where applicable, this can be provided in the form of links to other reviews or published work.

The UK Corporate Governance Code emphasises the value of good corporate governance to long-term sustainable success. The FCA's Listing Rules require all companies with a premium listing to report against the UK Corporate Governance Code on a comply or explain basis, whether incorporated in the UK or elsewhere. It does not set out a rigid set of rules; instead it offers flexibility through the application of principles and supporting guidance. It is the responsibility of boards to use this flexibility wisely and of investors and their advisors to assess differing company approaches thoughtfully.

In June 2018 the UK introduced legislation to require all UK companies of a significant size¹⁰³ that are not currently required to provide a corporate governance

¹⁰² Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

¹⁰³ Either more than 200 employees, or more than £200m turnover and a balance sheet greater than £2bn.

statement to disclose their corporate governance arrangements and the code, if any, which has been applied. In December 2018 the FRC published 'The Wates Corporate Governance Principles for Large Private Companies' which sets out principles that are appropriate for private companies to report their corporate governance arrangements against. Like the UK Corporate Governance Code, the Wates Principles are not a rigid set of rules but instead offer flexibility.

The Financial Reporting Council (FRC) is an independent body, its mission is to promote transparency and integrity in business. The FRC sets the UK Corporate Governance Code, the Stewardship Code, sets UK standards for accounting and actuarial work; monitors and takes action to promote the quality of corporate reporting; and operates independent enforcement arrangements for accountants and actuaries. As the Competent Authority for audit in the UK the FRC sets auditing and ethical standards and monitors and enforces audit quality.

The Bribery Act 2010 provides a legal framework in respect of potential bribes paid to domestic, foreign public official and third parties (see section C). In particular, it created an offence under section 7 which can be committed by commercial organisations which fail to prevent persons associated with them from bribing another person on their behalf. An organisation that can prove it has adequate procedures in place to prevent persons associated with it from bribing will have a defence to the section 7 offence. In 2012, the UK published guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing.

The Bribery Act applies to SMEs and the UK published a report in 2015 assessing the impact and awareness of the Bribery Act among SMEs exporting goods overseas.

In 2019 the House of Lords Liaison Committee published a report on its post legislative scrutiny of the Bribery Act. This stated:

"The view of our witnesses, with which we agree, is that the Act is an excellent piece of legislation which creates offences which are clear and all-embracing. At a time when much corruption is on a global scale, the new offence of corporate failure to prevent bribery is regarded as particularly effective, enabling those in a position to influence a company's manner of conducting business to ensure that it is ethical, and to take steps to remedy matters where it is not. The assessment of many of our witnesses is that the Act is an example to other countries, especially developing countries, of what is needed to deter bribery."

The report made thirty-five conclusions and recommendations around implementation and enforcement, which focussed on the operation of the particular provisions of the Act, including the section 7 'failure to prevent' offence; DPAs; the accompanying guidance; SMEs and the position in Scotland. The Government issued a response to these recommendations in May 2019.

Please also see 'private sector' and 'measures to prevent money laundering' under the UK UNCAC Phase 2 report: UNODC Country review report of the United Kingdom of Great Britain and Northern Ireland (publishing.service.gov.uk)

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

Business Integrity Initiative

The Business Integrity Initiative (BII) supports businesses to operate with integrity in developing countries. It is designed to provide practical guidance to help companies overcome barriers to doing business in frontier markets, including guidance on dealing with requests for bribes and human rights issues in supply chains.

The BII was designed as a pilot to run from 2018 to March 2021. The pilot tested how and what suite of demand driven support and products the Government should deliver to UK businesses on business integrity when they trade and invest overseas. To date, the BII has directly supported more than 250 businesses. The products and services have been highly rated by businesses with early evidence of impact on firms' behaviour and ability to implement integrity measures within their businesses.

Economic Crime Plan

In July 2019, the first Economic Crime Plan (2019-2022) was published , setting out how the UK's public and private sectors would work together to confront economic crime through seven strategic priorities and 52 actions. The Economic Crime Plan sets out a vision for the public and private sectors to jointly deliver a holistic plan that defends the UK against economic crime, prevents harm to society and individuals, protects the integrity of the UK economy, and supports legitimate growth and prosperity.

Joint Money Laundering Intelligence Taskforce

The UK has been a world-leader in promoting the appropriate sharing and use of information on economic crime between the regulated private sector and law enforcement. The establishment of the Joint Money Laundering Intelligence Taskforce (JMLIT) as an operational pilot in 2015 has led to a paradigm shift in how financial intelligence can be exchanged and analysed and several other countries have now established their own public-private information-sharing platforms. The JMLIT operates on both a tactical level, through its operations group, and at a strategic level, through Expert Working Groups, which focus on key priority areas such as bribery and corruption.

C. LIABILITY OF LEGAL PERSONS¹⁰⁴

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

Liability of legal persons for economic crime

In 2017, the UK Government carried out a call for evidence on corporate criminal liability for economic crime, to seek views on whether changes were necessary to the corporate criminal liability regime in the UK which is (except the law on bribery and the existing offence of facilitation of tax evasion) governed by common law rules. The Government response was issued in November 2020. This set out that the evidence produced had been inconclusive, so the Law Commission of England and Wales was asked to undertake an in depth, expert review of the law instead. Work began in November 2020 and an initial report is expected by the end of 2021.

OECD Anti-Bribery Convention

The UK undertook its OECD Anti-Bribery Convention Phase 4 review in March 2017 and had its two year follow up report in March 2019. The Working Group on Bribery reviewed UK progress after four years in June 2021 and this update will be published in due course.

Financial Action Taskforce

The 2018 Financial Action Taskforce Mutual Evaluation Review of the UK includes a chapter focused on legal persons and arrangements. MUTUAL EVALUATION OF THE UNITED KINGDOM (fatf-gafi.org)

¹⁰⁴ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

The Serious Fraud Office publishes details of all the anti-corruption investigations it is (subject to reporting restrictions) or has taken forward, including any relevant data on its website: <https://www.sfo.gov.uk/our-cases/#azp>

In prosecutions for fraud, bribery and other economic crime, as an alternative to prosecution following an investigation into corporate wrongdoing, a company can enter into a Deferred Prosecution Agreement (DPA). This is an agreement reached between a prosecutor and an organisation which could be prosecuted, under the supervision of a judge.

The agreement allows a prosecution to be suspended for a defined period provided the organisation meets certain specified conditions. They apply to organisations, never individuals. DPAs were introduced on 24 February 2014, under the provisions of Schedule 17 of the Crime and Courts Act 2013. They are available to the Crown Prosecution Service and the Serious Fraud Office. A Code of Practice for Prosecutors was published jointly by the SFO and CPS on 14 February 2014 after a public consultation. Further information can be found in the guidance for corporates on Deferred Prosecution Agreements.

Under a DPA, a prosecutor charges a company with a criminal offence but proceedings are automatically suspended if the DPA is approved by the judge. Negotiations on the specific conditions for those arrangements then begin where the company agrees to a number of terms, such as paying a financial penalty, paying compensation and co-operating with future prosecutions of individuals. If the company does not honour the conditions, the prosecution may resume. Arrangements for monitoring compliance with the conditions is set out in the terms of the DPA.

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

The Bribery Act 2010 provides for a general offence of bribery, which criminalises both the receipt and payment of bribes. There is no distinction between bribes paid in the private sector and those paid in the public sector. The main four offences under the Act are:

- bribing another person (section 1);
- being bribed (section 2);
- bribing a foreign public official (section 6); and
- failure by a commercial organisation to prevent bribery (section 7).

Offences 1-3 can be committed by an individual or a commercial organisation (e.g. company, partnership etc.). Offence 4 can only be committed by a commercial organisation.

The jurisdictional reach of the bribery offences extends to offences that are committed or partly committed in the United Kingdom and offences committed abroad by persons with a close connection to the United Kingdom.

A foreign company which carries on any "part of a business" in the UK could be prosecuted under the Bribery Act for failing to prevent bribery committed by any of its employees, agents or other representatives, even if the bribery takes place outside the UK and involves non-UK persons.

The corporate 'failure to prevent' offence currently applies only in respect to bribery and the facilitation of tax evasion offences. The Law Commission of England and Wales is currently carrying out a UK Government sponsored review into corporate liability for economic crime, which will analyse how effective the law is and where it could be improved. The Commission will present various options for reforming the law so that corporate entities can continue to be held appropriately to account.

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

The UK's legal framework does allow for the tracing and recovery of proceeds of crime from legal persons. The powers available to do this are:

- Confiscation orders (Parts 2-4 and 8 of the [Proceeds of Crime Act 2002](#)) which may follow, for example, a prosecution under the [Bribery Act 2010](#) or [Prevention of Corruption Act 1906](#)
- Civil recovery (Parts 5 and 8 of the [Proceeds of Crime Act 2002](#))
- Deferred prosecution agreements ([Crime and Courts Act 2013](#))

Please also see 'asset recovery' under the UK UNCAC Phase 2 report: [UNODC Country review report of the United Kingdom of Great Britain and Northern Ireland \(publishing.service.gov.uk\)](#)

The 2018 Financial Action Taskforce Mutual Evaluation Review of the UK also provides considerable information on asset recovery activity. [MUTUAL EVALUATION OF THE UNITED KINGDOM \(fatf-gafi.org\)](#)

While it is not possible to produce a full list of relevant cases, here are some examples:

- [GPT pleads guilty to corruption – Serious Fraud Office](#)
- [SFO enters into Deferred Prosecution Agreement with Airline Services Limited - Serious Fraud Office](#)
- [SFO receives approval for DPA with G4S Care & Justice Services \(UK\) Ltd - Serious Fraud Office](#)
- [SFO enters into €991m Deferred Prosecution Agreement with Airbus as part of a €3.6bn global resolution - Serious Fraud Office](#)

C.5. Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

As above, we cannot set out cases of international cooperation extensively, but here are two examples:

[Airline Services Limited \(deferred prosecution agreement\)](#)

The Serious Fraud Office (SFO) worked closely with the German prosecutors at Frankfurt am Main prior to entering into the DPA process and also during the course of the DPA negotiations. The SFO engaged with the Frankfurt prosecutors initially through the European Investigation Order (EIO) process. The German authorities then sought further material from us through an EIO. Following this, the German authorities then proceeded to conduct a search and arrest operation on key suspects, sharing with the SFO through an EIO the product of these lines of enquiry. The UK then continued to engage with our colleagues at the Prosecutor's Office in Frankfurt am Main regarding their progress with the individuals whilst we shared with them the progress in dealing with the corporate through to the conclusion of the DPA.

Airbus

The SFO conducted a joint investigation with the French Parquet National Financier (PNF) in parallel to an investigation conducted by the United States Department of Justice (DOJ) and by the United States Department of State (DOS). Co-operation between the SFO and PNF under the Joint Investigation Team (JIT) agreement included interviewing relevant individuals in each jurisdiction and sharing relevant documents, in compliance with the French Blocking Statute where applicable.

UNITED STATES

G20 ANTI-CORRUPTION ACCOUNTABILITY REPORT QUESTIONNAIRE

A. BENEFICIAL OWNERSHIP TRANSPARENCY

A.1 Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to promoting beneficial ownership transparency. Information on the implementation of relevant recommendations issued by the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes can be provided. Reference can be made to the G20 High Level Principles on Beneficial Ownership Transparency (“BOT”) and the relevant recommendations on beneficial ownership transparency issued by the Financial Action Task Force.

Information on capacity building efforts to promote the implementation of BOT can also be included

Required information can be provided in the form of links to other reviews or published work.

In January 2021, Congress passed the National Defense Authorization Act for Fiscal Year 2021 (NDAA). Among the NDAA’s many provisions was Title LXIV, entitled The Corporate Transparency Act (CTA). The CTA amended the Bank Secrecy Act to require corporations, limited liability companies, and similar entities to disclose to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury, information on their true beneficial owners. The law defines “beneficial owner” to mean, “with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise— (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.” The information required includes the beneficial owner or owners’ name(s), address(es), date(s) of birth, and driver’s license or other identification numbers. FinCEN is tasked with maintaining a non-public national database of this information. Pursuant to “appropriate protocols,” the law permits FinCEN to disclose beneficial ownership information to federal, state, local, or tribal law enforcement for use in financial crime investigations, and to financial institutions, with the consent of the covered entity, to facilitate customer due diligence requirements. In April 2021, FinCEN issued an advance notice of proposed rulemaking (ANPRM) to solicit public comment on questions pertinent to the implementation of the CTA. The comment period closed on May 5, 2021 and FinCEN is continuing to develop the implementing regulations.

A.2. Please provide an update about mechanisms in place in your Country that enable financial institutions, companies, or company registries to obtain, hold and disclose to competent domestic and international authorities and obliged entities beneficial ownership information, defined as the ability to

identify the natural person(s) who ultimately owns or controls a legal person or arrangement¹⁰⁵.

Required information can be provided in the form of links to other reviews or published work.

As of May 2018, 31 Code of Federal Regulations (CFR) § 1010.230 (Beneficial ownership requirements for legal entity customers) requires covered financial institutions to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their antimoney laundering (AML) compliance program. The requirements to identify and verify beneficial ownership, as applied to legal persons (such as corporations and limited liability companies), is clear with respect to both its ownership threshold and its control element. It would cover legal arrangements (such as trust) which are required to be registered by certain state authorities – such legal arrangements are considered legal entities and hence covered. In addition, the U.S. has introduced ongoing customer due diligence requirements for financial institutions, which include the need to have appropriate risk-based procedures on understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile, and ongoing monitoring of the customer relationship to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

In addition, the Treasury Department's Office of Foreign Asset Control requires financial institutions and Designated Non-Financial Business and Professions to identify the ownership structure of customers to ensure they are not doing business with entities 50% owned by one or more sanctioned parties, including in the aggregate. In practice, this includes reviewing the extent to which a designated person may have a minority ownership interest or otherwise exercise control without a majority interest, as these entities may be subject to future designation or enforcement action. The United States also uses intelligence analysis and information provided by financial institutions from their due diligence to publicly identify and designate individuals and entities acting for or on behalf of designated persons.

A.3. Please provide a description of existing tools, such as central registries of beneficial ownership or other appropriate mechanisms, that enable competent authorities (including domestic and international law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) to gain timely access to adequate and accurate information regarding the beneficial ownership of legal persons and legal arrangements.

¹⁰⁵ Reference is made to BO definition of FATF and the guidance for R24, R25 (Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement).

Required information can be provided in the form of links to other reviews or published work.

In significant investigations, FinCEN has a range of tools available to it, including the ability to query the U.S. financial system (22,000 Financial Institutions) for accounts or transactions of specified individuals, entities, and organizations engaged in, or reasonably suspected of engaging in, terrorist acts or money laundering activity (see Section 314(a) of the Patriot Act).

FinCEN, in its role as the U.S. FIU, works with foreign FIUs to exchange financial intelligence and law enforcement information, provide training, and support criminal law enforcement investigations that involve or are related to corruption.

FinCEN's customer due diligence (CDD) rule, which came into effect in May 2018, helps to partly mitigate this vulnerability by requiring certain financial institutions to identify and verify the identities of the beneficial owners of most legal entity customers at account opening. With the recent enactment of the Corporate Transparency Act (CTA) as a part of the AML Act, reporting companies will be required to disclose their beneficial owners when they are formed (or, for non-U.S. companies, when they register with a state to do business in the United States), and when they change beneficial owners.

A.4. Please provide an update on the main challenges or impediments related to the exchange of reliable information on beneficial ownership in a timely and effective manner at the national level and international levels,

Required information can be provided in the form of links to other reviews or published work.

Since 2016, FinCEN has issued numerous Geographic Targeting Orders (GTO) to title insurance companies, requiring them to identify the beneficial owners of legal entities used to purchase U.S. residential real estate in all-cash transactions in a number of major counties across the U.S. The GTOs have provided greater insight into illicit finance risks in the residential real estate market. However, GTOs are, by statute, limited to a duration of 180 days and, while they have been renewed and expanded, Treasury needs a permanent, comprehensive solution to the issue of opacity in real estate transactions.

B. PRIVATE SECTOR TRANSPARENCY AND INTEGRITY¹⁰⁶

- B.1. Please provide an update on any new measures adopted by your Country since the last general Accountability Report (which included similar questions) to ensure that businesses have a clear and accessible policy on preventing and tackling corruption and corruption related behaviours and/or offences as envisaged also in the G20 High Level Principles on Private Sector Transparency and Integrity.**

Where applicable, this can be provided in the form of links to other reviews or published work.

In 2017, the Department of Justice released the “Evaluation of Corporate Compliance Programs” (the Guidance). The Guidance was revised in April 2019 and June 2020. The Guidance is “meant to assist prosecutors in making informed decisions as to whether, and to what extent, the corporation’s compliance program was effective at the time of the offense and is effective at the time of a charging decision or resolution, for purposes of determining the appropriate (1) form of any resolution or prosecution; (2) monetary penalty, if any; and (3) compliance obligations contained in any corporate criminal resolution”. The 2017 Guidance was based on eleven program review topics, each containing questions to assess compliance programs. The 2019 revision expanded its content and reorganized it under three “fundamental questions”: (1) Is the corporation’s compliance program well designed?; (2) Is the program being applied earnestly and in good faith?; and (3) Does the corporation’s compliance program work in practice?

In June 2020, as part of its efforts to continuously improve and enhance enforcement policies where appropriate, the DOJ made further modifications to the Guidance, including specifying that the individualized assessment of compliance programs “considers various factors including but not limited to, the company’s size, industry, geographic footprint, regulatory landscape, and other factors, both internal and external to the company’s operations that might impact its compliance program”. The revised Guidance has an additional focus on lessons learned from risk assessments, the compliance commitment of middle management, and on whether the compliance program is “adequately resourced and empowered.” The revised Guidance also adds new questions that should be considered in assessing the efficiency of a compliance program, and clarifies existing ones, including on regular testing and adjustments of compliance programs.

- B.2. Does your legislation provide for an effective legal framework to protect whistleblowers, both in the public and, as appropriate, the private sector? Reference can be made to the 2019 G20 HLPs for the Effective Protection of Whistleblowers?**

¹⁰⁶ It would be welcome the provision of information arising from enforcement data on the level of company officials involved in bribery schemes, the size of the company involved and whether it had effective compliance programs, and the use of intermediaries. Countries may wish to refer to UNODC (2013) *A Resource Guide on State Measures for Strengthening Corporate Integrity*.

Please provide updated information about the existing framework in your Country to set up effective and easily accessible mechanisms for the reporting of allegations of corruption and/or bribery.

Where applicable, this can be provided in the form of links to other reviews or published work.

The United States has a comprehensive legal framework to protect reporting persons. Below are a number of the laws that make up this framework. This list is not exhaustive.

18 U.S. Code § 1513 - 1514

Criminalizes retaliation against a victim, witness or informant (1513). Allows for civil action to restrain harassment of a victim or witness.

Federal Public Sector

5 U.S.C. § 2302(b)(8) & (b)(9) (Together called the Whistleblower Protection Act)

These statutory provisions are two of the fourteen prohibited personnel practices over which Office of Special Counsel (OSC) (the office responsible for, among other things, protection of reporting persons) has jurisdiction. Section 2302(b)(8) prohibits taking, not taking, or threatening to take or not take, personnel actions with respect to a federal employee, former federal employee, or applicant for federal employment, as a result of, inter alia, any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences: violation of law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority, a substantial and specific danger to public health or safety, or censorship related to research, analysis, or technical information that is or will cause one of the prior listed forms of enumerated wrongdoing. Section 2302(b)(9) prohibits taking, not taking, or threatening to take or not take, personnel actions with respect to a federal employee, former federal employee, or applicant for federal employment who files a complaint or grievance; assists another employee in filing a complaint or grievance or testifies on behalf of another employee; provides information to OSC, an Inspector General, or an agency component responsible for internal investigation or review; or refuses to obey an order that would violate a law, rule, or regulation.

5 U.S.C. § 1212

Makes the OSC responsible for, inter alia, (1) protecting federal employees, former federal employees, and applicants for federal employment from fourteen statutory prohibited personnel practices, and (2) receiving, investigating, and litigating allegations of prohibited personnel practices.

5 U.S.C. § 1213

The Disclosure Unit within OSC “serves as a safe conduit for the receipt and evaluation of whistleblower disclosures from federal employees, former employees, and applicants for federal employment.” This is a separate statutory framework for

the receipt of disclosures of fraud, waste, abuse, and threats to public health and safety (specifically, violations of law, rule, or regulation; gross mismanagement a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety). If OSC determines that there is a substantial likelihood that an enumerated wrongdoing occurred or will occur, OSC can refer the allegation(s) to the subject agency for an investigation and report back to OSC, as mandated by this section.

The Whistleblower Protection Enhancement Act of 2012 and Other Legislative Updates

The law strengthened the protections for federal employees who disclose evidence of waste, fraud, or abuse. The law provides that the implementation and enforcement of nondisclosure agreements by Executive Branch agencies shall be consistent with the existing statutory framework for whistleblower protections, as set forth below. It also overturned several legal precedents that had narrowed protections for federal whistleblowers, provided whistleblower protections to employees who were not previously covered, and restored OSC's ability to seek disciplinary actions against agency officials who retaliate against whistleblowers. Furthermore, it added to the list of protected enumerated disclosures "censorship related to research, analysis, or technical information" that is or will cause one of the other listed forms of enumerated wrongdoing (e.g. violation of law, substantial and specific threat to public health or safety, etc.).

The United States has continued to strengthen whistleblower protections for covered federal employees, former employees, and applicants for federal employment. The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 added a provision to the governing statute that makes it a prohibited practice to access a whistleblower's medical records and use it against the whistleblower in furtherance of an act of retaliation. The Act also mandates that agencies provide training to supervisors with regard to responding to whistleblower retaliation complaints, as well as information to employees about their protections, the role of the Office of Special Counsel (OSC) with regard to those protections, and how to make lawful disclosures of certain kinds of protected information such as classified information. Lastly, the Act requires that agencies propose mandatory minimum penalties against supervisors found to have committed retaliation, and requires that where a supervisor is found to have committed a prohibited practice a second time, the agency must propose their removal.

Additionally, the OSC Reauthorization Act of 2017 further enhanced OSC's capabilities and tools. For example, the Act clarifies OSC's access to agency documents, including attorney-client communications (in this case, specifically communications between agency officials and agency attorneys). Agencies may not withhold information or records from OSC's requests on the basis of any common law privileges, and the Act empowers OSC to report to congressional committees any case of contumacy or failure by an agency to produce information or records requested by OSC under its statutory authority. The Act also adds protections for whistleblowers subject to retaliatory investigations, such that OSC may investigate an agency's own investigation of a whistleblower even if there is no resulting personnel action at issue, and furthermore adds as a protected activity an employee's cooperation with, or disclosure of information to, an agency

component responsible for internal investigation or review.

The OSC Reauthorization Act of 2017 further relaxes requirements with regard to whistleblowers who make disclosures in the normal course of their duties, such that it is more difficult now to preclude such disclosures from protection. It also ensures protection of disclosures made prior to the whistleblower's federal employment or application for federal employment. A new provision mandates that agency heads ensure, in consultation with OSC, that supervisors' job requirements and performance appraisals include criteria concerning how to respond appropriately to whistleblower disclosures, and how to create an environment that makes employees feel secure enough to make disclosures without fear of retribution. Finally, the Act also reiterates provisions similar to the Kirkpatrick Act concerning education of federal employees with regard to their whistleblower protections and rights, again in consultation with OSC, as well as the mandatory minimum penalties agencies must propose against supervisors found to have committed retaliation.

The 2021 National Defense Authorization Act (NDAA) included a prohibited personnel practice-related provision updating 5 U.S.C. 2302(b)(13), which has historically required agencies to include in any nondisclosure policy, form, or agreement, language that clarifies that such policy, form, or agreement does not supersede an employee's rights and obligations with respect to disclosures to Congress, an Office of Inspector General, and whistleblower protections. The updated language adds reference to protected disclosures to the Office of Special Counsel as well as an agency component responsible for internal investigation or review (such as an internal affairs office).

Private Sector

18 U.S.C. § 1514A

Prohibits certain companies registered with the Securities and Exchange Commission (SEC) from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminate against an employee in the terms and conditions of employment because of an act of whistleblowing (which is defined in the law).

The Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010

The SEC's whistleblower program was established by Congress in connection with the Dodd-Frank Act in 2010. The main goal of the whistleblower program is to incentivize the reporting of specific, timely, and credible information to the SEC, which the agency can then leverage to better protect investors and the marketplace.

Individuals who submit whistleblower tips to the SEC receive heightened confidentiality protection. This generally means that the SEC will not disclose information that could directly or indirectly reveal the identity of a whistleblower, except in certain limited situations. Furthermore, whistleblowers may report anonymously to the SEC if they are represented by counsel. When submitting a whistleblower tip, individuals are required to declare under penalty of perjury that

their information is true and correct to the best of their knowledge. For anonymous whistleblowers, attorneys provide a certification as to the truthfulness of the information.

The Dodd-Frank Act also expanded protections for whistleblowers and broadened prohibitions against retaliation. Employers may not discharge, demote, suspend, harass, or in any way discriminate against an employee in the terms and conditions of employment because the employee reported conduct to the SEC that the employee reasonably believed violated the federal securities laws. The anti-retaliation and strengthened confidentiality protections are designed to encourage individuals to report to the SEC without fear of reprisal.

B.3. Does your Government have a legal framework to encourage or require that internal controls, ethics and compliance programs include detailed policies and procedures for particular risk areas (payments to domestic, foreign public officials and third parties, political contributions, charitable donations and sponsorships) and require other relevant internal controls, including due diligence and the management of conflicts of interest, solicitation and extortion? Are those areas applicable also to SMEs and, if yes, how extensively¹⁰⁷?

Where applicable, this can be provided in the form of links to other reviews or published work.

In addition to considering whether a company has self-reported, cooperated, and taken appropriate remedial actions, DOJ and SEC also consider the adequacy of a company's compliance program when deciding what, if any, action to take. The program may influence whether or not charges should be resolved through a deferred prosecution agreement (DPA) or non-prosecution agreement (NPA), as well as the appropriate length of any DPA or NPA, or the term of corporate probation. It will often affect the penalty amount and the need for a monitor or self-reporting. The SEC's Seaboard Report focuses, among other things, on a company's self-policing prior to the discovery of the misconduct, including whether it had established effective compliance procedures. Likewise, three of the nine factors set forth in DOJ's Principles of Federal Prosecution of Business Organizations relate, either directly or indirectly, to a compliance program's design and implementation, including the pervasiveness of wrongdoing within the company, the existence and effectiveness of the company's pre-existing compliance program, and the

¹⁰⁷ Countries may also refer to the provision of mandatory internal controls, anti-corruption ethics and compliance programs, monitoring and audit, due diligences also extended to the joint ventures, business partners affiliates and suppliers.

company's remedial actions. DOJ also considers the U.S. Sentencing Guidelines' elements of an effective compliance program, as set forth in § 8B2.1 of the Guidelines.

DOJ and SEC have no formulaic requirements regarding compliance programs. Rather, they employ a common-sense and pragmatic approach to evaluating compliance programs, making inquiries related to three basic questions:

- Is the company's compliance program well designed?
- Is it being applied in good faith?
- Does it work?

The United States believes that individual companies may have different compliance needs depending on their size and the particular risks associated with their businesses, among other factors. When it comes to compliance, there is no one-size-fits-all program.

Some elements U.S. enforcement agencies will consider when evaluating a company's compliance programs include, but are not limited to, a demonstrated commitment from senior management and a clearly articulated policy against corruption; a company's code of conduct and compliance policies and procedures; oversight authority, autonomy, and resources of individuals responsibility for compliance; training and continuing advice; and incentives and disciplinary measures.

More information on this topic can be found in the Resource Guide to the Foreign Corrupt Practices Act and in the above-mentioned Evaluation of Corporate Compliance Programs. This Guide contains information regarding some of the basic elements DOJ and SEC consider when evaluating compliance programs. Although the focus is on compliance with the Foreign Corrupt Practices Act (FCPA), given the existence of anti-corruption laws in many other countries, businesses are encouraged to design programs focused on anti-corruption compliance more broadly.

B.4. Please provide examples of how business organisations and professional associations, support the private sector, in particular SMEs, in the promotion of transparency and integrity.

Where applicable, this can be provided in the form of links to other reviews or published work.

A number of associations and private sector entities in the United States help support integrity in the private sector. One such example is TRACE International, a non-profit business association founded in 2001 to provide multinational companies and their commercial intermediaries with anti-bribery compliance support. The non-profit NGO, the Center for International Private Enterprise, which is associated with the U.S. Chamber of Commerce is another example of a non-government entity

providing anticorruption support to private enterprise around the globe.¹⁰⁸ According to CIPE’s website, it helps the business community take collective action both in the public arena, by advancing public sector reform and transparency in government, and in the private sector, by promoting and strengthening compliance standards for companies.

In addition to the work of non-government organizations and associations, the United States government carries out a number of initiatives that engage the private sector on anti-corruption issues. Examples of such initiatives include:

Engagement with Companies on Anti-Corruption Issues:

The Department of Justice, the Securities and Exchange Commission, the Department of Commerce, the Department of State and other U.S. government agencies conduct routine outreach to the business community and continue to coordinate with the private sector on anti-corruption issues. To this end, DOJ continues to provide businesses, through its Foreign Corrupt Practices Act (FCPA) opinion release procedures, the opportunity to seek an opinion as to whether certain prospective, non-hypothetical conduct conforms with DOJ’s enforcement policy.

High-level Commerce Department officials also meet with business leaders around the world and advocate with government officials on rule of law and anti-corruption issues, and the Commercial Law Development Program (CLDP) supports both public and private sector stakeholders in their efforts to limit unethical business conduct through corporate governance frameworks. CLDP trains private sector companies to develop corporate governance frameworks and implement corporate practices that attract capital for investment and growth. CLDP assists foreign government counterparts to develop and implement mechanisms that incentivize, promote, and facilitate the widespread use of best practices in corporate governance and ethics in the public and private sectors. Introducing corporate governance and ethics rules and requirements in state-owned enterprises, for example, help make those enterprises more competitive and efficient and reduces opportunities for corruption.

The State Department and Commerce Department have also been working with the private sector to promote business in integrity through the Asia-Pacific Economic Partnership (APEC). Through this work, the U.S. government has worked with partners in the business community on an initiative to share best practices and novel government strategies to encourage ethical business practices. To complement this workstream, the State Department and Commerce Department are bringing together anticorruption experts from APEC economies and private sector experts for a “Public-Private Dialogue on Government Strategies to Promote Ethical Business Conduct” to be held on the margins of the upcoming 32nd ACTWG Plenary Meeting (SOM3). The goals of the Dialogue are to share best practices and novel government strategies to encourage ethical business practices, identify opportunities to pilot strategies in APEC member economies, to raise awareness of the Business Ethics for APEC SMEs Initiative, which has been active in the SMEWG since 2010, and identify additional avenues for ACTWG/SMEWG cross-fora collaboration.

¹⁰⁸ These organizations are cited for illustrative purposes only and their reference does not imply endorsement by the U.S. government.

Anti-Corruption Publications:

U.S. government agencies continue to provide information to companies through a number of U.S. and international publications designed to assist firms in complying with anti-corruption laws, including The Foreign Corrupt Practices Act Resource Guide.

FCPA Training:

State and Commerce continue to provide FCPA and related anticorruption training to Commerce's U.S. and Foreign Commercial Service officers and State Foreign Service officers so that they may raise awareness about corruption and compliance programs and assist U.S. companies as appropriate when confronted with corruption overseas.

C. LIABILITY OF LEGAL PERSONS¹⁰⁹

C.1. Please provide an update on the progress made by your Country since the last general Accountability Report (which included similar questions) in relation to the G20 High Level Principles on Liability of Legal Persons for Corruption.

Please also provide information on the findings of any evaluation (i.e. under UNCAC or the OECD ABC) of your liability regime and the steps taken to implement relevant recommendations.

Has your Country established or amended its legislation on the liability of legal persons for corruption and corruption-related offences, both at the national and international levels (including foreign bribery)? If yes, please provide details about the types of liability (penal, civil and others) and the associated sanctions.

Where applicable, this can be provided in the form of links to other reviews or published work.

General principles of corporate liability apply to the Foreign Corrupt Practices Act (FCPA). A company is liable when its directors, officers, employees, or agents, acting within the scope of their employment, commit FCPA violations intended, at least in part, to benefit the company. Similarly, just as with any other statute, DOJ and SEC look to principles of parent-subsidiary and successor liability in evaluating corporate liability. There are two ways in which a parent company may be liable for bribes paid by its subsidiary. First, a parent may have participated sufficiently in the

¹⁰⁹ While this section focuses on the G20 HLP LLP standards, additional information about the compliance to the UNCAC and the OECD ABC LLP standards is also welcome (i.e., on the liability of legal persons regime, incentives for self reporting, mitigating sanctions and alternative resolutions, specific sanctions as for instance debarment from public procurement and publication of sentences, denial of government benefits or dissolution).

activity to be directly liable for the conduct. Second, a parent may be liable for its subsidiary's conduct under traditional agency principles. DOJ and SEC evaluate the parent's control—including the parent's knowledge and direction of the subsidiary's actions, both generally and in the context of the specific transaction—when evaluating whether a subsidiary is an agent of the parent. Successor liability is an integral component of corporate law and, among other things, prevents companies from avoiding liability by reorganizing. Successor liability applies to all kinds of civil and criminal liabilities, and FCPA violations are no exception. Whether successor liability applies to a particular corporate transaction depends on the facts and the applicable state, federal, and foreign law.

More information can be found in the [Resource Guide to the Foreign Corrupt Practices Act](#)

Information on the U.S. foreign bribery laws and practices can also be found in the U.S. monitoring and evaluation reports conducted through the [OECD Working Group on Bribery](#).

C.2. Please provide information and data concerning the most relevant civil, administrative and/or criminal court decisions regarding corruption and related offences where legal persons and other arrangements were involved.

Do your corporate liability regime allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings?

Where applicable, this can be provided in the form of links to other reviews or published work.

U.S. law allows for proceedings to take place against legal persons irrespective of any proceedings against any natural persons or the outcome of such proceedings. Information on U.S. criminal FCPA enforcement actions are available on the Department of Justice's website: <https://www.justice.gov/criminal-fraud/enforcement-actions>

Information on U.S. civil FCPA enforcement actions are available on the Securities and Exchange Commission's website: <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>

Information on U.S. enforcement actions are also included in the U.S. monitoring evaluations conducted through the OECD Working Group on Bribery. <https://www.oecd.org/daf/anti-bribery/unitedstates-oecdanti-briberyconvention.htm>

In 2020 alone, DOJ charged 28 individuals for FCPA violations, 15 of whom were convicted. Eight corporate resolutions were concluded that involved the imposition of total global monetary amounts of more than \$7.84 billion, total U.S. monetary amounts of more than \$3.33 billion, and total U.S. criminal monetary amounts of more than \$2.33 billion. These numbers are provided for illustrative purposes only, and do not include civil enforcement actions in 2020.

U.S. civil FCPA enforcement actions continue to be a high priority for the SEC, and in 2020 the SEC brought charges for FCPA violations against nine legal and three natural

persons, and ordered total monetary amounts over \$1.2 billion. These numbers are provided for illustrative purposes only, and do not include criminal enforcement actions in 2020.

C.3. Does your country provide for liability of legal persons in the following cases: where a manager or officer with the requisite level of authority commits the offence; where such a person directs or authorizes a lower-level person to commit the offence; and where such a person fails to take adequate measures to prevent a lower-level person from committing such an offence, including through a failure to supervise or through a failure to implement adequate internal controls, ethics and compliance programs or measures?

Does your country provide for liability when intermediaries are used or corporate structures are altered in an effort to avoid liability?

Does your country have effective jurisdiction over legal persons with a view to corruption offences committed abroad?

Does your country have incentives to encourage the private sector to have integrity programs? If yes, how your country can assess or evaluate the level of compliance in these integrity programs?

Has your country considered or implemented incentives to foster legal persons' effective corporate compliance programs?

Do you have any provisions in place to protect employee's rights in case of investigations (including internal investigations) and prosecution of legal persons?

Under U.S. law a company or other entity will be liable for the "acts of its directors, officers, or employees whenever they act within the scope of their duties and at least in part for [its] benefit". If those conditions are met, the entity can be held liable. Notably, this liability will attach even if the entity or its management attempted to supervise the persons involved or otherwise prevent the offence from occurring. The *respondeat superior* doctrine used by the United States applies as a background rule for all criminal offences as well as civil liability in tort. Thus, corporate entities could in theory face liability for offences committed for their benefit by individuals acting with the scope of their duties. The same principles thus would apply to foreign bribery as well as false accounting and money laundering predicated on foreign bribery, in addition to other offences that may be charged. Moreover, the FCPA specifies that its provisions can apply to a range of legal persons and other entities, including all issuers as well as "any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship". In practice, the United States reports that it has sanctioned a wide-range of entities, including issuers, other foreign and domestic entities.

The *respondeat superior* doctrine applicable for holding companies liable for the acts of their officers and employees also applies to acts committed by third party agents. As a result, a company can be held liable for foreign bribery committed for its benefit by any person or entity entrusted with carrying out responsibilities or a mandate for the

company. In this context, it is important to recall that the FCPA's antibribery provisions also expressly apply to the agents of issuers, domestic concerns, and other persons subject to U.S. jurisdiction. Thus, if the conditions for vicarious liability are met, both the agent and the company can be held liable for FCPA violations.

As the FCPA does not define the term "agent", the courts will apply traditional common law agency principles to determine whether a particular individual or entity is in fact an agent of a company to support the application of the *respondeat superior* doctrine. An agency relationship arises when one person (the agent) agrees to undertake services on behalf of, and under the control of, another person (the principal). When such an agency relationship is formed, the principal can be held liable for offences that the agent committed when carrying out the undertaking for the principal. The same agency analysis will apply whether the intermediary is a natural or a legal person and irrespective of whether the agent is designated as a "sales agent", a "consultant", or another formal label. In their questionnaire responses, the U.S. authorities explain that in order to determine whether a related entity, such as a subsidiary, is in fact an agent of a company, they will evaluate the parent's knowledge and direction of the subsidiary's actions, both generally and in the context of the specific transaction, emphasizing substance over form to examine the practical realities of how the parent and subsidiary actually interact. In the *Alcoa* case (2014), for example, the SEC sanctioned the parent company issuer based on the acts of its agents, even though no individual within the parent company issuer knowingly engaged in the scheme. Such broad liability for the acts of third parties is consistent with the 2009 Anti-Bribery Recommendation.

The U.S. enforcement agencies will consider corporate compliance efforts when determining whether it is appropriate to charge a company if, for example, the offence was committed by a rogue employee. The FCPA Corporate Enforcement Policy provides incentives to companies who remediate conduct in the form of possible reduced fines or a less severe form of resolution. The degree to which corporate compliance efforts are taken into account when exercising prosecutorial discretion and sanctioning wrongdoing are also addressed in question B.3, and more information can be found in the [Resource Guide to the Foreign Corrupt Practices Act and the "Filip Factors"](#).

What rights an employee may have during an investigation, including internal investigations, as well what rights they may have during the prosecution of legal persons may depend on a variety of factors, including, but not limited to, whether the employee is alleged to have violated the law or qualifies for whistleblower status.

With respect to employees of issuers, and as outlined in the response to question B.2, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") expanded the protections for whistleblowers and broadened the prohibitions against retaliation. The Securities and Exchange Commission (SEC) can take legal action against employers who retaliate against whistleblowers, and the SEC may also file an enforcement action against any person who takes any action to prevent an individual from contacting the SEC directly to report a possible securities law violation. Dodd-Frank also created a private right of action that gives whistleblowers the right to file a retaliation complaint in federal court.

Additional information about whistleblower retaliation can be found in the response to question B.2 and on this SEC website: <https://www.sec.gov/whistleblower/retaliation>

C.4. Does your legal framework include the possibility to trace and confiscate assets that may be considered proceeds of crime obtained by legal persons?

Please provide forehand information about the results occurred actions related to cases involving legal persons in the last year.

Where applicable, this can be provided in the form of links to other reviews or published work.

The U.S. has parallel civil (in rem) and criminal (in personam) forfeiture systems, which provide for the forfeiture of both the instrumentalities and proceeds of crime, including when related to proceeds of crime obtained by a legal person. Bribery and corruption offenses are listed as “specified unlawful activities” under the United States’ money laundering provisions in Title 18, United States Code (U.S.C.) Section 1956(c)(7) and racketeering provisions set forth under Title 18, U.S.C., Section 1961(1), and the proceeds of these offenses may be forfeited under the United States’ civil (Title 18 U.S.C. Section 981) and criminal forfeiture (Title 18 U.S.C. Section 982 and Title 28 U.S.C. Section 2461(c)) statutes. Pursuant to 18 U.S.C. § 981, U.S. courts can order “in rem” forfeiture in connection with a wide variety of offenses, including but not limited to property involved in money laundering related to foreign or domestic corruption (§ 981(a)(1)(A)) and proceeds of certain domestic or transnational offenses related to foreign corruption, among others (§ 981(a)(1)(C)). If persons involved in foreign corruption are prosecuted in the United States for crimes committed, at least in part, in the United States, forfeiture pursuant to 18 U.S.C. §982, may be part of the defendant’s sentence. Corruption crimes involving, but not limited to, extortion, bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official, constitute violations of the United States’ money laundering laws for which forfeiture is authorized as corruption proceeds or property involved in money laundering.

The SEC can seek disgorgement in its civil or administrative enforcement actions. For the SEC, disgorgement covers “ill-gotten gains” derived from securities laws violations (including the FCPA). This could include both contracts obtained by a company as well as bonuses to employees based entirely on those contracts.

C.5 Please provide general information about the outcomes, if any, regarding the types of assistance provided and/or received in international cooperation, regarding corruption cases involving legal persons.

Where applicable, this can be provided in the form of links to other reviews or published work.

The United States relies on three main channels for seeking international co-operation in foreign bribery cases: (1.) formal requests for co-operation in criminal matters based on international treaties, letters rogatory, or letters of requests from ministries of justice; (2.) requests based on memoranda of understanding; and (3.) requests through informal means. More information on these channels can be found in the U.S. Phase 3 and Phase 4 evaluation reports under the OECD Working Group on Bribery.