

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: Argentina

Date of completion:

A. A robust legislative framework

1. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

Argentina ratified in the year 2000 the "[OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#)" and is, therefore, a member of the Working Group on Bribery (WGB).

Since March 2018, when Law N°27.401 about Criminal Responsibility of Legal Persons was enforced, articles 258 and 258 bis of the Criminal Code have been modified to change this type of crime in accordance with the OECD Anti-Bribery Convention.

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/295000-299999/296846/norma.htm>

More information on this topic available in:

https://www.unodc.org/documents/corruption/G20-Anti-Corruption-Resources/Accountability-and-Monitoring-Reports/2018_G20_ACWG_Accountability_Report_2018.pdf

<https://www.oecd.org/corruption/anti-bribery/OECD-Argentina-3bis-follow-up-report-ENG.pdf>

<https://www.oecd.org/corruption/anti-bribery/Argentina-Phase-1bis-Report-ENG.pdf>

*Note 2: For questions 2 through 5, **countries without a foreign bribery offence should include updates on plans to address the following issues** through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.*

2. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

The Law establishes sanctions to legal private entities -both domestic and foreign companies, with or without State participation- for crimes associated with corruption committed to its benefit, representation or interest. The aim of the Law is to maximize efficiency of the pre-emptive policies and the fight against corruption through the generation of incentives for legal entities that prevent crimes against public administration by the implementation of integrity programmes, and cooperate with the authorities, contributing to a more effective application of criminal law.

The Law provides strong incentives to companies that develop ethical compliance and cooperate with prosecution authorities. The implementation of an integrity programme adopted previous to crimes can sensibly reduce financial penalties applied by judges (art. 8). Along with the spontaneous voluntary declaration it could also exclude its application (art.9). In addition, in regards to major procurements with the Federal State having a previously credited integrity programme is a necessary condition to present offers (art. 24).

Sanctions applicable to legal persons

Law N° 27.401 increased the economic sanctions applicable to natural persons for foreign bribery crimes to a penalty from two to ten times the value of the bribe. On the other hand, to legal persons, the penalty imposed will be two to five times the value of the “undue obtained benefit or that could have been obtained” through the crime of foreign bribery. (Art. 8, inc. 1, Law N° 27.401).

Forfeiture

Article N° 10 of the Law of Criminal Responsibility of Legal Persons extends the application of the forfeiture rules established in the Criminal Code. Article N° 23 of the same Code provides for the forfeiture of “things that have been used to commit the crime and the things or profits derived from or are benefit of the crime” once sentence has been passed.

Arts. 7(2)-(6) CLL provide for additional administrative sanctions for foreign bribery, namely the partial or total suspension of a legal person’s activities of up to ten years; debarment from public tenders or bidding processes or other State-related activities also for a maximum of ten years; dissolution and liquidation of a legal person whose sole purpose or main activity was to commit foreign bribery; and loss or suspension of state benefits. These sanctions are optional upon conviction. Additional provisions outside the CLL also provide for debarment in some but not all foreign bribery cases. Decrees 436/2000 Art. 136 and 1023/2001 Art. 28 debar a person who is subject to criminal proceedings for an offence established by the InterAmerican Convention against Corruption (IACAC). A new Decree 1169/2018 extends the debarment regime to public works contracts.

Companies may also be debarred from public procurement for foreign bribery convictions in other jurisdictions. Arts. 5(f) and (g) of Decree 1169/2018 impose debarment from public works contracts against legal persons convicted in another country of a foreign bribery offence that falls within the Convention. The prohibition also applies to legal persons that have been debarred by the World Bank or the Inter-American Development Bank because of foreign bribery. These provisions are similar to those that apply to debarment for non-public works contracts in Arts. 68(h)-(i) of Decree 1030/2016

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/295000-299999/296846/norma.htm>

3. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response: N/A

Since Law N°27.401 was enforced there haven’t been convictions of either natural or legal persons in cases of foreign bribery, yet.

In regards to cases of foreign bribery and money laundering, the Public Prosecutor's Office (PPO) also has its own statistics that the Economic Crime and Money Laundering Prosecution's Office (PROCELAC) collects, for its performance.

Currently, there are 10 cases being processed throughout the country which are in different stages of investigation. Of these 10 cases, 5 had their genesis in preliminary investigations prosecuted by PROCELAC, as such, these comprise 50% of the existing cases. Among these, 1 was detected

autonomously by PROCELAC through the press (37.5% of the cases initiated in PROCELAC and 21% of the total cases in Argentina), while the remaining 4 cases were initiated through the press. based on the information provided by the OECD Transnational Bribery Task Force matrix of cases.

Likewise, it should be noted that PROCELAC collaborates with the prosecutors in charge of pending transnational bribery cases. Of the 10 existing cases, 7 have formal intervention of PROCELAC (70% of the cases). This reflects the specialization that characterizes the DAP work team on this subject. In this sense, and beyond the scant information that is often provided in the framework of preliminary investigations (which by their nature are limited), the allegations follow the standards suggested in studies carried out by the OECD, such as the use of corruption risk indicators developed in the “Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors” (2013), <http://www.oecd.org/tax/bribery-corruption-awareness-handbook.htm>).

B. Effective investigation and prosecution of foreign bribery

4. Please describe the institutional framework in place in your country’s law enforcement authorities to investigate and prosecute foreign bribery.

Response:

The Argentine Republic signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on December 17th 1997, and deposited its instrument of ratification to the OECD General Secretary on February 8th 2001.

To implement the Convention Law N° 25.188 of Ethics in the Exercise of Public Administration was sanctioned on November 1st 1999, and was enforced on November 10th 1999.

The Public Ethics Law No. 25.188 defines:

ARTICLE 1 - The present law of ethics in the exercise of the public function establishes a set of duties, prohibitions and incompatibilities applicable, without exception, to all persons who perform in the public function at all levels and hierarchies, permanently or transitory, by popular election, direct appointment, public contest or by any other legal means, extending its application to all magistrates, officials and employees of the State.

Public function is understood as any temporary or permanent activity, remunerated or honorary, performed by a person on behalf of the State or at the service of the State or its entities, in any of its hierarchical levels.

Argentina as well to the 2009 OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Also known as Recommendation 2009).

The argentinian Code of Ethics (Decree 41/99) defines:

ARTICLE 4 - SCOPE OF APPLICATION. This Code applies to public officials of all agencies of the National Public Administration, centralized and decentralized in any of its forms, autarkic entities, companies and state companies and companies with majority state participation, mixed economy companies, Armed Forces and Security, social security institutions of the public sector, banks and official financial entities and of any other entity in which the National State or its decentralized

entities have a total or majority share of capital or in the formation of corporate decisions, as well as the national commissions and the entities of regulation of public services.

On November 8th, 2017, the Argentine Congress passed Law N° 27.401 (CLL), the new statute on criminal liability of legal persons for corruption offences.

The main objective of this Law, which entered into force in March 2018, is to provide more effective prevention and anti-corruption policies by generating incentives for legal persons to prevent the commission of crimes against the public administration. The CLL focuses on meeting the recommendations adopted by the WGB, and the efforts made to adopt this Law are a clear signal of Argentina's commitment to comply with the Anti-Bribery Convention.

Law 27.401 on the Liability of Legal Persons defines its scope in article 1: regarding the subjects, it deals legal persons, whether of national or foreign capital, with or without state participation, that is, mainly commercial companies incorporated under any of the figures provided for in Law No. 19,550, as well as civil associations and foundations. As commercial companies, the SOEs are formed as joint stock companies with majority (or total) shareholding and the State Companies of Law No. 20,705.

The following crimes are covered:

- Bribery and influence peddling, national and transnational, provided by arts. 258 and 258 bis of the Penal Code;
- Negotiations incompatible with the exercise of public functions, provided by art. 265 of the Penal Code;
- Extortion, provided by art. 268 of the Penal Code;
- Illicit enrichment of officials and employees, provided by arts. 268 (1) and (2) of the Penal Code;
- Balance and false reports aggravated, provided by art. 300 bis of the Penal Code.

As stated previously, since March 2018, when Law N°27.401 about Criminal Responsibility of Legal Persons was enforced, articles 258 and 258 bis of the Criminal Code have been modified to change this type of crime in accordance with the OECD Anti-Bribery Convention.

This modifications are stated in articles 29 and 30 of Law N| 24.701:

Art. 29o.- ARTICLE 1° of the Argentine Penal Code is hereby replaced as follows:

“ARTICLE 1.- This Code shall apply to:

1.- Offences committed or whose consequences take place in the territory of the ARGENTINE REPUBLIC, or in places under its jurisdiction;

2.- Offences committed abroad by representatives or employees of Argentine authorities in the exercise of their duties.

3.- 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.”

This modification of the PC embodies jurisdiction by nationality for both physical and legal entities, setting the basis in Argentina to prosecute cases of transnational bribery committed by its citizens or companies anywhere in the world

Art. 30o.- ARTICLE 258 bis of the Argentine Penal Code (PC) is hereby replaced as follows:

“ARTICLE 258 bis.- 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, unduly, 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, favours, 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”

The Public Fiscal Ministry (MPF) has 21 specialized units (<https://www.mpf.gob.ar/procuradurias-y-unidades-fiscales/>), one of them being the Economic Crime and Money Laundering Prosecution's Office (PROCELAC), that has competence and specialization in cases of economic crimes and has 7 areas of work: 5 are operative and are related to the most relevant manifestation of economic crime 1) money laundering and terrorism financing, 2) tax and customs crimes, 3) bankruptcy 4) financial and capital market fraud and 5) crimes against public administration (among which are cases of transnational bribery); an administrative area (among whose tasks is to advise on international cooperation issues and recovery of transnational assets within the powers of the Attorney General's Office); and a technical area with a multidisciplinary composition, necessary to address the complexities presented by economic crimes and complement the investigative and legal work carried out by the operational areas (made up of accountants, economists, computer science graduates, an anthropologist and a sociologist).

The different areas of PROCELAC coordinate their work in order to achieve a cross-sectional and joint vision of economic criminal phenomena and thus avoid a fragmented analysis of the cases. The main objective of PROCELAC is to enhance the effectiveness of the MPF in the strategic criminal prosecution of economic crime, mainly in those cases of organized economic crime - often transnational - that generate a socio-economic impact of relevance and institutional significance.

Among their powers are:

- A. Initiate preliminary investigations.
- B. Collaborate with prosecutors across the country in cases of complex economic crime - the object of collaboration is defined by the Prosecutor's Office, therefore it varies from case to case but, broadly speaking, they deal with: suggestions for evidentiary measures to adequately investigate the criminal maneuvers; coordination of the fiscal strategy of the case; legal analysis and setting of legal criteria in controversial issues; study of documentation, financial and / or patrimonial information; search for information in open sources; determination of facts; conducting financial investigations or other technical-

accounting analysis; participation in hearings and other procedural instances; attendance and / or participation during instances of oral debate.

C. Assist, at the request of the prosecutors, jointly and / or alternately in cases.

Many of the cases with the greatest economic impact and institutional relevance of complex economic crimes that are processed in the country, on the one hand, found their genesis in preliminary investigations and complaints by PROCELAC and, on the other, PROCELAC collaborates with the prosecution services in their investigation.

On November 1, 2016, the Office of the Attorney General of the Nation approved the delimitation of powers and functions of PROCELAC in order to avoid inconvenient overlapping of tasks with other prosecutors, with the ultimate aim of maximizing efficiency in the prosecution of the complex crimes that they carry out.

In so doing, it was established that PROCELAC would become the specialized body in the investigation of possible crimes that:

- A. Have been committed by agents or within the scope of the Legislative or Judicial Powers or the National Public Ministry.
- B. Have been committed by agents or within the scope of the Government of the Autonomous City of Buenos Aires, in any of its Powers, in which National Criminal Justice has jurisdiction.
- C. The acts that make up cases of transnational bribery.

On these bases, the crime of transnational bribery falls within the competence of the operational area of crimes against public administration (DAP) of PROCELAC, whose work team is specialized in the detection and investigation of cases related to this crime. The proactive role of PROCELAC registered in recent years on the subject has contributed to the prosecution of the crime of transnational bribery in Argentina.

5. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.**
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.**

Response:

a.

The Central Authority of the Argentine Republic receives mutual legal assistance from Argentine Courts and Prosecutor's Offices, which require international cooperation measures with foreign authorities. Those requests are sent by email to the Central Authority. The applications are then reviewed to ensure that the requirements set forth in the cooperation treaties have been met. Finally, they are sent to the central authorities of the states whose help is required or, in some cases, to the Argentine Diplomatic Representations to be presented to the local authorities. This ensures that requests for international assistance are transmitted in a very short time.

In the case of incoming mutual legal assistance, the Argentine Central Authority accepts the receipt of legal assistance requests by email. The Central Authority analyzes the origin of the request according to the existence of applicable legal basis or offer of reciprocity, need for double criminality and minimum applicable penalty for the crime being investigated in the requesting country, the formal requirements, the viability of the request with the data provided according to the measures required. If deemed appropriate, it will be sent to the judge with federal jurisdiction on duty in the place where the measures must be practiced unless that the requesting state indicates an authority explicitly. This process is also done in a very short time.

In addition, the Central Authority communicates regularly with the different judicial authorities and prosecutors both to report the best way to obtain cooperation from foreign authorities and to request information on the progress of the mutual legal assistance required by foreign authorities.

In Argentina, international legal cooperation is developed in full compliance with the applicable national and international regulations, in order to guarantee its effectiveness in the judicial processes in which it is requested.

b.

Argentina's legal system facilitates international legal cooperation either through the Central Authority or the diplomatic channels, depending on whether a treaty can be applied or not.

Mutual legal assistance (MLA) as well as any communication related thereto are mainly transmitted through the central authorities appointed by the States Parties to the applicable convention.

Furthermore, in cases in which there is no treaty in force between both countries, the net of Argentinean Embassies across the world plays a key role in guaranteeing this assistance or communication regarding any specific case.

However, this is not the normal scenario in corruption or bribery cases since the large list of countries which are parties to the Multilateral Conventions that regulate MLA requests for the investigation into and prosecution for these offences. (e.g. United Nations Convention against Corruption, Inter American Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

Bribery cases generally entail economic and financial elements making informal previous cooperation among financial intelligence units vital to trace the proceeds of crimes and to provide details to be included in a future MLA request. Despite that, informal means do not and cannot replace formal cooperation. This type of cooperation is encouraged as a previous step to an MLA with the aim of facilitating and ensuring a successful execution of a request for international cooperation.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

6. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (Phase 1, 2, 3 or 4); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

The Argentine Republic has been part of the OECD Anti-Bribery Convention since 2001 and was assessed in the framework of the Phase 3bis (follow-up) and the Phase 1bis of the Working Group on Bribery in June 2019.

Furthermore, Argentina is going to have to report to the Working Group on the compliance with certain Recommendations of the Phase 3bis follow-up report in June 2021 and is going to be evaluated in the framework of the Phase 4 in March 2024.

<https://www.oecd.org/daf/anti-bribery/argentina-oecdanti-briberyconvention.htm>

7. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

8. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

N/A

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: Australia

Date of completion: 24 May 2021

A. A robust legislative framework

1. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

Australia's foreign bribery offence is contained in Division 70 of the Schedule to the *Criminal Code Act 1995* (Cth) (***Criminal Code***).

Division 70, entitled '*Bribery of foreign public officials*', was introduced on 17 December 1999 to give domestic effect to Australia's ratification of the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

The foreign bribery offence is located at section 70.2 of the Criminal Code and the offence applies to both natural and legal persons. Section 70.1 of the Criminal Code sets out relevant definitions.

Section 70.2 of the *Criminal Code* provides:

70.2 Bribing a foreign public official

(1) A person commits an offence if:

- (a) the person:
 - (i) provides a benefit to another person; or
 - (ii) causes a benefit to be provided to another person; or
 - (iii) offers to provide, or promises to provide, a benefit to another person; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
- (b) the benefit is not legitimately due to the other person; and
- (c) the first-mentioned person does so with the intention of influencing a foreign public official (who may be the other person) in the exercise of the official's duties as a foreign public official in order to:
 - (i) obtain or retain business; or
 - (ii) obtain or retain a business advantage that is not legitimately due to the recipient, or intended recipient, of the business advantage (who may be the first-mentioned person).

Note: For defences see sections 70.3 and 70.4.

(1A) For the purposes of paragraph (1)(c):

- (a) the first-mentioned person does not need to intend to influence a particular foreign public official; and
- (b) business, or a business advantage, does not need to be actually obtained or retained.

Benefit that is not legitimately due

(2) For the purposes of this section, in working out if a benefit is **not legitimately due** to a person in a particular situation, disregard the following:

- (a) the fact that the benefit may be, or be perceived to be, customary, necessary or required in the situation;
- (b) the value of the benefit;
- (c) any official tolerance of the benefit.

Business advantage that is not legitimately due

(3) For the purposes of this section, in working out if a business advantage is **not legitimately due** to a person in a particular situation, disregard the following:

- (a) the fact that the business advantage may be customary, or perceived to be customary, in the situation;
- (b) the value of the business advantage;
- (c) any official tolerance of the business advantage.

Penalty for individual

(4) An offence against subsection (1) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units, or both.

Penalty for body corporate

(5) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:

- (a) 100,000 penalty units;
- (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the **turnover period**) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.

(6) For the purposes of this section, the **annual turnover** of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate;

(b) supplies that are input taxed;

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);

(d) supplies that are not made in connection with an enterprise that the body corporate carries on.

(7) Expressions used in subsection (6) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in that subsection as they have in that Act.

(8) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this section in the same way as for the purposes of the *Corporations Act 2001*.

Full version of the Criminal Code available at:

https://www.legislation.gov.au/Details/C2021C00183/Html/Volume_1#_Toc63237744

Note 2: For questions 2 through 5, countries without a foreign bribery offence should include updates on plans to address the following issues through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

2. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

As stated above, the sanctions for a contravention of Division 70 are as follows:

Penalty for individual

An offence against subsection 70(1) committed by an individual is punishable on conviction by imprisonment for not more than 10 years, a fine not more than 10,000 penalty units¹, or both.

Penalty for body corporate

An offence against subsection 70 (1) committed by a body corporate is punishable on conviction by a fine not more than the greatest of the following:

- (a) 100,000 penalty units;
- (b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the conduct constituting the offence—3 times the value of that benefit;
- (c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the period (the **turnover period**) of 12 months ending at the end of the month in which the conduct constituting the offence occurred.

¹ The value of a penalty unit is governed by section 4AA of the [Crimes Act 1914](#) and at present (20 May 2021) one penalty unit is \$222.

(6) For the purposes of this section, the **annual turnover** of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:

- (a) supplies made from any of those bodies corporate to any other of those bodies corporate;
- (b) supplies that are input taxed;
- (c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);
- (d) supplies that are not made in connection with an enterprise that the body corporate carries on.

(7) Expressions used in subsection (6) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in that subsection as they have in that Act.

(8) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of this section in the same way as for the purposes of the *Corporations Act 2001*.

The *Proceeds of Crime Act 2002* (POCA) came into operation on 1 January 2003 and provides a scheme to trace, freeze, restrain and confiscate the proceeds of crime for offences committed contrary to Commonwealth law, including for an offence of foreign bribery.

Freezing and restraining orders are interim orders that can be sought by the Australian Federal Police (AFP) in respect of property (for freezing orders, this is limited to funds in an account held by a financial institution) in certain circumstances. Confiscation, also known as 'forfeiture' is a final determination and can occur through a broad range of mechanisms, including 'forfeiture orders' made by a court upon application by the AFP, 'pecuniary penalty orders' which are available where the exact property cannot be located and function by raising a debt payable to the Commonwealth equal to the value of the property, as well as through automatic forfeiture upon conviction, which in contrast to other confiscation mechanisms available under the POCA must be conviction based. The Commonwealth Director of Public Prosecutions (CDPP) is also empowered to seek conviction based confiscation orders (both forfeiture orders and pecuniary penalty orders) in matters where no restraining order has been sought².

3. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

In Australia, the foreign bribery offence is enforced under criminal law. A total of 9 defendants (7 individuals and 2 corporations) have been convicted for foreign bribery, and a further 2 individuals have been convicted of false accounting for conduct related to foreign bribery.

Prosecutions involving 4 defendants have been the subject of a permanent stay (the prosecutions were discontinued). There have not been any acquittals following trial.

² Note this paragraph has been extracted from the UNCAC Asset Management Questionnaire as prepared by AGD with contributions from the CDPP.

B. Effective investigation and prosecution of foreign bribery

4. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

The Australian Federal Police (AFP) is responsible for investigating suspected foreign bribery and, where the relevant thresholds are met, referring briefs of evidence to the Commonwealth Director of Public Prosecutions (CDPP) for a decision as to whether to commence prosecution. The CDPP is an independent prosecution agency established under the Director of Public Prosecutions Act 1983 (Cth). The functions and powers of the Director include the institution and carrying on of prosecutions on indictment for indictable offences against the laws of the Commonwealth.

5. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.**
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.**

Response:

Australia's central authority manages the prioritisation of requests for mutual legal assistance based on a range of factors, including the seriousness of the suspected or alleged offending, and timeframes associated with the matter such as imminent court dates.

Wherever possible, Australia's central authority encourages the development of informal assistance relationships between Australian and foreign agencies. Upon receipt of a request for an outgoing mutual legal assistance request, agencies are encouraged to seek assistance by informal means if information is attainable through these channels.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

6. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (*Phase 1, 2, 3 or 4*); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

Australia completed its Phase 4 review in December 2017, and Phase 4 follow-up in December 2019. The latest report is available here: <https://www.oecd.org/australia/australia-oecdanti-briberyconvention.htm>

7. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

8. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

N/A

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: Brazil

Date of completion: 2021/06/04

A. A robust legislative framework

9. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

Brazil has a very comprehensive and robust legal framework criminalizing acts of bribery and related offenses committed both domestically and internationally.

Brazilian legislation adopts a broad definition and interpretation of "public official", covering anyone who exercises a public function. Article 327 of Penal Code provides for the definition of domestic "public official" and Article 337-D PC, based on the same principles of Article 327, defines "foreign public official", in line with the requirements of article 2(b) of the UNCAC. Article 337-B criminalizes active bribery committed in international business transactions. The passive bribery of foreign public officials and officials of public

international organizations has not been criminalized. Brazilian legislation does not provide for the criminal prosecution of legal persons, except for acts against the environment (Article 225, § 3º of the Federal Constitution). However, the Anti-Corruption Law (12.846/2013) establishes the strict civil and administrative liability of legal persons for wrongful acts committed against the national and foreign Public Administration, which includes monetary sanctions, compulsory dissolution, suspension, and debarment 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.

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.

*Note 2: For questions 2 through 5, **countries without a foreign bribery offence should include updates on plans to address the following issues** through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.*

10. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

Brazil has introduced the civil and administrative sanctions for legal persons that commit foreign bribery offences by enacting the Anti-Corruption Law. 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 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 Anti-Corruption Law:

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.

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). A company can receive credit - as mitigating factors to be considered in the application of the calculated fine – whenever it cooperates with the investigation and self-disclosures the illicit to the authorities. Moreover, the fine can also be significantly diminished if the company proves that it has in place an effective compliance program.

11. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

Brazil has to date sanctioned 24 natural persons and 4 legal persons for foreign bribery. The sanctions applied to natural persons are the result of criminal convictions and the natural persons were sanctioned through the use of non-trial resolutions.

B. Effective investigation and prosecution of foreign bribery

12. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

As established in Anti-Corruption Law, Office of the Comptroller General - CGU is responsible for the administrative liability of legal entities. The attributions of CGU include to directly file and process administrative proceedings on the liability of legal entities that perform wrongful acts against foreign public administration bodies in compliance with the provisions established in Article 4 of the OECD Convention, and manage the registry of companies upon which penalties based on the Law were imposed.

According to the Anti-Corruption Law, the CGU holds the exclusive competence, within the Federal Executive branch, to negotiate leniency agreements with legal persons investigated for the performance of wrongful acts against national and foreign public administration, which includes foreign bribery. Companies may be exempted of some sanctions or have the applicable sanctions attenuated – which include fine and debarment – as long as they effectively collaborate with the investigations and the administrative liability proceeding. CGU also monitors compliance programs of companies that signed leniency agreements.

Moreover, in 2020 a Technical Cooperation Agreement was signed between several organizations, such as the Office of the Comptroller General, the Ministry of Justice, the Federal Court of Accounts and the Attorney's General Office, under the coordination of the Brazilian Supreme Court. The cooperation agreement was designed to improve the coordination between institutions with overlapping jurisdiction to fight corruption, which was considered one of the main challenges for Brazilian authorities. Besides, this has also improved the leniency agreements framework, granting a better safe point from which companies can cooperate with the Government, admitting its wrongdoings in order to solve its corporate liability with all public institutions.

CGU also works in partnership with strategic agencies, Brazil National Health Surveillance Agency and Administrative Council for Economic Defense, with the purpose of exchange information about companies that can contribute to the fight against transnational bribery.

As a rule, the administrative proceedings to determine the liability of legal entities are independent from the criminal proceedings against individuals. Whenever necessary, however, the same evidence may be used in both spheres for the elucidation of the facts and procedural instruction. There are no legal barriers to share with the criminal prosecution authorities the evidence acquired during the administrative proceedings. CGU has a long standing partnership with the Public Prosecutor Office and the Federal Police.

It is worth noting that The National Strategy Against Corruption and Money Laundering – [ENCCLA](#) – is one of the most relevant initiatives to strengthen Brazil's law enforcement capacity and promote interagency cooperation at the highest levels. ENCCLA is an overarching and transversal institutional coordination mechanism that has been in place since 2003. Comprised of 90 public institutions, from all government levels and branches, and 7 other private sector entities, ENCCLA serves as the main platform for the formulation of public policies, proposal of new legislation, and coordinated joint solutions to prevent and fight corruption and money laundering in Brazil. Over the years, the initiative has become a major center of innovation and thought leadership in the field.

Member institutions get together annually at a plenary session to discuss and decide, by consensus, on "actions" to be developed over the year to combat corruption and money laundering. Each action is implemented by a thematic working group, under the supervision of a sponsor agency, that reports back to the plenary on the results achieved. The strategy has contributed to major legislative changes in administrative, civil and criminal prosecution procedures; proposed new legislation and regulatory frameworks; conducted studies and training on anti-corruption and anti-money laundering techniques; set standards and disseminated good practices, promoted exchange of information and collaboration among institutions, and introduced the use of new technological tools in the fight against corruption.

Since 2003, ENCCLA has concluded more than 300 [actions](#) and achieved remarkable [outcomes](#), such as:

- the creation of the National Register of Clients of Financial Institutions (CCS), increasing the transparency of the financial sector
- the development of the Banking Transactions Investigation System (SIMBA), through which financial institutions transmit banking data to law enforcement agencies using a standard template, increasing the speed and quality of the information shared
- the establishment of the Laboratory of Technology Against Money Laundering (“LAB-LD”) to harness the use of information technology tools and scientific methodologies to analyze large volumes of data related to corruption and money laundering cases, optimizing judicial proceedings
- the digitization of the currency and monetary instruments customs declaration form, filed when entering and departing the country
- the establishment of specialized units to combat financial crimes within the Federal Police
- the creation of the National Group to Combat Criminal Organizations within State and Federal Prosecution Services to support law enforcement authorities in the fight against organized crime
- the enactment of Decree 5.483/2005 establishing the “asset investigation” administrative procedure and regulating public officials’ asset declarations, further developed by Decree 10.571/2020.
- the enactment of Law 12.846/2013 (Anti-Corruption Law), which provides for the administrative and civil liability of legal persons for corrupt practices against the domestic and foreign public administration, including bribery.

13. With respect to international cooperation,

- a. **Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.**
- b. **Please describe how informal assistance is encouraged, in conformity with your jurisdiction’s legal system, to facilitate international cooperation in relation to foreign bribery.**

Response:

a. Brazilian authorities are able to grant international legal cooperation in relation to foreign bribery cases, either based on a treaty or on reciprocity, provided that sovereignty, public order and core principles of Brazilian legal system are not violated by the execution of the request. Brazil does not impose any specific condition to be met previously to the formal submission of a cooperation request.

Created in 2004, the Department of Assets Recovery and International Legal Cooperation (DRCI), an agency of the Ministry of Justice and Public Security, is the Brazilian Central Authority for most matters pertaining to International Legal Cooperation.

Brazil accepts requests via electronic mail and direct communication between central authorities. Requests based on treaties do not need be sent through diplomatic channels.

After receiving the request, Brazilian Central Authority remains available to provide information about its execution whenever necessary to the central authority of requesting State. Direct contacts between the requesting and requested authorities can be made, with only the purpose to discuss specific details, remove any technical doubts and optimize the execution.

Brazil is prepared to receive and transmit urgent requests. As usually occurs, the requests can be sent in advance through the central authority e-mail address, which can forward it to the competent authorities in Brazil, even before the arrival of the printed version.

b. Brazil has been involved in networks as Latin America & Caribbean Anti-Corruption Law Enforcement Network (“LAC LEN”), which is a platform for informal exchange of information to facilitate the provision of legal assistance among its members, and Riyadh Initiative. Also has supported similar foreign organizations through direct cooperation.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

14. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (Phase 1, 2, 3 or 4); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

Brazil has reached Phase 3. The Phase 3 report on Brazil by the OECD Working Group on Bribery is available on: <https://www.oecd.org/daf/anti-bribery/Brazil-Phase-3-Report-EN.pdf> and the follow-up report: <https://www.oecd.org/corruption/anti-bribery/Brazil-Phase-3-Written-Follow-Up-Report-ENG.pdf>.

15. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);

- Open discussion for Participation in the WGB.

16. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: China

Date of completion: May 20, 2021

A. A robust legislative framework

17. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*

- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

China has established the offence of bribing foreign public officials in 2011 with the enactment of the Amendment VIII to the Criminal Law of China. The amended Criminal Law criminalizes foreign bribery by stipulating in Article 164 that "Whoever gives money or property to foreign public officials or officials of international public organizations in order to seek illegitimate commercial interests shall be punished following the provisions of the preceding paragraph (offence of bribing non-Chinese public officials ."

Note 2: For questions 2 through 5, countries without a foreign bribery offence should include updates on plans to address the following issues through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

18. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

The Chinese Criminal Law stipulates the maximum statutory penalty for foreign bribery offence for a natural person is 10 years in prison together with additional fines, which will be defined according to the severity of the offence.

The articles 30, 31 and 164 of the Criminal Law of China as well as its 8th Amendment make specific stipulations on the liability of legal persons for criminal offenses including corruption and corruption-related offenses. Legal persons shall be fined for foreign bribery offence while the natural persons in charge shall also be sanctioned, as the Chinese Criminal Law holds the dual punishment principle, which means that both the legal persons and the natural persons involving in the same offence will be punished by law.

19. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response: N/A

B. [Effective investigation and prosecution of foreign bribery](#)

20. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

In China, foreign bribery is investigated by the police, and the peoples' procuratorates at the central and local levels are responsible for the prosecution of foreign bribery offence. The National Commission of Supervision also has the jurisdiction if public officials are involved in foreign bribery cases. In addition, the commerce and finance authorities have power to make administrative sanctions.

21. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.

Response:

The Ministry of Justice is the central authority in China to receive and send MLA requests, while the National Commission of Supervision is responsible for dealing with MLA requests received and sent with the UNCAC as the legal basis, within which realm foreign bribery cases often fall. The MLA requests shall be sent via official channels and pre-contact is encouraged for prompt and effective handling. The *Law for International MLA in Criminal Matters of the People's Republic of China* was enacted in October 2018, which has provided clear and detailed information about procedural requirements for MLA in China. (http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-10/26/content_2064576.htm)

China recognizes that it is necessary to have informal assistance in addition to MLA for handling criminal cases, and encourages informal assistance in accordance with Chinese laws and regulations. Contacts and discussions on cases are welcomed by Chinese authorities. Such informal assistance can be obtained via police-to-police channel or between/among anti-corruption authorities, which in China is the National Commission of Supervision. China also encourages and actively conducts informal cooperation through mechanisms and platforms such as the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE), the APEC Network of Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET), the G20 Denial of Entry Experts' Network, and so on.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

22. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (*Phase 1, 2, 3 or 4*); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

23. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;

- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

24. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

China has maintained close cooperation with the OECD Working Group on Bribery. China has participated in the law enforcement cooperation conferences held by OECD and co-hosted with OECD several workshops on topics of mutual interests.

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: France

Date of completion: 21/05/2021

A. A robust legislative framework

25. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

Articles 435-1 and 435-3 of the Criminal Code penalize, under French law, the passive or active bribery of foreign public officials in the following terms:

Art. 435-1 : "Is punishable by ten years' imprisonment and a fine of €1,000,000, the amount of which may be increased to twice the proceeds of the offence, the fact, by a person in charge of public authority, entrusted with a public service mission or invested with a public elective mandate in a foreign State or within a public international organization, to solicit or accept, without right, at any time, directly or indirectly, offers, promises, gifts, presents or advantages of any kind, for himself or for another person, to perform or have performed, to abstain or to have abstained from performing an act of his function, mission or mandate or facilitated by his function, mission or mandate

The fine is increased to €2,000,000 or, if this amount is exceeded, to double the proceeds of the offence, when the offences provided for in this article are committed in an organised gang.

Art. 435-3 : "Is punishable by ten years' imprisonment and a fine of €1,000,000, the amount of which may be increased to twice the proceeds of the offence, the fact, by anyone, of proposing, without right, at any time, directly or indirectly, to a person who is a depositary of public authority, entrusted with a public service mission or invested with a public elective mandate in a foreign State or within a public international organization, offers, promises, gifts, presents or benefits of any kind, for himself or for others, to carry out or refrain from carrying out, or because he has carried out or refrained from carrying out an act of his function, mission or mandate, or facilitated by his function, mission or mandate.

The same penalties shall be imposed on any person who, without right, at any time, directly or indirectly, solicits offers, promises, gifts, presents or benefits of any kind from a person referred to in the first paragraph, for himself or for another person, in order to carry out or have carried out, or to refrain from carrying out, an act referred to in that paragraph.

The fine is increased to €2,000,000 or, if this amount is exceeded, to double the proceeds of the offence, when the offences provided for in this article are committed in an organized gang.

Article 435-4 of the Criminal Code also punishes active influence peddling by foreign public officials in the following terms:

"It is punishable by five years' imprisonment and a fine of €500,000, which may be increased to twice the amount of the proceeds of the offence, for anyone to offer, without right, at any time, directly or indirectly, offers, promises, gifts, presents or benefits of any kind to a person, for himself or for another person to abuse or because he or she has abused his or her real or supposed influence in order to obtain distinctions, jobs, contracts or any other favourable decision from a person who is a depositary of public authority, entrusted with a public service mission or invested with a public elective mandate in a foreign State or within a public international organisation.

The same penalties shall be imposed on anyone who, at any time, directly or indirectly, solicits offers, promises, gifts, presents or benefits of any kind, for himself or for another person, in order to abuse or have abused his real or supposed influence with a view to obtaining distinctions, jobs, contracts or any other favorable decision from a person referred to in the first paragraph.

Article 435-2 of the Penal Code punishes, with the same penalties and in similar terms, passive influence peddling by foreign public officials.

Finally, Articles 435-7 and 435-8 of the Criminal Code punish passive bribery and influence peddling by international judicial personnel, while Articles 435-9 and 435-10 punish active bribery and influence peddling by such persons.

*Note 2: For questions 2 through 5, **countries without a foreign bribery offence should include updates on plans to address the following issues** through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.*

26. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

Both the principal penalties (a) and the additional penalties (b) applicable to natural and legal persons for bribery of foreign public officials (CAPE) have been aggravated and extended, in particular by Law No. 2013-1117 of December 6, 2013 on the fight against tax fraud and serious economic and financial crime and Law No. 2016-1691 of December 9, 2016 on transparency, the fight against corruption and the modernization of economic life.

a. An increase in the principal penalties incurred

Principal penalties applicable to natural persons

Under the terms of the Law of December 6, 2013, the fine penalties incurred by natural persons in relation to foreign bribery (Articles 435-1 and 435-3 of the Penal Code) have been considerably increased from €150,000 to €1,000,000 in fines.

The judge also has the possibility to increase this fine to twice the amount of the proceeds of the offence.

The law n° 2020-1672 of December 24, 2020 relating to the European Public Prosecutor's Office, environmental justice and specialized criminal justice has also increased the fine incurred to €2,000,000 or, if it exceeds this amount, to double the proceeds of the offence, when the foreign bribery is committed in an organized gang.

The custodial sentence is ten years' imprisonment.

Trafficking in the influence of a foreign public official (TIAPE) created by the law of December 9, 2016 is, for its part, punishable by 5 years' imprisonment and a fine of €500,000, which can be increased to twice the proceeds of the offense (Articles 435-2 and 435-4 of the Penal Code).

Main penalties applicable to legal entities

The main penalty incurred by legal entities is a fine equal to five times (x5) that applicable to natural persons, i.e. since the law of December 6, 2013, €5,000,000 (€10,000,000 in the case of acts committed in an organized gang), the amount of which may be increased to ten times (x10) the proceeds of the offense.

b. Expanded complementary penalties

The additional penalties incurred by natural and legal persons have been expanded by the same texts, in particular, with respect to legal persons, by the creation of a new penalty for compliance with the prevention and detection of corruption.

Additional penalties for natural persons

The additional penalties applicable to natural persons are provided for in Article 435-14 of the Criminal Code and are as follows:

1° Prohibition of civic, civil and family rights, in accordance with the terms of article 131-26 ;

2° Prohibition, for a period of up to five years, from holding a public office or from exercising the professional or social activity in the exercise or during the exercise of which the offence was committed;

3° The posting or dissemination of the decision pronounced under the conditions provided for by Article 131-35 ;

4° Confiscation, in accordance with the terms of article 131-21, of the thing that was used or intended to be used to commit the offence or of the thing that is the product of it.

Prohibition from French territory may also be imposed under the conditions provided for in articles 131-30 to 131-30-2, either definitively or for a period of up to ten years, on any foreigner who has been guilty of one of the offences provided for in this chapter.

To these penalties was added by Law No. 2017-1339 of September 15, 2017 for confidence in political life, the additional penalty of ineligibility, which is now mandatory in matters of foreign bribery and TIAPE (Article 131-26-2 of the Penal Code).

Additional penalties incurred by legal persons

The additional penalties incurred by legal persons are provided for in articles 435-15 and 131-39 of the Criminal Code and are as follows:

1° A fine, in accordance with the terms of article 131-38 ;

2° For a period of up to five years, the penalties provided for in 2° to 7° of Article 131-39;

3° The confiscation, according to the methods provided for by article 131-21, of the thing that was used or intended to commit the offence or the thing that is the product of it;

4° The posting or dissemination of the decision pronounced under the conditions provided for by Article 131-35 ;

5° The penalty provided for in article 131-39-2.

A new additional penalty was introduced by the law of December 9, 2016, the obligation to submit, under the supervision of the French Anti-Corruption Agency (AFA), for a maximum period of five years, to a compliance program (Article 131-39-2 of the Criminal Code).

This penalty includes the obligation to implement the following measures and procedures:

1° A code of conduct defining and illustrating the different types of behavior to be prohibited as being likely to characterize corruption or influence peddling;

2° An internal alert system designed to enable the collection of reports from employees concerning the existence of conduct or situations that are contrary to the code of conduct of the legal entity;

3° A risk map in the form of regularly updated documentation designed to identify, analyze and prioritize the risks of exposure of the legal entity to external solicitations for the purpose of corruption, in particular in relation to the sectors of activity and geographical areas in which the legal entity operates;

4° procedures for assessing the situation of customers, first-tier suppliers and intermediaries with regard to risk mapping

5° Internal or external accounting control procedures designed to ensure that books, records and accounts are not used to conceal corruption or influence peddling. These controls may be carried out either by the accounting and financial control departments of the legal entity itself, or by using

an external auditor when carrying out the audits for the certification of accounts provided for in Article L. 823-9 of the Commercial Code;

6° A training system for managers and staff most exposed to the risks of corruption and influence peddling;

7° A disciplinary system allowing the employees of the legal entity to be punished for violations of the code of conduct of the legal entity.

When the court imposes this penalty, the costs incurred by the AFA in calling in experts or qualified persons or authorities to assist it in carrying out legal, financial, tax and accounting analyses are borne by the convicted legal entity, but the amount of these costs may not exceed the amount of the fine incurred for the offense for which this penalty is imposed

Additional penalty of confiscation for natural and legal persons

Confiscation is incurred by both natural and legal persons, in accordance with the procedures set out in Article 131-21 of the Criminal Code, of the thing that served or was intended to commit the offence or the thing that is the product of it.

27. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

Since foreign bribery was criminalized under French law following its ratification of the OECD Convention on Combating Bribery, 19 legal entities and 42 individuals have been prosecuted for foreign bribery and 3 legal entities and 4 individuals for money laundering. 19 legal entities were convicted (12 of them definitively) for foreign bribery, 3 for laundering of foreign bribery and 4 legal entities entered into judicial public interest agreements ("Convention judiciaire d'intérêt public", namely transactional procedure whereby the accused legal entity agrees to pay a public interest fine in exchange for a suspension of prosecution) for considerable penalties. 19 individuals have been finally convicted for foreign bribery, 4 others for related offenses, and 8 appeals are pending.

B. [Effective investigation and prosecution of foreign bribery](#)

28. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

The organization of corruption investigations and prosecutions was profoundly rethought following the creation, by the law of December 6, 2013, of the National Financial Prosecutor's Office (Parquet national financier or PNF), which effectively became operational in early 2014 and whose activity had just begun at the time of the Phase 3 monitoring report. It was accompanied by the creation of the Central Office for the Fight against Corruption and Financial and Tax Offenses (OCLCIFI), the same year, and thus marked an unprecedented strengthening of investigative and prosecutorial capacities in the fight against the "high end" of the probity spectrum, and first and foremost the foreign bribery, by safeguarding the staff dedicated to it and increasing the capacity for specialization and the visibility of these staff.

Investigations and prosecutions of transnational corruption offenses are thus handled by the national financial prosecutor's office and by specialized investigative services.

On the international scene, the PNF is a privileged interlocutor for international organizations (OECD, World Bank, etc.) as well as for specialized foreign judicial authorities (e.g. Department of Justice (DOJ) in the United States, Serious Fraud Office (SFO) in the United Kingdom, etc.). The privileged links that the PNF has developed over the last few years with these partners make it a key and respected partner. This recognition enables it to have an influence in the discussions it holds with its main counterparts when it comes to the best possible organization of investigations and prosecutions in accordance with article 4 (3) of the OECD Anti-Bribery Convention.

At the national level, its proven expertise in the economic and legal mechanisms likely to be implemented, its experience in handling sensitive economic data, as well as in the management of negotiations with the companies in question, particularly in the context of the implementation of public interest judicial agreements, make it a particularly well placed player to deal effectively with this type of case. Moreover, the PNF is able to mobilize very quickly the technical and human resources necessary to carry out effective investigations in this area.

The PNF's specialization also allows it to develop very close coordination with the specialized national investigation services that it is called upon to handle, and in particular the OCLCIFI in matters of international corruption.

The Ministry of the Interior, through the sub-directorate for the fight against organized crime and financial delinquency of the central directorate of the judicial police (DCPJ), has two expert offices in the field of economic and financial crime: the Central Office for the Repression of Serious Financial Crime (OCRGDF) and the OCLCIFI. The latter is more specifically specialized in matters of integrity violations and is in charge of most of the investigations concerning foreign bribery. However, the OCRGDF has developed a specialization in the investigation of money laundering, in France and abroad, of funds, assets and property resulting from offences against probity.

France also has specialized services for seizures and confiscations (PIAC and AGRASC), as well as within the national financial intelligence unit (TRACFIN).

The platform for the identification of criminal assets (PIAC), created in September 2005 within the OCRGDF, leads the identification of the financial assets and property of suspects. It has engaged in dynamic international cooperation in the identification and international seizure of assets, and has very actively contributed to the development of the Camden Asset Recovery Interagency (CARIN)

and Asset Recovery Office (ARO) networks. As part of the EMPACT project, OCRGDF is promoting the membership of partner countries in these networks.

The agency for the management and recovery of seized and confiscated assets (AGRASC), created by law n°2010-768 of July 9, 2010 aimed at facilitating seizure and confiscation in criminal matters, ensures the management of the assets entrusted to it, the centralized management of the sums seized and the disposal of these assets for the purpose of sale before judgment (article 706-160 of the code of criminal procedure). AGRASC is a structure that meets the real needs of the courts and provides our country with an effective system for the seizure and confiscation of criminal assets, following the example of many countries. It has invested in international cooperation in its field of competence through incoming and outgoing assistance in the seizure of property, management of the property if it is located on the national territory, and then through the execution of the confiscation, including sharing in the case of transnational confiscation.

With respect to investigative means, France has legislation that allows investigators to use all special investigative techniques under the control of judges and within certain frameworks (telephone tapping, surveillance, computer data capture, photography of private premises, etc.).

Moreover, the production of documents held by financial institutions in particular does not pose any difficulty and can be obtained upon judicial request, as banking secrecy is not enforceable in the context of criminal investigations. All investigative services have access to the national file of bank and similar accounts (FICOBA) which lists all bank accounts held by individuals and legal entities. This file, which is particularly useful for national investigations into economic and financial matters, including corruption, inspired the adoption of the 4th anti-money laundering directive, which extends the principle to all European member states.

29. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.**
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.**

Response:

The French legal framework guarantees extensive legal possibilities to resort to international mutual assistance in criminal matters and to comply with foreign requests in matters of international corruption.

Unlike some States, which only cooperate in criminal matters on the basis of an international convention, France agrees to comply with a foreign request for mutual assistance even in the absence of a convention, on the basis of domestic legal provisions. Similarly, these domestic provisions allow French judges, in the absence of a convention, to present their requests to foreign judicial authorities, making offers of reciprocity.

The general provisions relating to the transmission and execution of requests for mutual assistance are to be found in Title X of the Code of Criminal Procedure, which is devoted to international

mutual assistance, Chapter 1, and those relating to extradition are to be found in Chapter 5 of the same title.

The entry into force of the European Investigation Order in 2016 has further extended these possibilities, as has the entry into force on 19 December 2020 of the European Union regulation on the mutual recognition of freezing orders and confiscation orders.

Beyond the European borders, France's active policy in the negotiation of bilateral agreements contributes to the removal of obstacles in this area. France is a signatory to 51 conventions on mutual assistance in criminal matters for the purposes of investigations that may apply to corruption and are currently in force.

In addition to proactive action in the negotiation of bilateral conventions and French leadership in the adoption of European texts, France has put in place resources specifically dedicated to the facilitation of mutual assistance at the level of the Ministry of Justice, via an office dedicated to international mutual assistance in criminal matters for operational issues relating to mutual assistance, an office dedicated to European and international criminal negotiation for the negotiation of European and international legal instruments, and a delegation for European and international affairs for institutional issues.

These issues are also served, abroad, by the development and maintenance of the worldwide network of liaison magistrates, which represents a unique asset for the needs of international mutual assistance in criminal matters, as well as by the secondment of a French magistrate to EUROJUST.

The specific action of the Agency for the Management and Recovery of Seized and Confiscated Assets (AGRASC) and the Criminal Assets Identification Platform (PIAC) in terms of operational support for the execution of formal and informal requests relating to tracing, seizure and confiscation, and of the networks in which they participate, can also be noted.

Finally, the creation of the PNF, which executes a significant number of requests for international criminal assistance in foreign bribery matters, either on the basis of referrals from the office of international criminal assistance or in the context of direct referrals, is likely to promote better execution of requests for international criminal assistance in this area.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

30. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (*Phase 1, 2, 3 or 4*); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

France is a Party to the OECD Anti-Bribery Convention. The Phase 4 evaluation process is currently underway. The “virtual onsite visit” took place at the beginning of May 2021 and the evaluation report is foreseen to be adopted in December 2021.

31. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

32. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: Germany

Date of completion:

A. A robust legislative framework

33. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response: Germany has a clear and explicit foreign bribery offence covering the required key elements. Changes to the foreign bribery offence by the Anti-Corruption Act of 2015 entered into force in November 2015 (after the last self-assessment). The foreign bribery offence is now included in section 335a CC that reads as follows:

(1) For the application of section 332 and 334, in each case also in conjunction with section 335, to an offence relating to a future judicial act or a future official act

1. the following persons shall be deemed equal to a judge: members of a foreign or international court;

2. the following persons shall be deemed equal to a public official:

a) officials of a foreign state and persons entrusted with performing public functions for a foreign state;

b) officials of an international organisation and persons entrusted with performing functions for an international organisation;

c) soldiers of a foreign state and soldiers entrusted with performing functions for an international organisation;

[...]

In addition, nationality jurisdiction for foreign bribery was included in section 5 no. 15a CC. Furthermore, the new section 335a CC was included as a predicate offence for the money laundering offence (section 261 (1) no. 2 a CC).

As consequence, article 2 section 1, 2 (1) and section 4 of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions (*IntBestG*) that previously regulated the offence of (active) bribery of foreign public officials was repealed. The offence of bribery of foreign members of parliament in connection with international business transactions continues to be regulated in Article 2 sections 2 and 3 Act on Combating International Bribery in addition to section 108e CC.

Section 334(1) CC remains unchanged from Germany's last self-assessment in 2014 except for the addition of "European Public Officials" (please see [https://www.bmiv.de/SharedDocs/Downloads/EN/G20/Country%20Self%20Assessments%20on%20Implementation%20and%20Enforcement%20of%20G20%20Commitments%20on%20Foreign%20Bribery/Germany.pdf? blob=publicationFile&v=1](https://www.bmiv.de/SharedDocs/Downloads/EN/G20/Country%20Self%20Assessments%20on%20Implementation%20and%20Enforcement%20of%20G20%20Commitments%20on%20Foreign%20Bribery/Germany.pdf?blob=publicationFile&v=1)).

It should be noted that under the new legislation, passive bribery by foreign public officials is also criminalized and can be prosecuted provided Germany has jurisdiction over the offences.

Concerning the liability of legal persons for corruption including foreign briber, reference is made to question 2 below.

Note 2: For questions 2 through 5, countries without a foreign bribery offence should include updates on plans to address the following issues through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

34. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response: Regarding the applicable legal framework of the Administrative Offences Act (*Ordnungswidrigkeitengesetz – OWiG*), no changes have been made since our last self-assessment. Please see: <https://www.bmiv.de/SharedDocs/Downloads/EN/G20/Country%20Self%20Assessments%20on%20Implementation%20and%20Enforcement%20of%20G20%20Commitments%20on%20Foreign%20Bribery/Germany.pdf? blob=publicationFile&v=1>

However, in June 2020, the German Government (as provided for in the Government's 2018 Coalition Agreement) adopted a draft bill on corporate liability which aims at introducing a new sanctioning system for legal persons. 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. A date for the first deliberation has not yet been set.

The bill provides for the creation of a new act for sanctioning of corporate offences ("Corporate Liability Act", "Act"). The Corporate Liability Act will replace existing provisions for corporate liability for criminal offences in the 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.

A set of appropriate sanctions for corporate offences will be introduced. Section 9 of the Corporate Liability Act introduces the possibility of imposing a monetary sanction 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. 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.

35. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

Numbers on cases pertaining to the foreign bribery sphere between February 1999 and December 2020:

	criminal cases of foreign bribery		administrative and civil cases of foreign bribery	
	natural persons	legal persons	natural persons	legal persons
have resulted in a final disposition	350	12	7	5
thereof resulted in a criminal conviction	94	12	7	5
thereof resulted in an acquittal	2	-	-	-
thereof otherwise sanctioned after termination of proceedings	254	-	-	-

B. Effective investigation and prosecution of foreign bribery

36. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

The foreign bribery offence is investigated primarily by the public prosecution offices allocated to each Land. Several Länder have dedicated public prosecution offices or special divisions within a public prosecutor's office which specialise in investigating corruption offences and/or economic crimes throughout the Land.

The police forces of the Länder, for their part, have established special directorates for economic offences and, in some instances, specifically for corruption offences. Case-based special investigation teams can also be set up. The Federal Criminal Police Office (Bundeskriminalamt - BKA) supports the Federal police and the police of the Länder (LKA) in the prevention and prosecution of criminal offences with "international, transnational or considerable importance", such as foreign bribery. The 16 Länder enjoy a high level of autonomy in the actual investigation and prosecution of foreign bribery (as for almost all criminal offences) with the corresponding challenges it entails for the Federal Government in monitoring the implementation of Federal legislation including the foreign bribery offence.

37. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.

Response:

Response:

(a)

Under the German legal system, MLA can be rendered either on a treaty or a non-treaty basis in accordance with the Act on International Mutual Assistance in Criminal Matters. If bilateral or multilateral agreements have been concluded between Germany and other states, these are the main authoritative texts governing mutual legal assistance. In those cases which have not been regulated at all or not exhaustively in the relevant international agreements, the correspondent national provisions in the Act on International Mutual Assistance in Criminal Matters of December 23, 1982 as amended (IRG) are applicable.

Notwithstanding the role of the German Federal Foreign Office (for diplomatic channels of communication) and of the judicial authorities of the individual federal states (*Länder*) for direct communication, the Federal Office of Justice is competent for mutual legal assistance in criminal matters. The Federal Office of Justice is a federal agency which is independent from the public prosecution offices and the courts of the *Länder*. The Federal Office of Justice exercises the executive powers of the Federal Government to decide upon requests on the basis of sec. 74 of the Act on International Mutual Assistance in Criminal Matters. The *Länder* authorities are usually competent for the underlying criminal proceedings and the execution of MLA requests.

(b)

Germany actively participates in the WGB Network of Law Enforcement Officials (WGB LEO) which meets twice a year and brings together officials from the 41 countries of the OECD Working Group on Bribery, as well as observers. A number of German prosecutors have participated in the LEO meetings and have had the opportunity for an informal exchange on the challenges of international cooperation in foreign bribery cases.

Furthermore Germany participates through the Federal Office of Justice in international law enforcement networks, such as the Camden Asset Recovery Interagency Network (CARIN) to facilitate law enforcement cooperation.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

38. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (*Phase 1, 2, 3 or 4*); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

Germany has reached phase 4 of the evaluation process.

The Follow-up report regarding the implementation of Phase 4 recommendations was published in April 2021: <https://www.oecd.org/daf/anti-bribery/germany-phase-4-follow-up-report.pdf>

39. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

40. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response: /

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: India

Date of completion: 7.6.2021

A. A robust legislative framework

41. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

India has signed UNCAC with reservations on Article 45 and 46. India is not a signatory of OECD Anti-Bribery Convention. Hence, all our answers are based with reference to UNCAC.

As of now, India, as of today, has not enacted an explicit law on foreign bribery satisfying all the provisions of UNCAC.

India stands committed "to demonstrate concrete efforts towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention".

Note 2: For questions 2 through 5, countries without a foreign bribery offence should include updates on plans to address the following issues through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

42. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence (inducing criminal offences of corruption), it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J of Criminal Procedure Code. There is no per-requisite of conviction.

Where the Court has made an order for attachment or forfeiture of any property under Sub-Section (1) of 105-C CrPC, and such property is suspected to be in a contracting State, the Court may issue a letter of request to a Court or an authority in the contracting State for execution of such order.

As per section 105-C of Criminal Procedure Code where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J CrPC.

Enforcement of foreign criminal confiscation orders to the extent permitted by law by giving effect a final order forfeiting or confiscating the proceeds or instruments of crime made by a court of the Requesting State or by submitting the request to a competent authority of the Requested Party for the purpose of seeking a forfeiture or confiscation order.

Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence (inducing criminal offences of corruption), it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J of Criminal Procedure Code. There is no per-requisite of conviction.

As per section 105-C of Criminal Procedure Code where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J CrPC.

The action in respect of such matters is presently regulated in accordance with bilateral/multilateral agreements and in absence thereof, on the basis of reciprocal arrangements on case to case basis, keeping in view the reservations filed by India while ratifying the UNCAC.

Instances:

i) TREATY BETWEEN THE REPUBLIC OF INDIA AND AUSTRALIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

ARTICLE 20(3) The Requested State shall, to the extent permitted by its law, give effect a final order forfeiting or confiscating the proceeds or instruments of crime made by a court of the Requesting State.

ii) AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE KINGDOM OF BAHRAIN ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Article 12(2)

A request may be made for assistance in securing the forfeiture or confiscation of proceeds or instruments of crime. Such assistance shall be given in accordance with the law of the Requested State by whatever means are appropriate. This assistance may include giving effect to an order made by a court or other competent authority in the Requesting State or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested State.

iii) TREATY BETWEEN THE REPUBLIC OF INDIA AND THE RUSSIAN FEDERATION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Article 12(2)

A request may be made for assistance in securing the forfeiture or confiscation of proceeds of crime, including funds for purposes of terrorism. Such assistance shall be given in accordance with the law of the Requested Party by whatever means appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting Party or submitting the request to a competent authority of the Requested Party for the purpose of seeking a forfeiture or confiscation order in the Requested Party.

iv) TREATY BETWEEN THE REPUBLIC OF INDIA AND THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Article 15(5)

The Requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds or instruments of crime made by the Requesting State or take other appropriate action to secure the proceeds or instruments of crime following a request by the Requesting State.

43. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Such data is not maintained. However, since such offences involve the aspect of dual criminality, notwithstanding absence of domestic law, the other Member States can provide the necessary statistics relating to pendency of such matters, which would also enable India to identify further requirements and inadequacies to enable putting in place an effective foreign bribery law to provide for criminal consequences including imposition of fine on commercial organisations for offences of foreign bribery.

B. Effective investigation and prosecution of foreign bribery

44. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Refer to answers in Question 2 above.

45. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.

There is no legal impediment to international cooperation and spontaneous disclosure of relevant information on corruption or proceeds of corruption to law enforcement agencies in foreign territories.

Information on corruption and proceeds of corruption are regularly shared spontaneously with foreign jurisdictions when it is considered that such disclosure may assist a foreign jurisdiction to investigate a corruption case or take action on proceeds of corruption.

Both formal and informal channels are used for such spontaneous sharing with foreign jurisdictions in consonance with Articles 46(4) and 56 of UNCAC.

A. Informal sharing is done through INTERPOL channels to National Central Bureaus of respective countries.

B. Through formal channels of Letter Rogatory or MLA request assistance is rendered. Assistance requests on the basis of UNCAC and UNTOC are also respected.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

46. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (Phase 1, 2, 3 or 4); where relevant, please provide links to the latest evaluation report published by the WGB.

India is not a signatory to the OECD Anti-Bribery Convention.

47. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;

- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

48. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

India is already a signatory to UNCAC and implementing its provisions is the first priority. It would be premature to commit to joining the OECD WGB without first implementing its provisions. India actively participates in the G 20 ACWG forum and related joint meetings. In view of India's commitment in UNCAC, G 20 anti-corruption fora and upcoming Presidency in 2023, India is deeply assessing its legal framework and examining implementation of UNCAC at the highest level.

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: Indonesia

Date of completion: May 24th, 2021.

A. A robust legislative framework

49. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

Indonesia does not have a legal framework on foreign bribery offences. However, criminalization of foreign bribery is one of Indonesia's priorities, with consideration that it is also one of our commitments under the G20 Leaders' Commitment and the UNCAC. In accordance, Indonesia has focused on developing the legal framework that stipulates the criminalization of foreign bribery.

The Corruption Eradication Commission of Indonesia (KPK), for the last couple of years has been actively drafting a revised version of anti-corruption law which to includes several gaps identified from the UNCAC review from the 1st cycle and G20 High Level Principles, among others: criminalization of foreign bribery, illicit enrichment, corruption in the private sector and trading in influence. The process includes the advocacy and sharing of best practices from experts from

academia, law enforcement agencies, CSOs and international organizations. The draft of the law along with its academic paper was submitted to the Minister of Law and Human Rights of Indonesia in late 2019. The published work on this can be downloaded here: <https://perpustakaan.kpk.go.id/index.php?p=fstream-pdf&fid=3461&bid=9924>.

The KPK has also sent an official letter to the President of the Republic of Indonesia to follow up the recommendations drawn out from both cycles of UNCAC implementation review, this includes to criminalize foreign bribery. This letter has been followed up by a series of coordination meetings between the Commission, the Coordinating Ministry for Political, Legal, and Security Affairs of the Republic of Indonesia and other ministries and agencies.

The KPK has several task forces with focus to implement Indonesian global commitments from UNCAC and G20 in domestic level, including to disseminate a better understanding of foreign bribery offences to other law enforcement agencies and the public, by holding webinar series with panellists from UNODC and the OECD.

We are unable to provide a timeline for the entry into force of draft legislation, under consideration that the commitment to revise Indonesian anti-corruption law belongs to both Indonesian government and parliament.

Attachment: Anti-corruption law and its academic paper developed by the KPK (in Indonesian language).

*Note 2: For questions 2 through 5, **countries without a foreign bribery offence should include updates on plans to address the following issues** through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.*

50. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

(N/A)

51. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

(N/A)

B. Effective investigation and prosecution of foreign bribery

52. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

(N/A)

53. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.

Response:

(N/A)

C. [Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention](#)

54. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (*Phase 1, 2, 3 or 4*); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

(N/A)

55. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

56. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

We are planning to attend the joint session between the G20 ACWG and WGB in June 2021. Upon receiving invitation from the OECD, we are pleased to also attend the OECD WGB meeting in 2021 and engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence.

In 2022, under the plan to hold the G20 presidency, Indonesia considers to request to join the OECD Working Group on Bribery. This will be a strong signal to the world of Indonesia's seriousness to develop a legal framework on foreign bribery offences. Indonesia would further work with the OECD to organise the 5th joint ACWG-WGB meeting in 2022. Under our presidency in 2022, Indonesia will encourage the G20 to continue making progress on the criminalisation of foreign bribery, the G20 could further exchange experience on mechanisms such as deferred prosecution agreement and non-trial resolutions, based on the soon-to-be updated OECD Anti-Bribery Recommendation.

We would also work closely with the OECD on the criminalisation of foreign bribery in Indonesia.

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: Italy

Date of completion:

A. A robust legislative framework

1. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response: YES, Italy has adopted already since 2000 a foreign bribery offense which covers all the key elements of the internationally agreed definition under the UN and OECD standards and which covers natural and legal persons. The provision has been repeatedly amended in order to align it to the international obligations. In its present version the provision stands as follows:

Article 322-bis Criminal Code

«Embezzlement, concussion, undue inducement to give or promise an advantage, bribery and incitement to bribery of the members of international Courts, members of bodies of the European Communities or members of international parliamentary assemblies or international organizations and officials of the European Communities and foreign States.

The provisions set forth in articles 314, 316, from 317 to 320 and 322, third and fourth paragraphs, shall also apply:

1) to the members of the Commission of the European Communities, of the European Parliament, of the Court of Justice and of the Court of Auditors of the European Communities; 2) to contracted officials and agents in accordance to either Staff Regulations applying to officials of the European Communities or to the provisions applying to agents of the European Communities; 3) to any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions corresponding to those performed by the officials or agents of the European Communities;

4) to members and servants of bodies created on the basis of the Treaties establishing European Communities; 5) to those who, within other Member States of the European Union, carry out functions or activities corresponding to those performed by public officials or persons in charge of a public service; 5 bis) to judges, prosecutor, deputy prosecutors, officials and agents of the International Criminal Court, to any person seconded by the States party to the Treaty establishing the International Criminal Court who carries out functions corresponding to those performed by the officials or agents of the International Criminal Court, to members and servants of bodies created on the Treaty establishing the International Criminal Court; 5 ter) to any person who, within international public organizations, carries out functions or activities corresponding to those performed by public officials or persons in charge of a public service; 5 quater) to members of international parliamentary assemblies or of international or supranational organizations and judges and officials of international courts; 5 quinquies) to any person who, within States other than Member States of the European Union, carries out functions corresponding to those performed by public officials or persons in charge of a public service, if the fact harms financial interests of the European Union.

The provisions set forth in articles 319 quater, second paragraph, 321 and 322, first and second paragraphs, shall also apply whereas the money or other benefits are given, offered or promised: 1) to persons who are referred to in the first paragraph of this article; 2) to persons carrying out functions or activities corresponding to those performed by public officials and persons in charge of a public service in other foreign States or within public international organisations.

Persons indicated in the first paragraph are assimilated to public officials, whereas they carry out equivalent functions, and to persons in charge of a public service in all the other cases».

*Note 2: For questions 2 through 5, **countries without a foreign bribery offence should include updates on plans to address the following issues** through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.*

2. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

Since the 1980s Italy has adopted an increasingly resolute policy of combating serious forms of crime, including foreign bribery, through patrimonial measures and, in particular, confiscation measures.

Such a policy has been pursued first in the area of organized crime (mafia type organizations) and later extended to other areas of criminal law, especially economic and corruption crimes.

For natural persons, the specific measure of confiscation provided for the proceeds and price of corruption offences (including foreign bribery) the relevant provision is article 322 ter CC

Article 322-ter Criminal Code: Confiscation

«In case of conviction, or of application of punishment upon request of the parties pursuant to article 444 of the Code of Criminal Procedure, for any of the offences as per articles 314 to 320, even though they were committed by the persons referred to in article 322 bis, first paragraph, confiscation of the goods representing the price or the proceeds thereof shall always be ordered, unless the said goods belong to a person who has not committed the offence; if said confiscation is not possible, the confiscation of the goods which the offender has at his disposal shall be ordered for a value corresponding to such price.

In case of conviction or of application of punishment pursuant to article 444 of the Code of Criminal Procedure, as regards the offence provided for in article 321, even though it was committed in relation to art.322 bis, second paragraph, confiscation of the goods representing the proceeds thereof shall always be ordered, unless the said goods belong to a person who has not committed the offence; if said confiscation is not possible, the confiscation of the goods which the offender has at his disposal shall be ordered for a value corresponding to that of the said proceeds and, at all event, for a value which is not inferior to that of money or other assets given or promised to the public official or to the person in charge of a public service or to other persons referred to in art.322-bis, second paragraph.

In the cases provided for in paragraphs 1 and 2 the judge shall also determine, with the conviction, the sums of money or indicate the goods which shall be confiscated since they represent the price or proceeds of the offence or since they have a value corresponding to that of such proceeds or price»

The Italian legal system also provides for confiscation measures that are not based on a criminal conviction. These measures are regulated by Legislative Decree 6 September 2011, n. 159 (so called Anti-Mafia code) and they are known as misure di prevenzione patrimoniali (confisca di prevenzione). In a nutshell, the confiscation may be ordered irrespective of a judgement of conviction for a specific offence against persons who are suspected of being involved in serious criminal offences (indicated by the law) and whose assets, directly or indirectly owned, are not proportionate to their lawful economic activities or income, unless they give a reasonable explanation as to the legitimate source of the assets. The confiscation is based on serious indications that the assets targeted derive from criminal activities even if such assets are not directly linked to a specific offence. Among the crimes for which the confisca di prevenzione may be applied L. 161/2017 has introduced the offence of participation in a criminal group aimed at committing corruption offences (including foreign bribery) (article 4, letter i bis, Legislative Decree 6 September 2011).

It is worth noting that article 240 bis CC, as introduced by Legislative Decree 1 March 2018, n. 21, provides for a further special form of confiscation (so called extended confiscation), applicable in case of conviction for a list of offences including domestic and foreign bribery, which is aimed at depriving the offender of assets of which he/she is not able to prove the legitimate source.

According to article 240 bis CC in case of conviction and imposition of the sanction upon request of the parties (patteggiamento) for criminal offence provided for under articles 314, 316, 316 bis, 316 ter, 317, 318, 319, 319 quater, 320, 322, 322 bis, 325, 416 CC, the judge shall always order the confiscation of money and assets owned directly or indirectly by the offender that are not proportionate to his/her lawful income or economic activities and with respect of which the offender cannot justify the legitimate source. If it is not possible to confiscate such assets, the judge may order the confiscation of money and other assets legally acquired of equivalent value to the assets acquired illegally.

In cases falling under article 240 bis CC the confiscation does not affect assets directly linked to a specific offence (profits or price deriving from a specific crime) but assets owned by the offender and that it is reasonable to believe that have been obtained from criminal activities.

From the provision mentioned above it is clear that the policy pursued by the Italian legislator is to counter crimes and especially financial and corruption crimes through patrimonial measures.

For legal persons the relevant provision is article 19 Legislative Decree n. 231 of 2001

Article 19 Confiscation

«If convicted, the entity will always be subject to confiscation of the price or profit from the crime, excluding the part that could be returned to injured parties. This is without prejudice to any rights acquired by third parties in good faith. If it is not possible to enforce confiscation pursuant to paragraph 1, then sums of money, goods or other assets of value equivalent to the price or of profit of the crime may be confiscated».

3. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

16 is the total number of imposed or agreed sanctions on natural persons, plus 7 cases of foreign bribery-related accounting misconduct and money laundering

7 is the total number of imposed or agreed sanctions on legal persons, plus 2 cases of foreign bribery-related accounting misconduct and money laundering

9 is the total number of acquittals to date for natural persons

2 is the total number of acquittals to date for legal persons

84 is the total number of investigations on foreign bribery cases to date having led to one or more proceedings against natural or legal persons

19 is the total number of investigations to date not yet having led to any proceedings

17 is the total number of discontinued investigations to date without sanctions

B. Effective investigation and prosecution of foreign bribery

4. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

On the law enforcement side, Italy has different police forces, each with specialized responsibilities. For the offence of foreign bribery, the most important forces are the Guardia di Finanza, the Carabinieri and the Polizia di Stato (State Police). The Guardia di Finanza is a highly trained police service specialised in financial based crime; its Members are also specifically trained as tax auditors.

On the prosecutorial side all corruption offences, including international bribery, are prosecuted ex officio by Italian public prosecutors, under the general principle of mandatory prosecution ("principle of legality", established by article 112 of the Italian Constitution). Special units, consisting of prosecutors specialised in investigating offences of corruption, financial crimes and other offences against the public administration as well as coordinating mechanisms to optimize investigation tools and relevant protocols, are widespread in all PPOs of a large/medium size.

Italy has been repeatedly commended for the high level of awareness of the foreign bribery offence and the proactive approach to the prosecution of such offense demonstrated by its prosecutors and LEOs.

Italy also participates, with other 21 Member States of the European Union, in the European Public Prosecutor's Office (EPPO) enhanced cooperation. EPPO is a supranational specialised PPO competent for investigating, prosecuting and bringing to judgment the perpetrators of criminal offences affecting the financial interests of the Union, including corruption and foreign bribery offenses related to EU frauds. 15 European Delegated Prosecutors (EDPs) nominated by Italy have recently been appointed by the College of the EPPO upon a proposal by the European Chief Prosecutor; 7 additional Italian EDPs should be appointed in the next future.

5. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.**
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.**

Response:

Italy is a Party to all main cooperation instruments adopted at international level at the European Union, Council of Europe and United Nations level, in particular the 1959 Mutual Legal Assistance and the 1957 Extradition Conventions of the Council of Europe with their additional Protocols together with the 2003 UNCAC and the 2000 UNTOC UN Conventions and the 1997 OECD Anti Bribery Convention. Recent changes in the Criminal Procedural Code establish the principle of primacy judicial cooperation matters (first and foremost extradition and mutual legal assistance) are covered, in the relations with EU member States, by the European Union instruments and their implementing internal acts, whereas in the relations with States other than the EU Member States, by international conventions (multilateral and bilateral) to which Italy is a party and by the rules of general international law. Only where the rules of European law or the rules of international treaties are lacking or do not provide otherwise will the domestic laws of the Italian code of criminal procedure apply.

With respect to measures for facilitating the execution of MLA requests in cases of foreign bribery, it is worth emphasizing that, based on treaties and domestic rules, the Italian authorities do not require particular evidentiary thresholds to afford assistance. By way of example, to provide bank documents or information on bank accounts opened in Italy, the Italian authorities do not require that there should be serious clues of guilt or a probable cause, because it is enough for the requesting authority to indicate the relevance of the requested documents for the purposes of an ongoing investigation. Even for the treaty requirements contemplated by multilateral or bilateral treaties to which Italy is a Party, such requirements can normally be applied very easily and do not make it difficult to cooperate. As to case management systems, starting from June 2015 the Ministry of Justice has implemented an interoperating electronic filing system based both on outgoing and incoming requests exchanged with the authorities of States other than Member States of the European Union. MLA requests and follow-up requests (requests for further information, correspondence, material produced as a result of the execution of a letter of request) are entered into the system. The system easily enables the identification of a single MLA procedure and the follow-up of its progress. In the same period the “WATSON” system has also been implemented by the Ministry of Justice, which allows for the processing of the data entered into the electronic filing system for purposes of statistics.

Informal assistance is in particular encouraged through the “liaison magistrates” posted in and by Italy as well as its membership in the European Judicial Network (EJN) in Criminal matters and, by its intermediary, in all interconnected network of judicial cooperation (IberRed, EuroMed, CNCP, etc.), which are of particular relevance for prosecution of foreign bribery which quite always needs sending rogatory commissions abroad also towards very far Regions.

C. [Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention](#)

6. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (Phase 1, 2, 3 or 4); where relevant, please provide links to the latest evaluation report published by the WGB.

Response: Italy is actually undergoing Phase 4 evaluation procedure; the Report should be adopted at the plenary session of the Working Group on Bribery in December 2021.

The Phase 3 Report (adopted in December 2011) can be downloaded at the following link:

<https://www.oecd.org/daf/anti-bribery/anti-briberyconvention/Italyphase3reportEN.pdf>

7. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

8. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

N.a.

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: Japan

Date of completion: 2021/06/04

A. A robust legislative framework

57. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

Japan fulfils its obligations under the above Articles of the Conventions with Article 21 Paragraph 2 Item 7 (for natural persons) and Article 22 Paragraph 1 Item 3 (for legal persons) of the Unfair Competition Prevention Act, which stipulate the penal provisions with respect to violations of Article 18, Paragraph 1, of that Act.

Unfair Competition Prevention Act

Article 18 (Prohibition against the Provision of Wrongful Gains to Foreign Public Officials)

(1) No person may give, offer or promise any money or other benefit to a foreign public official, etc. in order to have them act or refrain from acting in relation to the performance of official duties, or in order to have the foreign public officials, etc., use their position to influence another foreign public official, etc. to act or refrain from acting in relation to the performance of official duties, so that the person in question can make any wrongful gain in business with regard to international commercial transactions.

(2) The term "foreign public official, etc." as used in the preceding paragraph means any of the following persons:

- (i) any person that engages in public service for a national or local foreign government;
- (ii) any person that engages in the business affairs of an entity established under foreign special laws to carry out specific business affairs in the public interest;
- (iii) any person that engages in the business affairs of an undertaking in which one or more of the national or local governments of foreign states directly owns a number of voting shares or an amount of capital subscription that exceeds 50 percent of that undertaking's total issued voting shares or total amount of capital subscription, or in which the majority of the officers (meaning directors, auditors, council members, inspectors, liquidators, and other persons engaged in management of the business) are appointed or designated by one or more of the national or local foreign governments, and to which special rights and interests are granted by the national or local government of the foreign states for performance of its business; or a person specified by Cabinet Order as their equivalent person;
- (iv) any person that engages in public services for an international organization (meaning an international organization which is formed by governments or international intergovernmental organizations); or
- (v) any person that engages in the business affairs that are under the authority of the national or local government of a foreign state or an international organization and that are delegated by any of them.

Article 21 (Penal Provisions for natural persons)

(1) (omitted)

(2) A person that falls under any of the following items is subject to imprisonment for not more than five years, a fine of not more than five million yen, or both:

(i)-(vi) (omitted)

(vii) a person that violates any of the provisions of Article 16, 17, or 18, paragraph (1).

(3)-(7) (omitted)

(8) The offence prescribed in paragraph (2), item (vii) (limited to the part under Article 18, paragraph (1)) is governed by Article 3 of the Penal Code (Act No. 45 of 1907).

(9) The provisions of paragraphs (1) through (4) do not preclude the application of penal provisions under the Penal Code or any other legislation.

(10)-(12) (omitted)

Article 22(Penal Provisions for legal persons)

(1) If the representative of a corporation, or the agent, employee, or other worker of a corporation or of any person has committed a violation set forth in any of the provisions of the following items with regard to the business of the corporation or the person, in addition to the offender being

subject to punishment, the corporation is to be subject to the fine prescribed in the relevant items, and the person is to be subject to the fine prescribed in the relevant Article:

(i)-(ii) (omitted)

(iii) paragraph (2) of the preceding Article: a fine not more than three hundred million yen.

(2)-(3) (omitted)

Penal Code

Article 3 (Crimes Committed by Japanese Nationals outside Japan)

This Code shall apply to any Japanese national who commits one of the following crimes outside the territory of Japan:

(i) – (xvi) (omitted)

Note 2: For questions 2 through 5, countries without a foreign bribery offence should include updates on plans to address the following issues through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

58. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

Article 13 of AOCL (the Act on Punishment of Organized Crimes and Control of Crime Proceeds) allows a variety of confiscations, such as confiscations of crime proceeds and property derived from crime proceeds. Under the AOCL, the “crime proceeds” includes “any property produced by, obtained through, or obtained in reward for a criminal act” (Article 2 (2) (i)) for the offence of foreign bribery. In addition, the “crime proceeds” includes any property given by a criminal act for the offence of foreign bribery (Article 2 (2) (iii) (b)). Finally, crime proceeds related to an offence of money laundering for which the foreign bribery is the predicate offense can be confiscated pursuant to Article 13 of AOCL. These measures are available for both natural and legal persons.

The statutory penalties are as follows:

For natural persons, imprisonment with work for not more than five years, a fine of not more than five million yen, or both (Article 21 (2) (vii) of the Unfair Competition Prevention Act).

For legal persons, a fine of not more than three hundred million yen (Article 22 (1) (iii) of the Unfair Competition Prevention Act).

Article 21 (Penal Provisions for natural persons)

(1) (omitted)

(2) A person that falls under any of the following items is subject to imprisonment for not more than five years, a fine of not more than five million yen, or both:

(i)-(vi) (omitted)

(vii) a person that violates any of the provisions of Article 16, 17, or 18, paragraph (1).

(3)-(12) (omitted)

Article 22(Penal Provisions for legal persons)

(1) If the representative of a corporation, or the agent, employee, or other worker of a corporation or of any person has committed a violation set forth in any of the provisions of the following items with regard to the business of the corporation or the person, in addition to the offender being subject to punishment, the corporation is to be subject to the fine prescribed in the relevant items, and the person is to be subject to the fine prescribed in the relevant Article:

(i)-(ii) (omitted)

(iii) paragraph (2) of the preceding Article: a fine not more than three hundred million yen.

(2)-(3) (omitted)

59. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

In 2020, we have three convictions for foreign bribery, and no acquittal. 3 natural persons have been convicted.

B. [Effective investigation and prosecution of foreign bribery](#)

60. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

In Japan, foreign bribery is being prosecuted under the article 18 (1) of unfair competition prevention act, and it is understood that the police are the primary investigative authority and prosecutors are the secondary and supplementary investigative authorities. However, in many cases on corruption including foreign bribery the prosecutors usually play the role of primary investigative authority and achieved good results.

Prosecutors and police officers in charge of foreign bribery regularly discuss in person and share information regarding foreign bribery cases. Since they also have much experience in joint investigation, their cooperative relationship is robust and smooth.

Public prosecutor is the governmental agency competent to exercise prosecutorial authority, and each public prosecutor is able to exercise his/her own authority. Public prosecutor investigates and prosecutes foreign bribery cases or any other cases based on the law and evidence without being influenced by external factors, regardless of the subject of investigation.

61. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.

Response:

a. Japan concluded the UNTOC and the UNCAC in July 2017. Thereby we are now able to contact directly with the Central Authorities of other States Parties without going through the diplomatic channel on MLA matters with regard to foreign bribery cases to which any of these Conventions are applicable. Japan has also concluded MLA treaties with many of the primary trade partners.

When a public prosecutor makes an MLA request for foreign bribery case, Japanese Central Authority consults with the Central Authority of the requested country. Moreover, in important or complicated cases, the prosecutor in charge of the case would visit the competent authority of the requested country to have a face-to-face meeting for detailed coordination. These are the examples of how we make efforts to obtain prompt and appropriate reply from the requested country.

Ministry of Justice properly manages each individual both incoming and outgoing cases. So that the prompt and effective execution of these requests could be achieved.

b. Informal assistance is done through our foreign diplomatic establishments to facilitate international cooperation in relation to foreign bribery.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

62. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (Phase 1, 2, 3 or 4); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

Japan completed its Phase Four evaluation in July 2019 with its document available on the following link: <https://www.oecd.org/daf/anti-bribery/japan-oecdanti-briberyconvention.htm>

63. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

64. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: Mexico

Date of completion: 24 May 2021

A. A robust legislative framework

65. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

Mexico establishes the foreign bribery offence in the article 222 bis of its Federal Criminal Code, as follows:

"Chapter XI Bribing to foreign public officials

Article 222bis.- The penalties provided in the previous article shall be imposed on those who, for the purpose of obtaining or retaining undue advantages, for themselves or for another person in the development or conduct of international commercial transactions, offer, promise or give, for themselves or through an intermediary person, money, or any other gift, either in the form of goods or services:

- I. To a foreign public servant, for his or her benefit or that of a third party, so that said public servant manages or refrains from managing the processing or resolution of matters related to the functions inherent to his / her employment, position or commission;
- II. To a foreign public servant, for his or her benefit or that of a third party, for said public servant so that he manages the processing or resolution of any matter that is outside the scope of the functions inherent to his / her employment, position or commission, or
- III. To any person, so that she/he goes before a foreign public servant and requests or proposes to carry out the processing or resolution of any matter related to the functions inherent to the employment, position or commission of the latter.

For the purpose of this article, a foreign public servant is understood to mean any person who performs an employment, position or commission in the legislative, executive or judicial branch of a public autonomous body in any order or level of government of a foreign State, being designated or elected; any person in the exercise of a function for an authority, agency or public enterprise or state participation of a foreign country; and any official or agent of an international public body or organization.

When any of these crimes contained in this article is committed, in the cases included in article 11 of this Code, the judge will impose a fine of up to one thousand days' worth, and may order his/her suspension or dissolution, taking into consideration the degree of knowledge by the administration bodies, in respect to the bribery in the international transaction and the damage obtained by the moral person."

Said prevision complies with paragraph 1 of the article 16 of the Convention.

The Federal Criminal Code is available in Spanish in the following link:

http://www.diputados.gob.mx/LeyesBiblio/pdf/9_010621.pdf

*Note 2: For questions 2 through 5, **countries without a foreign bribery offence should include updates on plans to address the following issues** through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.*

66. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

According to article 11 bis of the Federal Criminal Code, related to article 422 of the National Code of Criminal Procedures, the legal consequences available in a criminal procedure for a legal person responsible of committing foreign bribery are:

- I. Financial penalty or fine
- II. Forfeiture of instruments, objects or proceeds of crime
- III. Publication of the sentence
- IV. Dissolution

V. Any others expressly determined by criminal laws in accordance with the principles established in this article

These sanctions would be autonomous from those applicable to natural persons, which according to articles 222 and 222 Bis of the Federal Criminal Code are:

- When the amount or value of the gift, the goods or the promise does not exceed the equivalent of five hundred times the daily value of the Unit of Measurement and Update at the time of committing the offense, or is not valuable, will be imposed from three months to two years in prison and from thirty to one hundred days penalty fee.
- When the amount or value of the gift, the goods, promise or benefit exceeds five hundred times the daily value of the Unit of Measurement and Update at the time of committing the crime, it will be imposed from two to fourteen years in prison and a fine from one hundred to one hundred and fifty days.
- In no case will money or gifts delivered be returned to those responsible for the crime of bribery, they will be applied for the benefit of the State.

67. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

The Prosecutor General's Office of the Republic of Mexico (FGR) has no register of prosecuted cases of foreign bribery.

B. [Effective investigation and prosecution of foreign bribery](#)

68. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

The FGR has two administrative units in charge of investigating foreign bribery:

- Specialized Prosecutor's Office in Matters to Combat Corruption
- Specialized Unit for the Attention of Crimes committed Abroad

These units conduct foreign bribery investigations having as legal framework the Federal Criminal Code, the National Code of Criminal Procedures and the National Law of Non-Conviction Based Forfeiture (for the recovery of assets).

69. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.

Response:

In line with the Title X of the Federal Criminal Code, foreign bribery is considered as a crime of corruption. In that context, the Central Authority for mutual legal assistance (MLA) has adopted specific criteria for the handling of MLA requests (both active and passive) in general and their response.

According to said criteria, the MLA requests related to corruption offenses is considered as "Urgent matters or of high complexity", which is the highest level of priority that can be given to a request.

The procedures for the handling of MLA requests are foreseen in the bilateral treaties regarding mutual legal assistance, relevant multilateral conventions ratified by Mexico and, in the absence of any of these instruments, in the National Code of Criminal Procedures (Title XI).

The National Code of Criminal Procedures is available in Spanish in the following link: http://www.diputados.gob.mx/LeyesBiblio/pdf/CNPP_190221.pdf

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

70. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (*Phase 1, 2, 3 or 4*); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

Mexico is Part of the OECD Anti-bribery Convention and to date, it has completed its Phase 4 Evaluation. The latest evaluation report adopted was the *Phase 4 Two-Year Follow-up Report* and it was published in the official site of the OECD in March of 2021.

Link to the report: <https://www.oecd.org/daf/anti-bribery/mexico-phase-4-follow-up-report.pdf>

71. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

72. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

N/A

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: Russian Federation

Date of completion: 25 May 2021

A. A robust legislative framework

1. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

Responsibility for giving a bribe to a foreign official or an official of a public international organisation directly or through an intermediary is provided for in Article 291 "Bribe-giving" of the Criminal Code of the Russian Federation.

The definition of a "foreign official" is contained in Note 2 to Article 290 of the Criminal Code of the Russian Federation. According to it, a foreign official means any appointed or elected person holding any position in a legislative, executive, administrative or judicial authority of a foreign state, and any person performing any public function for a foreign state, in particular for a public agency or public enterprise; an official of a public international organisation means an international civil servant or any person who is authorised by such an organisation to act on behalf of it.

In addition, it is noteworthy mentioning that 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.

According to this legal provision, unlawful transfer, offer or promise on behalf of or in the interests of a legal entity or in the interests of a legal entity associated with it to a public official, a person exercising managerial functions in a commercial or other organisation, a foreign official or an official of a public international organisation of money, securities or other property, unlawful rendering thereto of services of a pecuniary nature or granting of property rights for taking by the official, the person performing managerial functions in a commercial or other organisation, the foreign official or the official of a public international organisation an action (inaction) associated with his/her official position in the interests of the legal entity or in the interests of a legal entity associated with it, shall incur an administrative fine on legal entities.

*Note 2: For questions 2 through 5, **countries without a foreign bribery offence should include updates on plans to address the following issues** through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.*

2. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

In accordance with Article 290 "Bribe-Taking", Part 1 of the Criminal Code of the Russian Federation, bribe-taking by an official, a foreign official or an official of a public international organisation directly or through an intermediary in the form of money, securities, other property or in the form of unlawful rendering thereto of services of property nature, or granting of other property rights (including when a bribe is given to another individual or legal entity at the official's direction) for actions (inaction) in favor of a bribe-giver or the persons he/she presents if such actions (inaction) are within the official powers of the official, or if he/she by virtue of his/her official position may contribute to such actions (inaction), as well as for overall patronage or connivance in the service, shall be punishable with a fine in the amount of up to one million rubles, or in the amount of salary or other income of the convicted person for a period of up to two years, or in the amount from ten to fifty times the amount of the bribe with forfeiture of the right to hold certain positions or engage in certain activities for up to three years, or by correctional labor for a term of one to two years with forfeiture of the right to hold certain positions or engage in certain activities for up to three years, or by compulsory labor for up to five years with forfeiture of the right to hold certain positions or engage in certain activities for up to three years, or by imprisonment for up to three years with a fine in the amount from ten to twenty times the amount of the bribe or without it.

Large-scale bribe-taking by an official, a foreign official or an official of a public international organisation (Article 290, Part 2 of the Criminal Code of the Russian Federation) shall be punishable with a fine in the amount from two hundred to one million five hundred thousand rubles, or in the amount of salary or other income of the convicted person for a period of six months to two years, or in the amount from thirty to sixty times the amount of the bribe with forfeiture of the right to hold certain positions or engage in certain activities for up to three years, or by imprisonment for up to six years with a fine in the amount of up to thirty times the amount of the bribe or without it and with forfeiture of the right to hold certain positions or engage in certain activities for up to three years or without it.

Bribe-taking by an official, a foreign official or an official of a public international organisation for unlawful actions (inaction) (Article 290, Part 3 of the Criminal Code of the Russian

Federation) shall be punishable with a fine in the amount from five hundred thousand to two million rubles, or in the amount of salary or other income of the convicted person for a period of six months to two years, or in the amount from forty to seventy times the amount of the bribe with forfeiture of the right to hold certain positions or engage in certain activities for up to five years, or by imprisonment of three to eight years with a fine in the amount of up to forty times the amount of the bribe or without it and with forfeiture of the right to hold certain positions or engage in certain activities for up to five years or without it.

The deeds stipulated in Parts One-Three of this Article and committed by a person holding a public post of the Russian Federation or a public post of a constituent entity of the Russian Federation as well as by the head of the local government (Article 290, Part 4 of the Criminal Code of the Russian Federation) shall be punishable with a fine in the amount from one to three million rubles, or in the amount of salary or other income of the convicted person for a period of one to three years, or in the amount from sixty to eighty times the amount of the bribe with forfeiture of the right to hold certain positions or engage in certain activities for up to seven years, or by imprisonment of five to ten years with a fine in the amount of up to fifty times the amount of the bribe or without it and with forfeiture of the right to hold certain positions or engage in certain activities for up to seven years or without it.

The deeds stipulated in Parts One, Three and Four of this Article (Article 290, Part 5 of the Criminal Code of the Russian Federation) if committed:

by a group of persons by prior conspiracy or by an organised group;

with extortion of a bribe;

on a large scale,

shall be punishable with a fine in the amount from two to four million rubles, or in the amount of salary or other income of the convicted person for a period of two to four years, or in the amount from seventy to ninety times the amount of the bribe with forfeiture of the right to hold certain positions or engage in certain activities for up to ten years, or by imprisonment of seven to twelve years with a fine in the amount of up to sixty times the amount of the bribe or without it and with forfeiture of the right to hold certain positions or engage in certain activities for up to ten years or without it.

The deeds stipulated in Parts One, Three, Four and paragraphs "a" and "b" of Part Five of this Article (Article 290, Part 6 of the Criminal Code of the Russian Federation) committed on a particularly large scale shall be punishable with a fine in the amount from three to five million rubles, or in the amount of salary or other income of the convicted person for a period of three to five years, or in the amount from eighty to one hundred times the amount of the bribe with forfeiture of the right to hold certain positions or engage in certain activities for up to fifteen years, or by imprisonment of eight to fifteen years with a fine in the amount of up to seventy times the amount of the bribe or without it and with forfeiture of the right to hold certain positions or engage in certain activities for up to fifteen years or without it.

In accordance with Article 291 "Bribe-Giving", Part 1 of the Criminal Code of the Russian Federation, bribe-giving to an official, a foreign official or an official of a public international organisation directly or through an intermediary (including when a bribe is given to another individual or legal entity at the official's direction) shall be punishable with a fine in the amount of up to five hundred thousand rubles, or in the amount of salary or other income of the convicted person for a period of up to one year, or in the amount from five to thirty times the amount of the bribe, or by correctional labor for a term of up to two years with forfeiture of the right to hold certain positions or engage in certain activities for up to three years or without it, or by compulsory labor for up to three years, or by imprisonment for up to two years with a fine in the amount from five to ten times the amount of the bribe or without it.

Large-scale bribe-giving to an official, a foreign official or an official of a public international organisation directly or through an intermediary (including when a bribe is given to another individual or legal entity at the official's direction) (Article 291, Part 2 of the Criminal Code of the

Russian Federation) shall be punishable with a fine in the amount of up to one million rubles, or in the amount of salary or other income of the convicted person for a period of up to two years, or in the amount from ten to forty times the amount of the bribe, or by correctional labor from one to two years with forfeiture of the right to hold certain positions or engage in certain activities from one to three years or without it, or by imprisonment for up to five years with a fine in the amount from five to fifteen times the amount of the bribe or without it.

Bribe-giving to an official, a foreign official or an official of a public international organisation directly or through an intermediary (including when a bribe is given to another individual or legal entity at the official's direction) for committing wittingly unlawful actions (inaction) (Article 291, Part 3 of the Criminal Code of the Russian Federation) shall be punishable with a fine in the amount of up to one million five hundred thousand rubles, or in the amount of salary or other income of the convicted person for a period of up to two years, or in the amount from thirty to sixty times the amount of the bribe with forfeiture of the right to hold certain positions or engage in certain activities for up to five years or without it, or by imprisonment for up to eight years with a fine in the amount of up to thirty times the amount of the bribe or without it and with forfeiture of the right to hold certain positions or engage in certain activities for up to five years or without it.

The deeds stipulated in Parts One-Three of this Article (Article 291, Part 4 of the Criminal Code of the Russian Federation) if committed:

- a) by a group of persons by prior conspiracy or by an organised group;
- b) on a large scale,

shall be punishable with a fine in the amount from one to three million rubles, or in the amount of salary or other income of the convicted person for a period from one to three years, or in the amount from sixty to eighty times the amount of the bribe with forfeiture of the right to hold certain positions or engage in certain activities for up to seven years or without it, or by imprisonment from seven to twelve years with a fine in the amount of up to sixty times or without it and with forfeiture of the right to hold certain positions or engage in certain activities for up to seven years or without it.

The deeds stipulated in Parts One-Four of this Article (Article 291, Part 5 of the Criminal Code of the Russian Federation) if committed on an especially large scale: shall be punishable with a fine in the amount from two to four million rubles, or in the amount of salary or other income of the convicted person for a period from two to four years, or in the amount from seventy to ninety times the amount of the bribe with forfeiture of the right to hold certain positions or engage in certain activities for up to ten years or without it, or by imprisonment from eight to fifteen years with a fine in the amount of up to seventy times or without it and with forfeiture of the right to hold certain positions or engage in certain activities for up to ten years or without it.

3. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

There has been one case of foreign bribery which concluded in November 2019 with a fine of RUB 1,000,000 (roughly USD 14,000) imposed on a legal person under article 19.28 of the Code of Administrative Offences of the Russian Federation.

B. Effective investigation and prosecution of foreign bribery

4. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

The Russian Federation has established a system of state bodies that develop and implement measures to prevent corruption. The main directions of the state anti-corruption policy are determined by the President of the Russian Federation.

The institutional system of the Russian Federation to prevent and combat corruption includes various institutions and bodies entrusted with anti-corruption functions, namely the Presidential Council for Countering Corruption, the prosecutorial authorities, the Investigative Committee, the Ministry of Justice, the Ministry of Internal Affairs, the Federal Security Service, the Federal Financial Monitoring Service, as well as human resources units to prevent corruption and other offences, established in each federal state body pursuant to the Order of the President of the Russian Federation No. 1065 of 21 September 2009.

In order to implement the recommendations of the OECD Working Group concerning the provision of resources specifically for the detection, investigation and criminal prosecution of bribery of foreign officials, designation of specialised units responsible for handling this category of cases, effective cooperation between prosecutors and investigators, a series of organisational and administrative documents were prepared, which define the authority and responsibilities for combating bribery of foreign officials and which were signed by the Prosecutor General of the Russian Federation.

5. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.

Response:

In accordance with its mandate, the Prosecutor General's Office of the Russian Federation cooperates directly with competent authorities of foreign States and international organisations. Cooperation with foreign authorities is carried out both bilaterally and multilaterally in the framework of international initiatives.

Under the relevant international treaties and Russian domestic legislation, the central bodies are: the Ministry of Justice, with respect to legal assistance in the framework of court proceedings; and the Prosecutor General's Office, as regards all other cases of legal assistance. The Prosecutor General's Office is also the competent authority for extradition.

Cooperation with foreign partners in tracing, seizure, confiscation and recovery of proceeds of crime is one of the main lines of work of the Russian competent authorities. The law provides for the possibility to cooperate even in the absence of international treaties, on the basis of reciprocity.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

6. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (Phase 1, 2, 3 or 4); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

Russia is in monitoring phase 2. Based on the positive outcome of the discussion of Russia's additional follow-up to phase 2 report in December 2019, the WGB found that it is ready to conduct phase 3 evaluation of the Russian Federation, provided that Russia implements a high priority recommendation on expanding the scope of the offence of foreign bribery, to include the "promising" and "offering" of a bribe as offences and eliminating the defences of effective regret and economic extortion for foreign bribery, which requires the amendment of relevant provisions of criminal legislation and that on criminal procedure.

Link to the report:

<https://www.oecd.org/daf/anti-bribery/RussianFederationPhase2ReportEN.pdf>

7. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

8. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

The Russian Federation is party to the OECD Anti-Bribery Convention.

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: Saudi Arabia

Date of completion: May 2021

A. A robust legislative framework

73. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

Saudi Arabia is currently working to criminalize all forms and manifestations of bribery, in line with the United Nations Convention against Corruption (UNCAC). In this regard, the current Saudi legislation does not expressly criminalize the act of paying a bribe to a foreign public official, however, the Saud Anti-Bribery Law issued by the Royal Decree No. (M/36) dated 29/06/1992 was amended in (2018) to criminalize the act of promising, offering or giving a bribe to any person who works at public international institutions and organization in relation to the conduct of international business.

The amendments to Article (8) of the previous Law provided the following, "[...] in the application of the provision of 'anti-bribery law', the following persons shall be considered public

officials: 7- Staff of international institutions and organizations in respect to the conduct of international business."

Note 2: For questions 2 through 5, countries without a foreign bribery offence should include updates on plans to address the following issues through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

74. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

Saudi Arabia has made several amendments to its Anti-Bribery Law to criminalize

- (i) Any person who offers or promises of a bribe that is rejected by the public official, to be read as follows "Any person who offers or promises of a bribe that is rejected shall be punished by imprisonment for a term not exceeding ten years and a fine not exceeding one million Riyals, or by either penalty;
- (ii) Any person who promises, offers, or gives a gift to any person who works at civil society or cooperative associations, civil society organizations, companies or private institutions, or professional bodies in any capacity, whether for his own interest or for others, as a consideration for performing any of his office duties or not performing any of his office duties, constituting a breach of his office duties, shall be considered a briber, and shall be punished by imprisonment for a term not exceeding five years or a fine not exceeding five hundred thousand Riyals, or by both penalties;
- (iii) Any person who works at civil society or cooperative associations, civil society organizations, companies or private institutions, or professional bodies in any capacity, who solicits, accepts or receives for himself or for others a gift or payment of any sort or a promise thereof, as a consideration for performing any of his office duties or not performing any of his office duties, constituting a breach of his office duties, shall be considered a bribe, and shall be punished by imprisonment for a term not exceeding five years or a fine not exceeding five hundred thousand Riyals, or by both penalties.

Furthermore, there are no specific provisions in the anti-bribery law that govern the criminal liability of legal entities when its representatives or subsidiaries commit crimes abroad. However, Article (19) of the Anti-bribery Law provided that, "The competent authority responsible for adjudging bribery offences shall impose a fine not exceeding ten times the value of the bribe or ban entering into procurement or project execution contracts with ministries, public corporate entities, or either penalty against any national or foreign private company or establishment where the manager or any of the employees thereof is convicted of any of the offences provided for in this Law if proven that the offence is committed in its favor. [...]"

In addition, Article (20) of the previous law provided the following, "If any national or foreign private company or establishment is banned from entering into any contracts in accordance with Article 19 of this Law, the government agency contracting therewith shall submit to the Council of Ministers its opinion on ongoing contract with such company or establishment, even if the government agency is not conducted to the offence subject of the judgment."

Thus, the Sanctions applicable to legal entities include fines, confiscation, and deprivation of participation in government contracts.

75. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

As of now, the Kingdom of Saudi Arabia criminalizes the act of promising, offering or giving a bribe to any person who works at public international organization, in relation to the conduct of international business, only. Therefore, the number of convictions/criminal cases cannot be provided at this stage.

B. Effective investigation and prosecution of foreign bribery

76. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

Besides the amendments that were made to the Saudi Anti-bribery Law, a Royal Order No: A\277, dated 12/12/2019 was issued approving the organizational and structural arrangements related to combating financial and administrative corruption, which included the following:

- Incorporating the (Oversight and Investigation Board) and the (Administrative Investigations) to the (National Anti-Corruption Commission); and altering its name to the (Oversight and Anti-Corruption Authority).
- A Criminal Investigation and Prosecution Unit shall be established in the Oversight and Anti-Corruption Authority, which will be responsible for criminal investigations, and the prosecution of criminal cases related to financial and administrative corruption.
- The judgment issued by the competent court to convict any employee, or those of similar status, of a criminal offense related to financial and administrative corruption results in his/her dismissal from his/her post.
- If an irrelevant increase occurs in the wealth of the public employee and those of similar status after assuming the job that does not commensurate with his/her income or resources based on evidence from financial investigations proving that he/she had committed financial or administrative corruption crimes, then he/she shall prove that his/her wealth has been acquired legitimately, including the husband, wife, children, and relatives up to the first degree; If he/she is unable to prove so, the results of the financial investigations shall be referred to the Criminal Investigation and Prosecution Unit at Nazaha, to investigate the employee in question and take the necessary measures to file a

case against him/her to the competent court, requesting that he/she needs to be punished for his/her unlawful action, in accordance with the legal and statutory requirements; the proceedings shall include a request for the recovery or confiscation of funds related to the crime, if proven.

77. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.

Response:

Saudi Arabia established (The Standing Committee for Legal Assistance Requests), within the Ministry of Interior. The committee is responsible for mutual legal assistance requests to provide/obtain support from/to foreign countries.

In addition, Saudi Arabia worked closely with the UNODC, G20 members, and other International Organizations in establishing the Riyadh Initiative (GlobE) towards the Creation of a Global Operational Network of Anti-Corruption Law Enforcement Authorities, which aims to strengthen informal cooperation between countries in the fight against corruption.

C. [Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention](#)

78. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (*Phase 1, 2, 3 or 4*); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

79. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

80. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

In 2020, the Kingdom of Saudi Arabia has taken a first step towards joining the OECD Anti-Bribery Convention, by officially requesting to join the OECD Working Group on Bribery as an observer country. In early 2021, the kingdom officially became a participant where it designated the Oversight and Anti-Corruption Authority to be the contact point and attended WGB plenary meeting.

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: South Africa

Date of completion: 24 May 2021

A. A robust legislative framework

81. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response: Yes,

PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, 2004 (ACT NO. 12 OF 2004) (PRECCA):

Section 5 of the PRECCA expressly provides for offences in respect of corrupt activities relating to foreign public officials. This section provides as follows:

"(1) Any person who, directly or indirectly gives or agrees or offers to give any gratification to a foreign public official, whether for the benefit of that foreign public official or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner

(a) that amounts to the:

(i) illegal, dishonest, unauthorised, incomplete, or biased; or

(ii) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(b) that amounts to:

(i) the abuse of a position of authority;

(ii) a breach of trust; or

(iii) the violation of a legal duty or a set of rules;

(c) designed to achieve an unjustified result;

(d) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corrupt activities relating to foreign public officials.

(2) Without derogating from the generality of section 2(4), "to act" in subsection (1) includes:

(a) the using of such foreign public official's or such others person's position to influence any acts or decisions of the foreign state or public international organisation concerned; or

(b) obtaining or retaining a contract, business or an advantage in the conduct of business of that foreign state or public international organisation. "

Section 1 of the PRECCA contains the following definitions that are relevant to section 5 of the PRECCA:

Subparagraph (v) defines "foreign public official" to mean

- any person holding a legislative, administrative or judicial office of a foreign state; or
- any person performing public functions for a foreign state, including any person employed by a board, commission, corporation or other body or authority that performs a function on behalf of the foreign state; or
- an official or agent of a public international organization.

In terms of subparagraph (vi), "foreign state" means any country other than South Africa, and includes:

- any foreign territory;
- all levels and subdivisions of government of any such country or territory; or
- any agency of any such country or territory or of a political subdivision of any such country or territory.

In terms of subparagraph (iii), "business" means any business, trade, occupation, profession, calling, industry or undertaking of any kind, or any other activity carried on for gain or profit by any person within The RSA or elsewhere, and includes all property derived from or used in or for the purpose of carrying on such other activity, and all the rights and liabilities arising from such other activity.

Subparagraph (xxiii) defines "public international organisation" to mean

- an organization of which two or more countries are members; or
- an organization that is constituted by persons representing two or more countries;
- an organisation established by, or a group of organizations constituted by organisations of which two or more countries are members or organisations that are constituted by the representatives of two or more countries; or
- an organisation that is an organ of, or office within, an organisation described above;
- a commission, council or other body established by an organization or organ referred to above;
- or
- a committee or a subcommittee of a committee of an organisation referred to above; or

-- of an organ, council or body referred to above.

Foreign bribery is, therefore, included in the Act in terms of Section 5 of Prevention and Combating Corrupt Activities Act 12 of 2004 as offences in respect of corrupt activities relating to foreign public officials.

Section 5 of PRECCA applies to both natural and legal persons.

*Note 2: For questions 2 through 5, **countries without a foreign bribery offence should include updates on plans to address the following issues** through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.*

82. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

IN TERMS OF SECTION 26 OF THE PRECCA:

(1) Any person who is convicted of an offence referred to in-

(a) Part 1, 2, 3 or 4, or section 18 of Chapter 2 of PRECCA, is liable;

(i) in the case of a sentence to be imposed by a High Court, to a fine or to imprisonment up to a period of imprisonment for life;

(ii) in the case of a sentence to be imposed by a regional court, to a fine or to imprisonment for a period not exceeding 18 years;

(iii) in the case of a sentence to be imposed by a magistrate's court, to a fine 10 or to imprisonment for a period not exceeding 5 years.

Section 5 of PRECCA, relating to offences in respect of corrupt activities relating to foreign public officials, forms part of Part 2 of PRECCA, with cases relating thereto being tried in the High Court and the Regional Court. Sanctions in terms of paragraphs (i) and (ii), for the High Court and the Regional Court, are therefore applicable.

THE PREVENTION OF ORGANISED CRIME ACT, 1998 (Act No. 121 OF 1998) (POCA)

In terms of Chapters 5 and 6 of POCA, only the National Director of Public Prosecutions (**NDPP**) is allowed to initiate or institute asset forfeiture proceedings. However, POCA specifically allows for parties, either foreign or domestic, with an interest in the property to claim the property in the processes described hereunder.

Chapter 5 of POCA (Conviction based)

1. In terms of s 24 of the POCA, a High Court may, for purposes of issuing a confiscation order, enquire into any benefit a convicted person may have derived from an offence. Where such a convicted person dies or absconds before a confiscation order is made, the Court may, among others, make a confiscation order or authorise the realisation of the property. Further, s 24(4) of the POCA provides that the High Court shall not make such orders, unless it has afforded all

persons having any interest in the property, an opportunity to make presentations to it in connection with the making of such orders.

2. In terms of s 26 of the POCA, a High Court may on application by the NDPP make a restraint order in respect of realisable property. In terms of s 26(10) of the POCA, a person affected by such a restraint order may apply for the rescission of the order.
83. In terms of s 29 of the POCA, a High Court may make orders in respect of immovable property which is subject to a restraint order. In terms of s 29(6) of the POCA any person affected by such an order may at any time apply for the rescission of the order.
4. In terms of s 30 of the POCA, a High Court may, on the application of the NDPP, make an order in respect of the realisation of property which is under a confiscation order. In terms of s 30(3) and (4) of the POCA the Court shall not make such an order unless it has afforded all persons known to have an interest in the property concerned an opportunity to make representations in connection with the realisation of that property.

Chapter 6 of POCA (Non conviction based)

1. Section 48 of the POCA deals with applications for forfeiture orders. Section 48(1) provides that if a preservation of property order is in force the NDPP may apply to a High Court for an order forfeiting to the State all or any of the property that is subject to the preservation of property order. In terms of s 48(2) the NDPP must give 14 days' notice of such an application to every person who entered an appearance in terms of section 39(3).

Any person who entered such an appearance may appear at the application to oppose the making of the order or to apply for an order excluding his or her interest in that property from the operation of the order or varying the operation of the order in respect of that property and may adduce evidence at the hearing of the application (s 48(4)).

2. In terms of s 52(1) of the POCA, a High Court considering a forfeiture order, may on application make an order excluding certain interests of persons in property from the operation of a forfeiture order.

THE SUPERIOR COURTS ACT, 2013 (Act No. 10 OF 2013)

Section 21 of the Superior Courts Act, allows any party, both foreign and domestic, as a litigant, to initiate any action and/or application procedure in the South Africa Courts.

Furthermore, any such affected individual or company, with a vested and/or direct and substantial interest in the outcome of any dispute, may approach a South African Court to be joined as litigant or interested party to any dispute.

Note that in terms of section 173 of the 1996 Constitution, all South African High Courts have the inherent power to protect and regulate their own process, and to develop the common law, considering the interests of justice.

EXAMPLES

In Bisonbord Ltd. v K Braun Woodworking Machinery (Pty) Ltd. 1991 (1) SA 482 (AD); [1991] 1 All SA 201 (A), the then Appellate Division of the Supreme Court of South Africa had to decide on the question of the competence of a Court to hear and determine an action sounding in money instituted against a company solely on the grounds that it was incorporated in South Africa and has its registered office within the area of jurisdiction of such court.

In the Witwatersrand Local Division the appellant instituted an action for the payment of damages against two defendants. The first defendant in the action was the respondent in the appeal. Apart from pleading to the merits of the case the respondent filed a special plea in which it raised an objection to the jurisdiction of the then Witwatersrand Local Division of the High Court of South Africa to hear the action. The argument was that although its registered office is situated in Johannesburg the respondent carries on its business at Butterworth in the Republic of Transkei. The respondent's objection to the jurisdiction of the Court a quo was therefore based upon the fact that its sole place of business is in the Transkei.

The Appellate Division, at 499F, held that the nature of the inquiry into whether a Court has jurisdiction 'is a dual one: (1) is there a recognised ground of jurisdiction; and, if there is, (2) is the doctrine of effectiveness satisfied - has the Court power to give effect to the judgment sought? See Hugo v Wessels 1987 (3) SA 837 (A)'.

It was further held, at 488B, that: 'A judgment sounding in money may be put into effect anywhere. From this it follows (see Pollak *The South African Law of Jurisdiction* (1937) at 22) that in an action for the payment of money "it is a sufficient basis for jurisdiction that the State in whose court the action is brought has power over the Defendant".' ... 'In my view the legal position is correctly summarised thus by Forsyth *Private International Law* 2nd ed (1990) at 175-6: 'Provided that the Defendant is an incola of the court's area of jurisdiction, the court will be prepared to hear the case.... Accordingly, if the Defendant is either domiciled or resident in the area, this will be a sufficient jurisdictional connecting factor.'

In the recent unreported matter of Apleni v African Process Solutions (Pty) Ltd and Another (15211/17) [2018] ZAWCHC 160 (27 November 2018), the Court quoted Bisonboard – supra with approval and concluded, at paragraph 57, that: 'In my view, and after having regard to all the authorities cited, it is clear that the Court should follow a pragmatic approach in order to determine whether it would have jurisdiction over a matter when the delict was caused in a foreign country. The overwhelming wealth of authority seems to suggest that the court may deviate from the *lex loci delicti* rule in cases where there is common link between the parties, which link seems to be that the Plaintiff and Defendant have a common residence, domicile or nationality and some other link between them.'

84. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

- Number of natural persons charged: (1) One (The accused subsequently passed on during 2019)
- Number of pending investigations: (8) Eight
- Number of convictions: (0) Nil

B. Effective investigation and prosecution of foreign bribery

85. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

- **Multi-agency task team approach:**

The Anti-Corruption Task Team (ACTT) was established in 2010 through collaboration between the Directorate of Priority Crime Investigations (DPCI), the Special Investigations Unit (SIU) and the National Prosecuting Authority (NPA) represented by the Special Commercial Crimes Unit (SCCU) and the Asset Forfeiture Unit (AFU). The primary mandate of the ACTT was to successfully detect, investigate and prosecute cases of alleged corruption.

In 2014, Government reaffirmed its commitment to the fight against corruption and adopted a zero tolerance and “*whole of Government and societal approach*” to combatting corruption and ensuring a resilient anti-corruption framework. This culminated in the extension of the ACTT mandate and focus to include improving multi-agency and integrated operational approaches and inter-sectoral cooperation. The following institutions form part of the ACTT:

1. The Directorate for Priority Crime Investigation (DPCI), South African Police Service.

The establishment of the Directorate for Priority Crime Investigation (DPCI) in terms of section 17C of the South African Police Service Act 68 of 1995, as amended, was aimed at performing its functions as contained in section 17D of the Act, which is to prevent, combat and investigate national priority offences, selected offences not limited to offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 and any other offence or category referred to by the National Commissioner, subject to any policy guidelines by the Minister and approved by Parliament.

The Directorate for Priority Crime Investigation (DPCI) is responsible for the prevention, combating and investigation of national priority offences relating to serious corrupt activities and related offences within the public and private sectors.

National priority offences means organised crime, crime that requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof, as referred to in section 16(1) and 16(2) of the South African Police Service Act 68 of 1995.

NB: *The preamble of the Prevention and Combating of Corrupt Activities Act 12 of 2004 states that the Act was enacted “To provide for the strengthening of measures to prevent and combat corruption and corrupt activities”. It also states that “corruption is a transnational phenomenon that crosses national borders and affects all societies, economies and is equally destructive and reprehensible within both the public and private spheres of life, so that regional and international cooperation is essential to prevent and control corruption and related corrupt activities”.*

2. National Prosecuting Authority

The National Prosecuting Authority (NPA) has the mandate to institute and conduct criminal proceedings on behalf of the State. The NPA also hosts the Investigative Directorate which was established in 2019 to investigate unlawful activities relating to serious, high profile or complex corruption including but not limited to offences or criminal or unlawful activities arising from

identified commissions and inquiries. In particular, the unit investigates allegations of offences that impact the integrity of the state itself, the economy and/or the reputation and integrity of the country. The SCCU is another core unit in the NPA with the mandate to guide investigations and prosecute complex commercial crimes emanating from the South African Police Service (SAPS) Commercial Crime Branch and DPCI.

3. Special Investigating Unit

The Special Investigating Unit is an independent statutory body established in 1996 with the mandate to investigate serious malpractices related to state institutions, state assets and public money. It also aims to recover and prevent financial losses to the state caused by acts of corruption, fraud and maladministration. The SIU reports to parliament and the president and it assists government departments with systemic improvements that improve service delivery.

4. Financial Intelligence Centre

The Financial Intelligence Centre is South Africa's national centre for the receipt of financial data, analysis and dissemination of financial intelligence to the competent authorities. It was established in 2001 with the mandate to identify the proceeds of crime, combat money laundering and terror financing. In fulfilling its mandate, it can share information with law enforcement authorities, intelligence services, the South African Revenue Service, international counterparts and supervisory bodies.

Inter-Agency Working Group on Illicit Financial Flows (IAWG)

In 2018, South Africa established an Inter-Agency Working Group on Illicit Financial Flows (IAWG) known as the Fusion Centre, a collaborative and intelligence driven platform for addressing national priority crimes related to money laundering, terrorist financing and related activities. The Fusion Centre is a practical initiative that allows for **focused collaboration on high priority cases** on a multi-agency basis. Through this mechanism, there is **better coordination** of different agencies on one single case and improve South Africa's ability to **combat financial crime**. The Fusion Centre is led by the Financial Intelligence Centre. During the period of national disaster, the law enforcement agencies collaborated under the Fusion Centre to expedite investigation, prosecution, and recovery of assets.

Benefits of Fusion Centre model includes:

- ✓ Immediate access to variety of expertise to deal with cases, thus ensuring faster turnaround
- ✓ Immediate recovery of proceeds
- ✓ Practical sharing resources among different agencies
- ✓ Training and learning from each other.

Other anti-corruption institutions in South Africa are:

(i) Auditor-General of South Africa

The Auditor-General of South Africa (AGSA) is the supreme audit institution of South Africa. It is mandated by law to audit and report on public expenditure including its proper use and management. Its reports are submitted to parliament.

(ii) Public Protector South Africa

The Public Protector was established as the national ombudsman with a mandate to support and strengthen constitutional democracy. The Public Protector has the power to investigate, report on and remedy improper conduct in all state affairs. The Public Protector can make findings and propose remedial action or present its findings to parliament.

5. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.**
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.**

Response:

1. To coordinate the implementation of the WGB work, South Africa established **the OECD Inter-Departmental Task Team**, which operates within the ambit of Programme 3 of the Anti-Corruption Task Team and reports to the Anti-Corruption Task Team and the MPSA. All reports to be submitted to the OECD are cleared within these structures, before being submitted to Cabinet for approval.
2. The Teams relationships are guided by the following principles:-
 - **Collaboration:** The members of this Task Team will collaborate as team members, but also with other necessary stakeholders.
 - **Recognition of autonomy:** The legislative mandate of each role-player is acknowledged and will be honoured.
 - **Building cohesion and synergy between entities:** All members of this Task Team commit to create interdependencies, whilst also working together to achieve common objectives.
 - **Ensuring coordination of systems and information:** Information and knowledge management generated from different systems will be well coordinated.

While formal processes regarding MLA are followed, the member of the team who is most relevant to the case is engaged through the task team to fast-track investigation and administrative processes where relevant. The Central Authority is situated in the Department of Justice and Constitutional Development.

The Team consists of the following role players:

- National Prosecuting Authority (Dedicated Prosecutors)
- Directorate for Priority Crime Investigation (Dedicated investigators)

- Asset Forfeiture Unit (AFU)
- Department of Justice and Constitutional Development (DoJ&CD)
- Financial Intelligence Centre (FIC)
- South African Police Service (SAPS)
- South African Revenue Services (SARS)
- South African Reserve Bank (SARB)

SOUTH AFRICA HAVE CRIMINAL MATTERS TREATIES WITH DIFFERENT THE FOLLOWING COUNTRIES :

- BOTSWANA
- CANADA
- AUSTRALIA
- CHINA
- HONG KONG INDIAUNITED ARAB STATES
- ARGENTINIA REPUBLIC
- REPUBLIC OF KOREA
- IRELAND
- UNITED KINGDOM
- USA
- LESOTHO
- MALAWI
- NIGERIA
- IRAN
- ISRAEL
- MAURITIUS
- EGYPT
- ZIMBABWE
- NAMIBIA
- USA

b) informal cooperation is encouraged to facilitate international cooperation, through the following avenues:

- Police to police cooperation through Interpol;
- Prosecutor to prosecutor cooperation through the International Association of Prosecutors (IAP) and the Africa Prosecutors Association (APA);
- FIC to other FIU cooperation;
- Cooperation through contacts established through the network of the Organisation for Economic Cooperation and Development (OECD) Working Group of Bribery (WGB).

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

6. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (Phase 1, 2, 3 or 4); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

- South Africa acceded to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions on 19 June 2007, thus becoming the 37th country and first African country to accede to the Convention and to join the OECD Working Group on Bribery in International Business Transactions (WGB).
- South Africa has already undergone phase 1, 2, and 3 evaluation of the OECD Bribery in International Business Transactions. The evaluation reports are found in the link below:

<https://www.oecd.org/corruption/southafrica-oecdanti-briberyconvention.htm>

7. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

N/A

8. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

To coordinate the implementation of the WGB work, South Africa established an Intergovernmental structure, the OECD Inter-Departmental Task Team, which operates within the ambit of Programme 3 of the Anti-Corruption Task Team and reports to the Anti-Corruption Task Team and the MPSA.

All reports to be submitted to the OECD are cleared within these structures, before being submitted to Cabinet for approval.

The OECD Inter-Departmental Task Team consists of a core group, namely the DPSA, National Prosecuting Authority (NPA), Department of Justice and Constitutional Development (DOJ & CD), Financial Intelligence Centre (FIC) and the Directorate for Priority Crime Investigations (DPCI). Besides the core group, other role players also attend the intergovernmental meetings, namely: National Treasury (NT), Department of International Relations and Co-operation (DIRCO), Department of Trade and Industry (DTI), South African Revenue Service (SARS), the Auditor-General of South Africa (AGSA), the State Security Agency (SSA) and the National Intelligence Coordinating Committee (NICOC).

This Task Team addressed most of the concerns raised by the WGB in March 2014 regarding the Phase 3 Assessment, with only issues related to investigations and prosecutions remaining by June 2019. As this remaining recommendations are specific in nature, the committee is required to address the WGB recommendations regarding **investigations and prosecutions** – From 2019, investigations steadily improved, as acknowledged by WGB in 2019 and 2020 assessments. 2020, SA was urged to improve prosecutions. With a prosecution, SA will be able to demonstrate that our legislative environment is able to address foreign bribery.

Current Tasks:

- Assessment of Spain (March 2022) – Training already took place.
- NPA reached out to the Secretariat regarding non-trial-resolutions (Zoom meeting to follow)
- UN Special Session on Corruption (UNGASS) – 2 - 4 June, WGB to organise a side event (3rd) to showcase the WGB work. SA was requested to represent the continent.
- During the same event (4th), SA was requested to present on the fusion centre. “In our opinion, this experience deserves sharing as a good practise at a global level.” OECD

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: South of Korea

Date of completion:

A. A robust legislative framework

86. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

The Republic of Korea includes a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery in the 「Act on Combating Bribery of Foreign Public Officials in International Business Transactions」 ('FBPA'). Article 3 of the FBPA applies to natural persons and Article 4 of the FBPA applies to legal persons.

「Act on Combating Bribery of Foreign Public Officials in International Business Transactions」

Article 3

(1) Any person who has promised, given, or expressed his/her intent to give a bribe to a foreign public official in relation to any international business transaction with intent to obtain any improper advantage for such transaction shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding fifty million won. In such cases, if the pecuniary advantage obtained by such offense (or the bribe provided, if the amount of the pecuniary advantage is less than the bribe provided or cannot be calculated) exceeds ten million won, the offender shall be punished by imprisonment with labor for not more than five years or by a fine of two to five times the amount of the pecuniary advantage (or the bribe provided, if the amount of the pecuniary advantage is less than the bribe provided or cannot be calculated).

(2) The preceding paragraph shall apply to a person who, for the purpose of committing the crime specified in the preceding paragraph, delivers money or goods to a third party, or receives such delivery with the knowledge of its nature.

(3) Of cases under paragraph (1) or (2), any case falling under any of the following subparagraphs shall be excluded therefrom: 1. Where such payment is permitted or demanded pursuant to any applicable Act and subordinate statutes of the country to which a foreign public official belongs.

(4) Where any person who has committed an offense under paragraph (1) or (2) is punished by imprisonment with labor, a fine provided for in paragraph (1) or (2) shall be imposed concurrently.

Article 4

If the representative of a corporation, or an agent or employee of, or any other person employed, by a corporation commits an offense under Article 3 (1) in connection with the business affairs of the corporation, not only shall such offender be punished but also the corporation shall be punished by a fine not exceeding one billion won.

In such cases, if the pecuniary advantage obtained by such offense (or the bribe provided, if the amount of the pecuniary advantage is less than the bribe provided or cannot be calculated) exceeds 500 million won, the offender shall be punished by a fine of two to five times the amount of the pecuniary advantage (or the bribe provided, if the amount of the pecuniary advantage is less than the bribe provided or cannot be calculated). Provided, That this shall not apply where such corporation has not been negligent in giving due attention and supervision concerning the relevant duties to prevent such offence.

*Note 2: For questions 2 through 5, **countries without a foreign bribery offence should include updates on plans to address the following issues** through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.*

87. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

As mentioned in the previous answer, Korea punishes natural and legal persons for the offences of foreign bribery based on Article 3 and 4 of the FBPA. Also, Article 5 of the FBPA stipulates that any bribe given in the course of committing an offense and owned by the offender(including a

legal person subject to the punishment under Article 4) or knowingly acquired by any person other than the offender shall be confiscated.

「Act on Combating Bribery of Foreign Public Officials in International Business Transactions」

Article 3

(1) Any person who has promised, given, or expressed his/her intent to give a bribe to a foreign public official in relation to any international business transaction with intent to obtain any improper advantage for such transaction shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding fifty million won. In such cases, if the pecuniary advantage obtained by such offense (or the bribe provided, if the amount of the pecuniary advantage is less than the bribe provided or cannot be calculated) exceeds ten million won, the offender shall be punished by imprisonment with labor for not more than five years or by a fine of two to five times the amount of the pecuniary advantage (or the bribe provided, if the amount of the pecuniary advantage is less than the bribe provided or cannot be calculated).

(2) The preceding paragraph shall apply to a person who, for the purpose of committing the crime specified in the preceding paragraph, delivers money or goods to a third party, or receives such delivery with the knowledge of its nature.

(3) Of cases under paragraph (1) or (2), any case falling under any of the following subparagraphs shall be excluded therefrom: 1. Where such payment is permitted or demanded pursuant to any applicable Act and subordinate statutes of the country to which a foreign public official belongs.

(4) Where any person who has committed an offense under paragraph (1) or (2) is punished by imprisonment with labor, a fine provided for in paragraph (1) or (2) shall be imposed concurrently.

Article 4

If the representative of a corporation, or an agent or employee of, or any other person employed, by a corporation commits an offense under Article 3 (1) in connection with the business affairs of the corporation, not only shall such offender be punished but also the corporation shall be punished by a fine not exceeding one billion won.

In such cases, if the pecuniary advantage obtained by such offense (or the bribe provided, if the amount of the pecuniary advantage is less than the bribe provided or cannot be calculated) exceeds 500 million won, the offender shall be punished by a fine of two to five times the amount of the pecuniary advantage (or the bribe provided, if the amount of the pecuniary advantage is less than the bribe provided or cannot be calculated). Provided, That this shall not apply where such corporation has not been negligent in giving due attention and supervision concerning the relevant duties to prevent such offence.

Article 5

Any bribe given in the course of committing an offense and owned by the offender (including a legal person subject to the punishment under Article 4) or knowingly acquired by any person other than the offender shall be confiscated.

88. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil

procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

As of December 31st, 2020, the total number of criminal cases involving foreign bribery is 24. Among those cases, 25 natural persons have been found guilty and 5 natural persons were found not guilty. 9 legal persons have been found guilty and none were found not guilty.

B. Effective investigation and prosecution of foreign bribery

89. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

Korea uses various techniques such as bank account tracing, CCTV investigations, digital forensics, FIU cooperation, wire-tapping, investigation of the complainant, search and seizure, suspect interrogation, undercover operations, whistleblower statements, witness interviews, etc. to actively investigate possible foreign bribery cases.

Especially, based on the Recommendation given in Korea's OECD WGB Phase 4 Report, Korea amended the 「Protection of Communications Secrets Act」(PCSA) to allow wiretapping for foreign bribery investigations(Article 5(1)12 of the PCSA) on December 31, 2019.

Using the evidence gathered from various investigative techniques mentioned above, the Prosecutors' office vigorously indicts and responds to active criminal cases involving foreign bribery. Also, foreign bribery cases are classified as priority cases in each Prosecutors' Office as well.

In addition, model foreign bribery cases are shared in the internal network ("ePros") of the Supreme Prosecutors' Office (SPO) so that all investigators and prosecutors can build capacity to track, investigate and indict possible foreign bribery violations.

90. With respect to international cooperation,

a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.

b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.

Response:

a. The Ministry of Foreign Affairs (MOFA) receives MLA requests and transmits them to the MOJ which assesses whether the request meets the statutory or treaty requirements. If requirements are met, the MOJ sends the request to the SPO's International Co-operation Division which

forwards it to the relevant DPO or other agency (e.g. the NPA) for execution. Close co-operation and communication between authorities streamlines this process. Officers in MOJ's International Co-operation Team monitor requests through the case management system and liaise with the SPO through a secure, online messaging service to ensure prompt execution of requests. Discussions with the MOJ and SPO confirmed that co-operation and communication between the authorities is ongoing and constructive.

Typically, Korea executes MLA requests as soon as possible. In general, MLA requests are processed in the order in which they are received, but the MOJ and SPO are able to prioritize MLA requests where required (e.g. where requested by the requesting country or when necessary to meet the statute of limitations). Korea can apply a simplified process for MLA requests from certain countries (sending the request directly to MOJ and bypassing MOFA). Currently, 20 countries are able to use this system based on Korea's frequency of co-operation and mutual recognition.

b. Official MLAT requests are handled between the Central Authorities (Ministry of Justice is the Central Authority of Korea). Sometimes unofficial MLA requests are exchanged between police agencies through Interpol in urgent cases. However, evidence received through unofficial channels cannot be used as viable evidence in criminal trials.

「**Act on International Judicial Mutual Assistance in Criminal Matters**」

Article 38 (Cooperation with International Criminal Police Organization)

(1) Where the Minister of the Interior and Safety receives or makes any request for cooperation as to any investigation on a criminal case of a foreign country, from or to the international criminal police organization, he/she may take any of the following measures:

1. Exchange of any information and materials on any international crime;
2. Certification of the identity of any international crime, and the inquiry into any previous conviction;
3. Fact-finding and investigation on any international crime.

(2) If any request for cooperation, except as provided for in the subparagraphs of paragraph (1), is related to mutual assistance prescribed by this Act, it shall be governed by this Act.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

91. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (Phase 1, 2, 3 or 4); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

Currently, Phase 4 is complete.

<http://www.oecd.org/korea-oecdanti-briberyconvention.htm>

92. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

93. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: United Kingdom

Date of completion:

A. A robust legislative framework

94. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response: Yes. In the UK this is covered by Section 6 of the Bribery Act 2010, as detailed below. This offence only applies to natural persons.

The Bribery Act 2010 does have an offence specific to legal persons - for a company that fails to put sufficient procedures in place to prevent bribery or corruption from taking place at that company. This can include failing to prevent the bribery of a foreign public official.

The Bribery Act 2010 has extraterritorial reach – this means that the jurisdictional reach of all of its 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.

Section 6 Bribery Act 2010 - Bribery of foreign public officials (full text)

(1) A person (“P”) who bribes a foreign public official (“F”) is guilty of an offence if P’s intention is to influence F in F’s capacity as a foreign public official.

(2) P must also intend to obtain or retain—

- (a) business, or
- (b) an advantage in the conduct of business.

(3) P bribes F if, and only if—

- (a) directly or through a third party, P offers, promises or gives any financial or other advantage—
 - (i) to F, or
 - (ii) to another person at F’s request or with F’s assent or acquiescence, and
- (b) F is neither permitted nor required by the written law applicable to F to be influenced in F’s capacity as a foreign public official by the offer, promise or gift.

(4) References in this section to influencing F in F’s capacity as a foreign public official mean influencing F in the performance of F’s functions as such an official, which includes—

- (a) any omission to exercise those functions, and
- (b) any use of F’s position as such an official, even if not within F’s authority.

(5) “Foreign public official” means an individual who—

- (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory),
- (b) exercises a public function—
 - (i) for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or
 - (ii) for any public agency or public enterprise of that country or territory (or subdivision), or
- (c) is an official or agent of a public international organisation.

(6) “Public international organisation” means an organisation whose members are any of the following—

- (a) countries or territories,
- (b) governments of countries or territories,
- (c) other public international organisations,
- (d) a mixture of any of the above.

(7) For the purposes of subsection (3)(b), the written law applicable to F is—

- (a) where the performance of the functions of F which P intends to influence would be subject to the law of any part of the United Kingdom, the law of that part of the United Kingdom,
- (b) where paragraph (a) does not apply and F is an official or agent of a public international organisation, the applicable written rules of that organisation,

(c) where paragraphs (a) and (b) do not apply, the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in—

(i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or

(ii) any judicial decision which is so applicable and is evidenced in published written sources.

(8) For the purposes of this section, a trade or profession is a business.

If the offending is prior to July 2011 (when the Bribery Act 2010 came into force), offences of foreign bribery can be covered by the Prevention of Corruption Act 1906. Full legislative text is found here: [Prevention of Corruption Act 1906 \(legislation.gov.uk\)](http://legislation.gov.uk).

Note 2: For questions 2 through 5, countries without a foreign bribery offence should include updates on plans to address the following issues through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

95. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response: The relevant UK sanctions relating to bribery offences are outlined in the Bribery Act 2010 as follows.

S.11 Bribery Act 2010 Penalties (full text)

(1) An individual guilty of an offence under section 1, 2 or 6 is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or to both.

(2) Any other person guilty of an offence under section 1, 2 or 6 is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to a fine.

(3) A person guilty of an offence under section 7 is liable on conviction on indictment to a fine.

(4) The reference in subsection (1)(a) to 12 months is to be read—

(a) in its application to England and Wales in relation to an offence committed before the commencement of [F1paragraph 24(2) of Schedule 22 to the Sentencing Act 2020], and

(b) in its application to Northern Ireland, as a reference to 6 months.

Please note:

- S.1 Bribery Act 2010 is **Offences of bribing another person** applicable to natural persons only;
- S.2 Bribery Act 2010 is **Offences relating to being bribed** applicable to natural persons only;
- S.6 Bribery Act 2010 is **Bribery of foreign public officials** applicable to natural persons only
- S.7 Bribery Act 2010 is **Failure of commercial organisations to prevent bribery** applicable to legal persons only.

In respect of confiscation measures, the UK's Proceeds of Crime Act 2002 (POCA) covers both recovery of criminal assets following a conviction, and the powers to recover assets where there is no conviction. The full text of POCA can be found here: [Proceeds of Crime Act 2002 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2002/29)

The Criminal Finances Act 2017 builds on POCA and provides additional key powers to enable the UK to respond to money laundering, tax evasion, corruption, and the financing of terrorism. The full text of the legislation is found here: [Criminal Finances Act 2017 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2017/69) (Part 1 being relevant to Proceeds of Crime).

This legislation includes Account Freezing Orders and Unexplained Wealth Orders (UWOs). The latter is available where a person holds property of greater value than £50,000, and the Court is satisfied there are reasonable grounds to suspect that the known sources of lawful income would be insufficient for a person to obtain the property and either (a) the person is suspected/connected of involvement in serious crime or (b) the person is a "politically exposed person".

96. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response: To date the SFO has not prosecuted anyone under Section 6 of the Bribery Act 2010. However, as described in A1 above the Bribery Act has extraterritorial reach. Therefore we can and often use s.1 and s.2 of the Bribery Act 2010 in cases involving foreign bribery. Since the Bribery Act has come into force there have been 6 prosecutions against individuals by the SFO under s.1 of the Act. Of these 3 resulted in guilty pleas, 2 resulted in convictions after trial and there was one acquittal after trial.

The SFO may also use Deferred Prosecution Agreements (DPAs) as per Schedule 17 of the Crime and Courts Act 2013. (Full legislative text here: [Crime and Courts Act 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2013/22)). A DPA 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.

DPAs can be used for fraud, **bribery** and other economic crime. They apply to legal persons only. 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.

A company (legal persons) would only be invited to enter DPA negotiations if there was full cooperation with an investigations. The SFO in its investigation must establish the extent of the criminality prior to entering into a DPA.

If DPA negotiations go ahead, the company will agree 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.

To date the SFO has entered into nine DPAs, **six of which have covered criminality of foreign bribery and corruption**. These are court approved non-trial resolutions. Within each of these six DPAs, the company has accepted that it failed to prevent bribery and corruption taking place (s.7

Bribery Act 2010). The nine DPAs have in total required the companies involved in the DPA to pay penalties and costs worth over £1.5 billion (GBP).

B. Effective investigation and prosecution of foreign bribery

97. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response: The SFO and the NCA's International Corruption Unit (ICU) share primary responsibility for investigating allegations of International Bribery and Corruption, although the SFO unlike the NCA, does not investigate cases linked to Scotland. The SFO also uniquely prosecutes the cases it investigates.

In England and Wales the CPS prosecutes international corruption investigated by the NCA and other investigative bodies that are not referred to the SFO. In Northern Ireland such cases would be prosecuted by the Public Prosecution Service of Northern Ireland.

The SFO investigative and prosecutorial function is targeted at the more serious cases of, international bribery and corruption, and any associated fraud or money laundering conducted by or involving corporate entities with a link to the England Wales and Northern Ireland. Their operational remit, which is detailed online (www.sfo.gov.uk), is deliberately quite narrow in order to ensure they are able to fulfil this role effectively.

Unlike the rest of the UK, Scotland does not have a separate specialist agency dealing specifically with the investigation/prosecution of bribery. Allegations involving Scotland are usually referred to the NCA and Police Scotland to investigate in the first instance and then subsequently prosecuted by the *Crown Office and Procurator Fiscal Service*.

The NCA ICU's investigate most other serious and complex cases of bribery and grand corruption involving UK based companies or nationals, which have an international element, but do not meet the SFO's remit.

Other more low-level bribery offences would normally be investigated by the local police force relevant to where the offences took place. Within England and Wales, the City of London Police have the national lead for corruption and often lead on many of the more serious corruption cases that are not taken by the SFO or the NCA.

It is important to note that all allegations of foreign bribery that are reported to UK authorities are usually considered collectively by UK law enforcement agencies in the Foreign Bribery Clearing House, which is hosted by the National Economic Crime Centre, and then allocated to the most appropriate agency for consideration of further investigation. The SFO, NCA, Police Scotland and other law enforcement partners work closely together to de-conflict referrals and coordinate investigations to ensure the right agency is investigating.

98. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.**
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.**

Response:

The UKCA is the central authority for receiving incoming and transmitting outgoing Mutual Legal Assistance (MLA) requests for bribery relating to England, Wales and Northern Ireland. For enquiries in Scotland, the Crown Office is the relevant central authority for receiving and transmitting MLA requests.

The UKCA receives approximately 8500 requests a year for MLA. The UKCA is also the central authority for extradition in England, Wales and Northern Ireland.

All MLA requests received and transmitted by the UKCA are first assessed by a lawyer and if accepted, the request may be referred to an executing authority for execution. The UKCA has no investigative function and so relies on an investigative body to obtain evidence and freeze and confiscate assets.

All requests are logged on a caseworking database which allows for the effective tracking of cases and case management.

Requesting states are encouraged, particularly in complex or high profile cases to discuss their case and requirements with the UKCA before submitting the request.

The UKCA also publishes guidelines for obtaining MLA which can be found here [Mutual legal assistance - GOV.UK \(www.gov.uk\)](http://www.gov.uk) (please note they are due to be updated in 2021).

Requesting authorities are also encouraged to use informal assistance where possible under domestic law to assist in both investigations pre submission of any formal mutual legal assistance request and also to better inform any subsequent MLA request. In grand corruption cases, the [International Anti-Corruption Coordination Centre](#) (IACCC) can assist in providing intelligence pre mutual legal assistance.

The SFO is an executing authority for Mutual Legal Assistance (MLA) requests in matters of serious or complex fraud, bribery or corruption (including foreign bribery) that are referred to them by the UK Central Authority. A dedicated International Assistance Team is responsible for this work. Incoming requests are reviewed and allocated to a lawyer and an investigator on receipt and the requesting authority notified of our involvement, given the case reference and our contact details. Each MLA request is logged as a case onto the SFO's systems and recorded on a case progression spreadsheet which the head of the team uses to monitor case progression, meeting with the lead investigator to review progress every two or three weeks.

The head of the division in which the International Assistance Team sits, who is a senior Civil Servant (SCS), meets with an SCS2 (a more senior civil servant – often the Chief operating Officer or Chief Capability Officer) every other month and uses the case progression spreadsheet to provide assurance that cases are progressing at pace. Cases are progressed in parallel with each

other and any prioritisation that is required will be determined by the circumstances and needs of the individual investigation or prosecution from which the MLA request arises, eg proximity of trial, limitation issues, or cases where there the retention period for banking material is near to the limit.

SFO case teams are responsible for drafting and issuing MLA requests on their own foreign bribery cases in accordance with their investigation strategy. Administrative assistance is provided by the International Assistance Team arranging translation and transmission for case teams and the team will provide further support and expertise in for example advising on the requirements of the requested state, identifying helpful overseas contacts and identifying appropriate recipients for SFO's MLA requests. Receiving authorities are contacted by the team within a few weeks of issuing the request if no acknowledgment has been received by the recipient authority and will provide assistance in chasing requests when this is needed by the case teams.

The SFO's internal guidance highlights the importance of informal contacts with overseas law enforcement and the fact that MLA is not the default position whenever assistance can be provided without it. The SFO Intelligence Division operates as the initial point of contact for handling most such contact between the SFO and other justice partners worldwide and is fully plugged into wider cross-government networks handling intelligence on bribery and corruption matters.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

99. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (*Phase 1, 2, 3 or 4*); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

The UK undertook its [Phase 4 review](#) in March 2017 and had its [two year follow up report](#) in March 2019.

The final update is due to be released in June 2021.

100. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

101. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response: N/A

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: United States of America

Date of completion: 05/18/2021

Introductory Note from the United States: The United States remains a strong advocate for greater global action against foreign bribery. We commend all G20 countries for committing to take concrete action by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation and we look forward to learning what actions have been taken. The United States is happy to provide the following update on implementation and enforcement of G20 commitments on foreign bribery to support these efforts within the G20 and its Anticorruption Working Group. However, this update should not be interpreted as replacing or eliminating the need for the monitoring and evaluations conducted through the OECD Working Group on Bribery. The Working Group on Bribery evaluations remain the most thorough and comprehensive evaluation of implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. As a policy body, the G20 Anticorruption Working Group should continue to promote stronger action against bribery, including foreign bribery, and encourage all members to accede to the Anti-Bribery Convention and participate in the Working Group on Bribery and its technical evaluation process.

A. A robust legislative framework

102. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*

- *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
- *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

The U.S. Foreign Corrupt Practices Act (FCPA), contained in Title 15, United States Code, sections 78m, 78dd-1 et seq., and 78ff, establishes as a criminal offence the conduct described in Article 16(1) of the UNCAC and Article 1 of the OECD Anti-Bribery Convention. Additionally, U.S. federal law enforcement authorities may, depending upon the facts and circumstances of a given case, use other federal criminal laws to punish the conduct described in UNCAC Article 16(1). Those laws include, but are not limited to, Title 18, United States Code, sections 371 (conspiracy to commit an offence against the United States), 1341 (mail fraud), 1343 (wire fraud), 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), and 1956 (money laundering), among others.

As the principal statute prohibiting bribery of a foreign public official or an official of a public international organization, the FCPA contains both anti-bribery and accounting provisions. The anti-bribery provisions prohibit U.S. persons and businesses (domestic concerns), U.S. and foreign public companies listed on stock exchanges in the United States or which are required to file periodic reports with the Securities and Exchange Commission (issuers), and certain foreign persons and businesses acting while in the territory of the United States (territorial jurisdiction) from making corrupt payments to foreign officials to obtain or retain business. The accounting provisions require issuers to make and keep accurate books and records and to devise and maintain an adequate system of internal accounting controls. The accounting provisions also prohibit individuals and businesses from knowingly falsifying books and records or knowingly circumventing or failing to implement a system of internal controls.

General principles of corporate liability apply to the 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, the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) look to principles of parent-subsidary 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 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.

Note 2: For questions 2 through 5, countries without a foreign bribery offence should include updates on plans to address the following issues through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

103. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response: Civil monetary penalties allowed for under the FCPA vary depending on which provision of law is violated, the date of the violation, and whether the violation was made by a natural person or legal person. A full list of the civil monetary penalties administered by the SEC can be found here: <https://www.sec.gov/enforce/civil-penalties-inflation-adjustments.htm>. Currently, for violations of the anti-bribery provisions of the FCPA, corporations and other business entities are subject to a civil penalty of up to \$21,663 per violation. Individuals, including officers, directors, stockholders, and agents of companies, are similarly subject to a civil penalty of up to \$21,663 per violation, which may not be paid by their employer or principal. For violations of the accounting provisions of the FCPA, the SEC may obtain a civil penalty not to exceed the greater of (a) the gross amount of the pecuniary gain to the defendant as a result of the violations or (b) a specified dollar limitation. The specified dollar limitations are based on the nature of the violation and potential risk to investors, ranging from \$9,753 to \$195,047 for an individual and \$97,523 to \$975,230 for a company. The SEC may obtain civil penalties both in actions filed in federal court and in administrative proceedings. The FCPA provides a range of criminal sanctions for foreign bribery as well as the books-and-records and internal controls violations. For each violation of the anti-bribery provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to \$2 million. Individuals, including officers, directors, stockholders, and agents of companies, are subject to a fine of up to \$250,000 and imprisonment for up to five years. For each violation of the accounting provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to \$25 million. Individuals are subject to a fine of up to \$5 million and imprisonment for up to 20 years. Under the Alternative Fines Act, 18 U.S.C. § 3571(d), courts may impose significantly higher fines than those provided by the FCPA—up to twice the benefit that the defendant obtained by making the corrupt payment, as long as the facts supporting the increased fines are included in the charging document and either proved to the jury beyond a reasonable doubt or admitted by the defendant. Fines imposed on individuals may not be paid by their employer or principal. In addition, the DOJ can seek criminal or non-criminal forfeiture to recover assets acquired from the wrongdoing.

When the court is sentencing a convicted defendant, it will refer to the non-binding U.S. Sentencing Guidelines (U.S.S.G.). The U.S.S.G. seek to standardize sentences for given offences while still allowing the court to individualize the sentence to reflect the unique mitigating and aggravating factors of the case. The U.S.S.G. also guide how the DOJ calculates sanctions in non-trial resolutions.

The DOJ typically includes an explanation of how the U.S.S.G. factors are applied to determine the appropriate fine range.

Under U.S. law, the authorities have an incentive to quantify the illicit proceeds derived from foreign bribery. In the criminal context, the DOJ can seek an alternative fine equal to twice the value obtained from foreign bribery as well as forfeiture of bribe proceeds and property involved in laundering the bribes, depending on the charges brought. The DOJ can also seek civil forfeiture independently of a criminal prosecution, while 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.

For more detailed information on sanctions and confiscation measures, please see the U.S. Phase 4 Monitoring Report under the OECD Working Group on Bribery.
<https://www.oecd.org/corruption/anti-bribery/United-States-Phase-4-Report-ENG.pdf>

104. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

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 is 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.

B. Effective investigation and prosecution of foreign bribery

105. Please describe the institutional framework in place in your country’s law enforcement authorities to investigate and prosecute foreign bribery.

Response:

DOJ and SEC share enforcement authority for the FCPA's anti-bribery and accounting provisions. They also work with many other federal agencies and law enforcement partners to investigate and prosecute FCPA violations, reduce bribery demands through good governance programs and other measures, and promote a fair playing field for U.S. companies doing business abroad.

Department of Justice

DOJ has criminal FCPA enforcement authority over "issuers" (i.e., public companies) and their officers, directors, employees, agents, or stockholders acting on the issuer's behalf. DOJ also has both criminal and civil enforcement responsibility for the FCPA's anti-bribery provisions over "domestic concerns"—which include (a) U.S. citizens, nationals, and residents and (b) U.S. businesses and their officers, directors, employees, agents, or stockholders acting on the domestic concern's behalf—and certain foreign persons and businesses that act in furtherance of an FCPA violation while in the territory of the United States. Within DOJ, the Fraud Section of the Criminal Division has primary responsibility for all FCPA matters. The FCPA Unit within the Fraud Section handles all FCPA matters for DOJ, and regularly works jointly with U.S. Attorneys' Offices around the country.

DOJ maintains a website dedicated to the FCPA and its enforcement at <http://www.justice.gov/criminal/fraud/fcpa/>. The website provides translations of the FCPA in numerous languages, relevant legislative history, and selected documents from FCPA-related prosecutions and resolutions since 1977, including charging documents, plea agreements, deferred prosecution agreements, non-prosecution agreements, press releases, and other relevant pleadings and court decisions. The website also provides copies of opinions issued in response to requests by companies and individuals under DOJ's FCPA opinion procedure.

Securities and Exchange Commission

The SEC is responsible for civil enforcement of the FCPA over issuers and their officers, directors, employees, agents, or stockholders acting on the issuer's behalf. SEC's Division of Enforcement has responsibility for investigating and prosecuting FCPA violations. In 2010, SEC's Enforcement Division created a specialized FCPA Unit, with attorneys in Washington, D.C. and in regional offices around the country, to focus specifically on FCPA enforcement. The Unit investigates potential FCPA violations; facilitates coordination with DOJ's FCPA program and with other federal and international law enforcement partners; uses its expert knowledge of the law to promote consistent enforcement of the FCPA; analyzes tips, complaints, and referrals regarding allegations of foreign bribery; and conducts public outreach to raise awareness of anti-corruption efforts and good corporate governance programs.

The SEC maintains a website dedicated to the FCPA and its enforcement at <https://www.sec.gov/spotlight/foreign-corrupt-practices-act.shtml>. The website provides summaries of SEC enforcement actions against FCPA violators, an investor bulletin detailing the FCPA's prohibitions, speeches by SEC staff on the FCPA, and links to the FCPA itself and other FCPA related resources.

Law Enforcement Partners

DOJ's FCPA Unit regularly works with the Federal Bureau of Investigation (FBI) to investigate potential FCPA violations. The FBI's International Corruption Unit has primary responsibility for international corruption and fraud investigations and coordinates the FBI's national FCPA enforcement program. The FBI also has dedicated FCPA squads of FBI special agents that are responsible for investigating many, and providing support for all, of the FBI's FCPA investigations. In addition, Homeland Security Investigations, the Internal Revenue Service – Criminal Investigations, and the Postal Inspection Service regularly investigate potential FCPA violations. A number of other agencies are also involved in the fight against international corruption, including the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, and the Department of Treasury's Office of Foreign Assets Control and Financial Crimes Enforcement Network.

More information can be found in the Resource Guide to the Foreign Corrupt Practices Act

Information on U.S. foreign bribery and related laws and practices can also be found in the U.S. monitoring and evaluation reports conducted through the OECD Working Group on Bribery.

- 106. With respect to international cooperation,**
- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.**
 - b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.**

Response:

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.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

- 107. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (*Phase 1, 2, 3 or 4*); where relevant, please provide links to the latest evaluation report published by the WGB.**

Response:

The United States is an original party to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The United States completed its Phase Four evaluation in November 2020. All of the U.S. reports can be found on the OECD website: [United States - OECD Anti-Bribery Convention - OECD](#)

108. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

109. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: the Netherlands

Date of completion: 21 May 2021

A. A robust legislative framework

110. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

Pursuant to the following articles of the Dutch Criminal Code (DCC), foreign bribery is punishable in a clear and explicit way. These articles cover the key elements of the internationally agreed definition for foreign bribery. Pursuant to art. 51 DCC also legal persons are punishable for these crimes.

- Bribery of a civil servant / public official: Six years imprisonment and/or a fine of the fifth category (art. 177 DCC active bribery and art. 363 DCC passive bribery). This includes persons working in the public service of a foreign state or an organization governed by international law and former public officials (art. 178a DCC).

- Bribery of a judge: nine up to twelve years imprisonment and/or a fine of the fifth category (art. 178 DCC active bribery and art. 364 DCC passive bribery). This includes judges in a foreign state or an organization governed by international law are equivalent to judges (art. 178a / 364a DCC).
- Commercial bribery of someone else other than a civil servant / public official: four years imprisonment and/or a fine of the fifth category (art. 328ter DCC, active and passive bribery).
- When passive bribery accure in connection with the capacity as a minister, state secretary, royal commissioner, member of the provincial executive, mayor, member of the municipal executive or member of a general representative body: eight years imprisonment and/or a fine in the fifth category (art. 363 paragraph 3 DCC).
- Bribery of a person who is employed to provide information regarding telecommunications to judicial officers or police officers, or cooperate in intercepting or recording telecommunications: four years imprisonment and/or a fine in the fifth category (art. 328quater DCC, active and passive bribery).

Furthermore, suspects in foreign bribery cases are often suspected of and prosecuted for:

- Money Laundering: four years imprisonment and/or a fine of the fifth category (art. 420bis DCC) and habitual money laundering: eight years imprisonment and/or a fine of the fifth category (art. 420ter DCC).
- Forgery: six years imprisonment and/or a fine of the fifth category (art. 225 DCC).

Full text of Article 177 DCC (Active bribery of a public official):

1. Punishment in the form of a prison sentence of no more than six years or a fine in the fifth category will be imposed on:

1°. Whoever makes a gift or a promise to a public official, provides, or offers him a service with a view to getting him to carry out or fail to carry out a service;

2°. Whoever makes a gift or a promise to a public official, provides, or offers him a service in response to or in connection with a service, past or present that the official carried out or failed to carry out.

2. The same punishment will apply to anyone who commits an offence as described in the first paragraph, under 1°, against a person who has prospects of an appointment as a public official, if the appointment as a public official is followed.

3. If the offender commits any of the serious offences defined in this section in the practice of his profession, he may be disqualified from the practice of that profession.

4. Disqualification from the rights listed in section 28(1°)(2°) and (4°) may be imposed.

Full text of Article 178a DCC (Extended definition of public official)

1. With regard to Article 177, persons working in the public service of a foreign state or an organization governed by international law are equivalent with public officials.

2. With regard to Article 177, first paragraph, under 2°, former public officials are equivalent to public officials. 3. With regard to Article 178, judges in a foreign state or an organization governed by international law are equivalent to judges.

Full text of Article 178 DCC (Active bribery of a judge)

1. Whoever makes a gift or a promise to a judge or provides or offers him a service with a view to exerting influence on his decision in a case that is subject to his judgment will be punished with a prison sentence of at most nine years or a fine in the fifth category.

2. If the gift or promise is made or the service is provided or offered with a view to obtaining a conviction in a case, the guilty person will be punished with a prison sentence of at the most twelve years or a fine in the fifth category.

3. The offender may be disqualified from the practice of that profession if he commits any of the serious offences defined in this section in the practice of his profession.

*Note 2: For questions 2 through 5, **countries without a foreign bribery offence should include updates on plans to address the following issues** through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.*

111. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

For the applicable sanctions please refer to the above mentioned provisions. These provisions stipulate the maximum prison sentence which can be imposed and the category of the fine which can be imposed (per act). The category of the fine refers to the amounts which are mentioned in art. 23 DCC. At this moment the fifth category is € 87,000 per act. Paragraph 7 states that In the case of conviction of a legal person, a fine up to the maximum of the next highest category may be imposed if the fine category specified for the offence does not provide for an appropriate punishment. The sixth category is € 870,000. If a fine of the sixth category can be imposed, but that fine is not an appropriate punishment, a fine can be imposed up to a maximum of ten percent of the annual turnover of the legal person in the financial year preceding the judgment or punishment.

For these crimes various confiscation options exist under criminal law, including object confiscation (art. 33, 33a - 34 DCC), value confiscation of unlawfully obtained assets (art. 36e DCC), victim compensation measures (art. 36f DCC) and the imposition of a fine with a confiscation component, such as in the case of a fine in which the amount of illegal gains has been taken into account (art. 23 DCC).

While object confiscation (art. 33a DCC) is a pecuniary sanction that the court may impose as an additional punishment (next to e.g. imprisonment), value confiscation is a measure that the court can impose in separate value confiscation proceedings (art. 36e DCC and art. 511b to 511i of the Dutch Code on Criminal Procedure (DCCP)). As a principle the value confiscation proceeding should

progress simultaneously with the main proceeding, but as value confiscation proceedings are sequel to the main proceedings, value confiscation proceedings can also follow in time after the main trial (for example if confiscation cases are too complex or too time consuming for joint hearings with the main proceedings).

If a value confiscation measure is imposed, a convicted person will be liable to the full extent of his property, so also the property he legally acquired. Therefore, also legal property can be seized for safekeeping (prejudgment seizure). Also property which has come to belong to someone else than the suspect, with the aim to frustrate seizure, can be seized / attached prejudgment (Article 94a subsection 4 and 5 DCCP).

112. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

Besides the figures on foreign bribery of public officials mentioned in the OECD Phase 4 Report of the Netherlands, there are no (solid) statistics available to answer this question (about the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition).

As mentioned in the OECD Phase 4 Report, during phase 3 there were 4 ongoing investigations into foreign bribery of public officials. Twenty-six new foreign bribery investigations have been opened since Phase 3, of which 18 investigations since 2016. At the moment of the publication of the Phase 4 Report there were 23 ongoing foreign bribery cases involving 40 natural persons and 45 companies. During an ongoing investigation the number of natural and legal persons involved is subject to change (for example, between the publication of the phase 4 report and 31 December 2020, at least 1 natural person and 1 company had to be added to these numbers).

At the moment of the publication of the Phase 4 Report, investigations/proceedings into foreign bribery of public officials had been concluded with sanctions against two individuals and seven legal persons by means of a non-trial resolution (1 legal person should be added to these numbers) and proceedings against 13 natural persons and 5 legal persons had been discontinued. Assets valued at a total of USD 892.5 million (€ 790.8 million, based on the exchange rate at the time of writing) were confiscated and/or imposed through fines.

Since then the investigation into foreign bribery against 5 other legal persons was settled out-of-court for a total amount of € 41,621,000. This investigation is still ongoing against the natural persons involved. Please refer to the press release and statement of facts:

<https://www.prosecutionservice.nl/latest/news/2021/04/28/econosto-mideast-econosto-eriks-cmk-and-mammoet-salvage-reach-settlement-agreements-with-the-netherlands-public-prosecution-service>

B. Effective investigation and prosecution of foreign bribery

113. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

A dedicated law enforcement framework to investigate and prosecute foreign bribery is in place in the Netherlands. Please refer to the OECD Phase 4 report of the Netherlands for a description of this framework. Amongst others: "Both the Fiscal Intelligence and Investigation Service (FIOD) and the Dutch Public Prosecution Office (Openbaar Ministerie (OM)) have created dedicated anti-corruption teams which include specialised intelligence units and which work together to detect new cases. The financial intelligence unit's (FIU) targeted awareness raising efforts and new anti-money laundering legislation led to three foreign bribery investigations being opened following a suspicious transaction report (STR) and significant numbers of reports from the auditing profession."

Please refer for a further description to the OECD report itself, especially chapter B.2: <https://www.oecd.org/corruption/netherlands-phase-4-report-en.pdf>

114. With respect to international cooperation,

- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.**
- b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.**

Response:

Please refer to chapter B.6 of the OECD Phase 4 Report (<https://www.oecd.org/corruption/netherlands-phase-4-report-en.pdf>) and to the description below of the Dutch framework for mutual legal assistance, including informal cooperation:

The Netherlands seeks to establish and enhance international cooperation and exchange of information with foreign countries in criminal matters, and has developed a thorough procedure and framework for this purpose. The Netherlands regards providing and seeking MLA as equal; we seek MLA in the same manner as we provide it and therefore strive for the best results in both.

All incoming and outgoing MLAs are dealt with and executed through the International Legal Assistance Centres (Internationaal Rechtshulp Centrum; IRCs). An IRC is a cooperation between the Public Prosecution Service (PPS) and LEA and consists of prosecutors, assistants to the prosecutor, administrative staff and police officers. For international cooperation in matters of asset recovery, the Netherlands has established both a police and a judicial Asset Recovery Office (ARO). The

judicial ARO is part of the IRC and is specialized in international confiscation procedures. It consists of five International Advisers, an international asset-tracer and a prosecutor.

The Netherlands maintains a dynamic international cooperation and the number of MLA requests received and sent are steadily rising. Since 2017, more than 35.000 police and judicial-requests were received annually. Even though the numbers have been more or less on a steady level for the last years, the requests themselves have become more extensive. The same development can be seen with outgoing requests: since 2017 approximately 12.000 police and judicial requests were sent out annually. All incoming and outgoing MLAs are dealt with and executed through the IRCs, within the EU as well as all the requests from outside the EU, but for the latter the Department of International Legal Assistance in Criminal Matters (AIRS) of the Ministry of Justice and Security is the Central Authority for international (judicial) mutual legal assistance. Within the EU, there is direct mutual legal assistance between judicial authorities, meaning that EU-requests will be sent directly to and from the IRCs. MLA requests to non-treaty countries are made through diplomatic channels, through the intervention of the Ministry of Justice and Security (AIRS) and the Ministry of Foreign Affairs.

IRC: International Legal Assistance Centers

An IRC is a cooperation between the OM and the LEA and consists of prosecutors, assistants to the prosecutor, administrative staff and police officers. They work together on international MLA requests, both police and judicial MLAs. This set-up was organised to enhance efficiency of cooperation in international affairs and guarantees a high quality of responses and swift execution. All incoming and outgoing requests go through one of the IRCs and are assessed on the basis of their content.

All incoming requests are handled and executed by or through the IRCs. Most cases are executed by the IRCs themselves. This can be different when the execution calls for more capacity than the IRC has available, or when the request has links with an (ongoing) Dutch investigation. In that case it can be decided to let the LEAs and prosecutor responsible for the investigation handle the execution. In those cases, the IRC will coordinate the handling of the request and send the end result to the requesting country.

The IRCs are also the point of contact for foreign authorities for either questions they have, or to address their MLA requests to. Every IRC provides contact details of its contact points on the website of the European Judicial Network (EJN), making it easy for countries which are part of the network to find them.

Structurally, IRCs are part of the public prosecutor's office, even though IRC staff consists of both police officers and public prosecutors. This cooperation enables a swift execution of both police and judicial MLA requests. Another advantage of specialised staff, is the fact that they are fully devoted to the provision of MLA. This stimulates the development of expertise in the field of international legal cooperation. It also guarantees that the execution of the MLAs is the number one priority of the staff and not influenced by the demands of day-to-day police and prosecutorial work.

As for the outgoing requests: the IRCs do not only play a formal role because of the obligation to register the MLA request at the IRC, but they also play an important part in maintaining a high level of quality. The IRCs are the first point of contact for Dutch LEAs and the OM for any questions on international cooperation and they will advise and support them on a practical and substantive

level. IRCs provide formal as well as more informal information: from contact data of authorities abroad to specific questions like whether the requested country will accept a verbal European Investigation Order (EIO) in case of urgency. Furthermore, outgoing MLAs can be looked at by the IRCs textually and content-wise before they are sent abroad, which leads to a better quality of MLAs and prevents any unnecessary delays because of errors in the request. In the situation in which a case can profit from using a different international channel like Eurojust, the IRCs will give their advice on this.

In March 2020, the Minister of Justice and Security and the Public Prosecutor's Office issued a new Protocol on International Cooperation and MLA. The Minister of Justice and Security indicated that the Protocol serves as a guideline for all parties involved in MLA and extradition requests. The Protocol is intended to 'arrive at more checks and balances in the considerations surrounding requests for international legal assistance to countries outside the EU'. It describes the relevant agencies responsible for MLA, namely the IRCs, AIRS and the police. The Protocol sets out a procedure for requesting MLA, which, amongst others, permits exploratory consultations with foreign authorities before making the formal MLA request. According to the procedure, the public prosecutor must submit an MLA request through the national IRC to AIRS for assessment (if necessary in consultation with the MFA and/or police liaison officers posted abroad) based on a prescribed framework. The framework for assessing whether the MLA request is legal or desirable is to be applied primarily in relation to countries with which the Netherlands does not have a long-term or stable international cooperation relationship.

Whether incoming and outgoing requests can be sent directly to the IRCs or will first go through AIRS depends on which foreign country is involved. Any incoming MLA request, European Investigation Order (EIO or in Dutch: EOB (Europees Opsporings Bevel) and European Arrest Warrant (EAW, or in Dutch EAB (Europees Arrestatiebevel)) can be sent by EU member states directly to respective IRC, or they can be sent to the LIRC which will then send the request to the relevant IRC. Outgoing request follow the same route. Any requests for of from countries outside of the EU go through AIRS and are from there on distributed to the relevant IRC.

There are in total twelve IRCs. Of those IRCs, ten have regional competence, the IRC FP (IRC Functioneel Parket) is specialised in serious fraud and complicated asset recovery and the LIRC is national/coordinating. The LIRC has several specific duties. The police department of the LIRC is responsible for maintaining the so-called 5 channels (Europol, Interpol, SIRENE, Foreign Liaison Officers (LOs) in the Netherlands and Dutch LOs abroad). The judicial side of the LIRC has amongst its responsibilities the coordination of joint investigation teams (JITs), execution of the Prüm Treaty and all cross-border surveillance. Furthermore, the LIRC coordinates all incoming MLAs that are not sent directly to the corresponding IRCs. Finally, the LIRC usually provides national input for upcoming treaties and international or EU-legislation if so requested.

The IRC FP is part of the OM for Serious Fraud, Environmental Crime and Asset Confiscation. The IRC FP cooperates with the Fiscal Intelligence and Investigation Service (Fiscale Inlichtingen en Opsporingsdienst: FIOD), which also has a centralised, dedicated team for international cooperation. The FIOD is part of the Ministry of Finance. Together they handle all incoming MLA requests concerning tax fraud investigation, as well as larger investigations into investment fraud, corruption and cybercrime amongst other things. They are also responsible for all terrorism financing (TF) requests and the more elaborate or complicated cases of money laundering (ML). These are defined as the cases in which for instance there is extensive cash flow, where legal structures such as trust offices or Dutch legal entities are being used, where national or

international PEPs (Politically Exposed Person) are involved, or where alternative payment platforms are being used. This has led to the development of extensive expertise in the field of international cooperation in combination with TF/ML, so that the judicial MLAs as well as the MLAs at police level can be executed swiftly and efficiently.

All IRCs are in close contact with each other. There is a standing consultation structure in which the IRCs, AIRS and other stakeholders meet to discuss operational problems and exchange expertise and experience. These meetings are chaired by the LIRC and take place around 5 times a year. Topics for discussion vary and can be introduced by either the LIRC or one of the participants of the meeting: for instance upcoming legislation, manuals for drafting or evaluating EIOs, practical arrangements made with neighbouring countries, or the need to distribute some of the pending requests in times of increased workload. This contributes to a uniform way of working within the IRCs.

ARO: Asset Recovery Office

For international cooperation in matters of asset recovery, the Netherlands has established both a police and a judicial Asset Recovery Office (ARO). EU law (2007/845/JHA) requires all EU Member States to have a central contact point for exchanging information on the existence of criminal assets and exchanging best practices and providing assistance. The existence of these AROs has significantly improved cooperation within the EU.

The AROs serve to locate and identify assets that are proceeds of illegal activity which can be frozen, seized or confiscated in a criminal procedure. Both AROs are the expertise centres for international cooperation in asset recovery in all phases: asset tracing, freezing and seizing, prosecution and execution. The judicial ARO forms part of the IRC FP and the police ARO is connected to the regional IRC in the Hague.

The judicial ARO is part of the IRC network and is specialized in international confiscation procedures. It consists of five International Advisers, an international asset-tracer and a prosecutor. It forms part of the IRC FP but serves the country as a whole with its expertise, and works closely with all the IRCs. Prosecutors and LEAs can also contact the judicial ARO directly for any question or support request in asset recovery cases. The judicial ARO can call upon the expertise of accountants, asset tracers, civil law advisers and the Asset Management Office (AMO) as well as specialized prosecutors and assistants to the prosecutor.

All IRCs are capable of handling incoming and outgoing requests for asset freezing or confiscation. However, complicated, urgent or (politically) sensitive requests, requests that involve large sums of money or requests from non-treaty countries will be handled by the judicial ARO. Furthermore, the judicial ARO focuses on new developments like crypto-currencies. Together with other stakeholders like Europol, FIOD and the Dutch police, it has developed expertise in this field. The ARO focuses on freezing and seizing of different cryptocurrencies, while other stakeholders focus on the exchange of information. The judicial and police ARO are working on a standardised method with regard to requesting information from crypto-currencies exchanges and the freezing and confiscation of crypto-currencies.

Just like the IRCs, the judicial AROs have an external and internal role. Internally, the AROs advise and support ongoing investigations on the possibilities of cross-border asset recovery. Externally, they serve as a first point of contact and have close ties to different international organisations.

AROs are active participants in the EU ARO Platform. The platform is used to keep everybody informed about the latest developments, to connect all the members and to share best practices. The AROs are also connected to the CARIN-network. CARIN is an international informal network of asset recovery practitioners, aiming to increase the effectiveness of its members' efforts in depriving criminals of their illicit profits. Its members can use the network to quickly exchange or obtain information in an informal way. The judicial ARO for instance has used its contacts within the CARIN network to request information about procedures and execution, or about bitcoin exchange. This is done in parallel with the official process of the request for mutual legal assistance.

The conditions under which the police ARO can exchange information are laid down in Council Framework Decision 2006/960/JBZ. In essence, LEAs of EU member states can request and exchange any information that is available to them through their own police registers or any other registers which they can access, such as the land registry or the chamber of commerce. By way of a standardised form, the request can be sent directly to the police ARO. The exchange of data takes place through the Secure Information Exchange Network Application (SIENA). The information cannot be used as evidence in court. Requests are registered in the National Uniform Registration System for International Legal Assistance in Criminal Matters (LURIS). Different time frames are set for the execution of the request: 8 hours for urgent requests, 1 week for non-urgent requests if the requested information is held in a database directly accessible by the LEA and in case the crime is mentioned on the list of Council Framework Decision 2006/960/JBZ, and 14 days for all other cases. All requests concerning information about the identification and location of assets that fall within the scope of the framework decision, is executed by the police ARO. All other requests are forwarded to the IRC.

Police and judicial ARO keep in close contact, and also have regular meetings with the AMO. The numbers of the police ARO show a stark contrast compared to the regular MLA requests: where IRCs receive more requests than they send out, the police ARO sends out more requests than they receive. The numbers show overall an increase in both incoming and outgoing requests.

Liaison Officers

Since 2007, the police and KMar have cooperated in a joint network of liaison officers (LO's), who are stationed within Dutch representations in and outside Europe. They are awarded a diplomatic status and, if necessary, are accredited for neighbouring countries. LO's are authorised to receive and provide confidential criminal investigation information to the relevant police and judicial authorities, if so permitted under treaty law. LOs may also receive requests from other countries. Based on the Benelux Police Treaty, the LO's abroad from Belgium and the Netherlands, can handle each other's files and fulfil their role as channel for the exchange of police information for both countries.

The PPS and FIOD may call upon the help of Police LO's. But besides the network of Police Liaison officers there are also PPS Liaison Officers to strengthen the cooperation with foreign authorities in combating money laundering and other crimes that transcend borders.

Since 2014 the PPS has a representative Magistrate Liaison Officer stationed in Rome. Initially this was a temporary position, but due to its successes, efforts and added value, it has been made permanent in the summer of 2019. Also it was decided to deploy at the same time another liaison officer in Madrid, and it is intended to deploy more liaison officers abroad. These liaison magistrates focus on international organised crime, which also includes money laundering, terrorism and asset

confiscation. The LO in Rome has established a broad network in Italy in the last six years. This network works both ways: Dutch seizure requests can be executed very quickly to ensure that assets have not gone lost, and Italian LEAs are assisted by the LO Magistrate to find the appropriate IRC for their requests.

The LO in Madrid has been concentrating on removing obstacles, tracing mislaid requests and generally speeding up procedures. A lot of dormant confiscation procedures have been re-awakened and others put to eternal sleep. She also managed to send missing Spanish evidence on a confiscated valuable Mercedes Benz to her Dutch colleague just in time, so that it could be forfeited by the Dutch court.

The PPS may also make use of informal contacts at foreign counterparts. For instance, informal contacts are established and exchanges are made during European and international conferences, training courses and meetings. This allows for quick switching before a new initiative, for example when setting up a JIT or before a formal MLA request is submitted .

The PPS has established in 2016 a Bureau for International Affairs as part of the head office of the PPS. This bureau acts as a non-operational advisory body to gain more coherence and overview in the field of international matters. One of its projects is the OM has provided prosecutors to be deployed for longstanding projects in countries like Serbia, Albania and North-Macedonia.

Execution of MLA's, knowledge exchange, training and direct police-to-police MLA cooperation. Although question 14(5) concerns the cooperation of the Public Prosecution Service with other foreign authorities, it has to be mentioned that of course Police and other LEA's play a key role in the execution of the PPS cooperation. Besides executive tasks the Police and FIOD (and, especially for money laundering, the AMLC department of the FIOD) also support knowledge exchange and training to LEA's in other countries.

Furthermore the Dutch National Police works together with LEA's in other countries through direct police-to-police exchanges of police information. During the period between 2015 and 2020, a total of 7744 incoming police MLA requests concerning money laundering or terrorism were registered. The National Police makes most use of the following instruments to exchange police information:

- On a 24/7 basis, police information can be exchanged through SIRENE. This channel is stipulated in Article 108 of the SIC: each country that is connected with the Schengen Information System (SIS) has a SIRENE bureau which runs on a 24/7 basis. The Member States are supposed to furnish the SIRENE-bureau with human and technical resources in such a way that continuity can be guaranteed. In the Netherlands, these bureaus or desks are accommodated within the LIRC, which manages all information channels.

- Secondly, Europol works with a system of Europol National Units (ENUs), which form the bridge between Europol and the competent authorities in the other 26 member states. In the Netherlands, this unit is LIRC. The ten Dutch Europol liaison officers represent several investigation authorities (a multidisciplinary team) and are authorised to exchange information between the Dutch unit, Europol and other EU member states. They also have access to a variety of computer systems in use by Europol in order to be able to perform their tasks.

- Thirdly, Interpol's global network of national contact points or bureaus for the exchange of police information. Some of Interpol's members are countries with which the Netherlands does not maintain a mutual legal assistance relationship. The National Central Bureau (NCB) of the Netherlands, established within the Department of International Legal Assistance in Criminal

Matters (AIRS) is responsible for international police information exchange from and to the Interpol Secretariat.

The police can also receive foreign police requests directly, besides receiving police requests through IRCs. In principle, the police may independently handle a police request from a foreign state if that foreign state asks for police data that are stored in national police files. This is established in further Instructions on the application of Article 5.1.2 Dutch Criminal Procedure Code which allows for a direct international exchange of information by police professionals. The police-to-police cooperation without going through the IRC process guarantees efficiency and a swift handling of the request.

If a police-to-police request is made for information that involves the use of coercive measures, the request must be forwarded to the PPS. Such request must also be forwarded if special investigative powers must be exercised or if the information obtained is used as evidence abroad. In these cases, the IRC structure is directly involved again.

Police-to-police cooperation is based on a number of treaties, to which the Netherlands is a party, such as but not limited to the Schengen Implementing Convention (SIC), the Prüm Treaty, the Senningen Treaty, the Enschede Treaty, the Swedish Framework Decision and the EU Convention on Mutual Assistance in Criminal Matters. All legal instruments offer plenty of opportunity for direct cross-border police information exchange. The National Police makes use of various information systems for the exchange of police data, such as the Europol Information System (EIS), SIENA, the Europol Analysis System (EAS) and the Schengen Information System II (SIS II).

Eurojust cases

Eurojust is an EU-agency, based in The Hague which task is to facilitate the proper coordination of national prosecuting and judicial authorities and to support cross-border criminal investigations in serious and complex crimes, including terrorism, fraud and money laundering. At Eurojust, every EU member state has a national desk headed by a National Member. Several Liaison Prosecutors from third states are stationed at Eurojust, such as Switzerland, the USA and Norway. Eurojust facilitates national authorities of EU member states in bringing together judicial and investigating officials in order to exchange information, to overcome differences in legal systems, to organise a Coordination Meeting between national authorities or to set up a Coordination centre for joint action days. Contact with Eurojust is usually established through the IRCs.

In the Netherlands, the National Public Prosecution Service initiated a CFT-related international cooperation and exchange within Eurojust. The reason for this was given in the provisions by Western Union, FIU-NL, criminal investigations and media reports. This information revealed the presumption that FTF's in Syria and Iraq were funded through middlemen in Turkey and Lebanon and money transfers to these middlemen, not only from the Netherlands, but from several countries worldwide. Within this Eurojust-case several coordination meetings took place between the USA, Spain, France, Belgium and other countries, and information and best practices were shared.

In international terms, there is added value because the approach provides an insight into the functioning of networks, particularly the role of intermediaries involved (those who operate between the financiers and the FTFs). The focus on 1 on 1 financing of FTFs constitutes evidence of offences by the funders. However, it is important (and that's exactly what the cooperating countries

learned from each other here) that the approach also gains intelligence for investigations into offences committed by the FTFs themselves and may be of importance in the subsequent return of these FTFs. This international cooperation therefore provides steering information and evidence in both CT and CFT cases.

Joint Investigation Teams (JITs)

A JIT is one of the most advanced tools used in international cooperation in criminal matters, comprising a legal agreement between competent authorities of two or more states for the purpose of carrying out criminal investigations. A JIT can be established on the initiative of the Netherlands (outgoing request) or on the initiative of a foreign country (incoming request). See for the legal basis the Council Framework Decision 2002/465/JHA on joint investigation teams and Articles 5.2.1 – 5.2.5 Dutch Criminal Procedure Code). A MLA is always the basis of a JIT. The relevant MLA request comes from the initiating country and is addressed to the participating countries. For more information about the outgoing requests with regard to establishing a JIT.

Incoming JIT requests are registered with the IRC where the request is received. That request is always notified in writing to the national public prosecutor's office by the regional IRC. Requests to participate from Eurojust, Europol or OLOF shall be forwarded to the LIRC. The LIRC involves the relevant public prosecutor, who checks whether the criteria have been met. If that is the case, the request is notified in writing to the national public prosecutor's office. This is followed by the same phases as for setting up a JIT on Dutch initiative.

A joint investigation team may consist of investigating officers, but also public prosecutors or examining judges from the relevant countries, officials from the other participating countries and/or members of international organisations such as Europol. The Dutch members of the team may, for the purpose of the investigation, provide data that are available in the Netherlands, in accordance with Dutch law and the powers of those members. The Police Data Decree [Besluit politiegegevens] provides that Dutch police data can be provided to the other members of a joint investigation team. Data may be provided to seconded members of a Netherlands-based team in the same way as to Dutch police officers. Moreover, data may be provided to Dutch police officers in a foreign team for the purpose of the investigation.

The decision to set up da JIT often takes shape at Eurojust and Eurojust can supported a JIT during the cross-border investigation. Once parallel or linked investigations have been identified by the National Desks at Eurojust, and the case is registered, Eurojust may organize a coordination meeting between the involved States. During the meeting, Eurojust helps authorities assess the suitability of the case for the purpose of establishing a JIT. The setting up of JITs can also be agreed upon without, or prior to, a coordination meeting. Next, Eurojust supports the national authorities in setting up the team, and assisting in the drafting of JIT agreements etc. Throughout the operational phase, Eurojust works with the partners to ensure the smooth running, providing legal and prosecutorial strategies and enable the coordination. As a follow up, Eurojust is involved in an evaluation of the JIT.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

115. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (*Phase 1, 2, 3 or 4*); where relevant, please provide links to the latest evaluation report published by the WGB.

Response:

Phase 4: <https://www.oecd.org/corruption/netherlands-phase-4-report-en.pdf>

116. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

117. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.

Response:

Country self-assessment questionnaire on implementation and enforcement of G20 commitments on foreign bribery

In response to Leaders' request in 2020 for countries "to demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention", G20 countries are invited to complete the questionnaire below on the implementation and enforcement of G20 commitments on foreign bribery.

Responses to this questionnaire will be compiled into a succinct summary for G20 Sherpas and Leaders on the state of play in G20 countries on steps taken to implement the aforementioned commitments, as well as plans for future action in this area. This will also serve as a background document for discussion at the joint session between the G20 ACWG and OECD Working Group on Bribery in June 2021.

Country Name: Spain

Date of completion:

A. A robust legislative framework

118. Does your country have a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery [Article 16 UNCAC; Article 1 OECD Anti-Bribery Convention]? Please specify whether it applies to both natural and legal persons.

- *If your country has a foreign bribery offence, please provide references to the relevant provisions and/or the full text, if possible.*
- *If your country does not have a foreign bribery offence:*
 - *Please note whether an offence has been drafted, submitted for government review, or adopted but not yet entered into force. If a draft is available and can be shared, please include it.*
 - *Please provide a timeline for the entry into force of draft legislation, where applicable.*

Response:

Yes, Spain has criminalised the foreign bribery offence in line with the UNCAC and the OECD Anti-Bribery Convention.

Article 286 ter of the Penal Code reads as follows:

"1. Those who, by offering, promising or granting any undue pecuniary or other kind of benefit or advantage, corrupt or attempt to corrupt, personally or through an intermediary, an authority or civil servant, for their own benefit or that of a third party, or who attend to requests in that regard, in order for them to act or abstain from acting in relation to the exercising of public functions to obtain or conserve a contract, business or another competitive advantage in the course of international economic activities, shall be punished with a prison sentence of three to six years and

a fine of twelve to twenty-four months, unless the profit obtained exceeds the resulting sum, in which case the fine shall be up to three times the amount of such profit, unless otherwise punished with a more severe penalty in another provision of this Code.

In addition to the outlined penalties, the offender shall also be punished with a ban from being hired in the public sector, the loss of the possibility of obtaining public subsidies or aid, the forfeit of the right to tax or Social Security benefits and incentives and a ban on participating in commercial transactions of public significance for a period of seven to twelve years.

2. For the purposes of this Article, civil servant refers to the individuals outlined in Articles 24 and 427.”

Article 286 ter was added through Organic Law 1/2015, of 30 March, which amends Organic Law 10/1995, of 23 November, of the Penal Code ("B.O.E." 31 March). It has been in force since the 1 July 2015.

<https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444&p=20190302&tn=1#a286ter>

Note 2: For questions 2 through 5, **countries without a foreign bribery offence should include updates on plans to address the following issues** through efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

119. Please describe the sanctions and confiscation measures available for natural and legal persons for the offence of foreign bribery.

Where possible, please provide references to the relevant provisions and/or the full text, if possible.

Response:

In addition to the sanctions described in the previous question, **Article 286 quarter** of the Penal Code defines the sanctions when the acts referred to in Article 286 ter were of particular seriousness. In this case, the penalty shall be imposed in the upper half of the sentence, which may be increased to the next higher degree.

“The acts shall be considered, in any case, to be particularly serious when:

a) the benefit or advantage is of a particularly high value,

b) the action of the perpetrator is not merely occasional,

(c) the acts are committed within a criminal organisation or group, or

(d) the object of the transaction concerns humanitarian or other essential goods or services.”

<https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444&p=20210429&tn=1#a286quater>

Article 288 of the Penal Code defines the sanctions applicable to legal persons for this offence:

“2º 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) A fine of two to five years, or three to five times the amount of the benefit obtained or that could have been obtained if the resulting amount were higher, when the offence committed by the natural person is punishable by more than two years' imprisonment.

b) a fine of six months to two years, or a fine of six months to two times the amount obtained or which could have been obtained if the resulting amount were higher, in all other cases.

3º In accordance with the rules set out in Article 66a, judges and courts may also impose the penalties set out in Sub-Paragraphs b) to g) of Section 7 of Article 33.”

<https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444&p=20210429&tn=1#a288>

Article 33 of the Penal Code

“7. The penalties applicable to legal persons, all of which are considered to be serious, are as follows:

(a) fine by instalments or proportional fine.

b) Dissolution of the legal person. Dissolution shall result in the definitive loss of its legal personality, as well as its capacity to act in any way in legal transactions, or to carry out any kind of activity, even if lawful.

c) Suspension of its activities for a period not exceeding five years.

d) Closure of their premises and establishments for a period not exceeding five years.

e) Prohibition to carry out in the future the activities in the exercise of which the offence has been committed, favoured or concealed. This prohibition may be temporary or permanent. If it is temporary, the period may not exceed fifteen years.

f) Disqualification from obtaining public subsidies and aid, from contracting with the public sector and from enjoying tax or Social Security benefits and incentives, for a period not exceeding fifteen years.

g) Judicial intervention to safeguard the rights of workers or creditors for the time deemed necessary, which may not exceed five years.”

The fine is set on the amount of profit obtained or intended to obtain. In addition, both the amount of the bribe and the proceeds of corruption, or the assets whose value corresponds to that of the proceeds, are subject to "seizure and confiscation" because Art. 127 bis 1.g of the Penal Code is applicable. It provides for the confiscation of gains or profits obtained from criminal activities in business corruption, even on the basis of circumstantial evidence.

In case of third parties affected by confiscation, the rules on “autonomous confiscation”, regulated in Article 803 ter of the Criminal Procedure Act, introduced in 2015, must be followed.

On the other hand, confiscation of equivalent value or by substitution is contemplated (Article 127.3 of the Penal Code), as well as confiscation extended to other assets, even of lawful origin, belonging to those criminally responsible for the act, when confiscation could not have been carried out in whole or in part (Articles 127 quinquies, 127 sexies and 127 septies of the Penal Code).

120. Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

Response:

One criminal case resulted in a final disposition according to which two natural persons were convicted. Another natural person as well as a legal person were acquitted.

B. Effective investigation and prosecution of foreign bribery

121. Please describe the institutional framework in place in your country's law enforcement authorities to investigate and prosecute foreign bribery.

Response:

In Spain, the investigation and prosecution of foreign bribery is assigned to the Special Prosecutor's Office against Corruption and Organised Crime (ACPO), according to Article 19.4 ñ) of Law 50/1981, of 30 December, which regulates the Organic Statute of the Public Prosecutor's Office. ACPO is competent in other highly complex matters, not only in foreign bribery.

Investigations by the ACPO are forwarded to the National High Court (Audiencia Nacional) that will deliver judgement.

Within the Spanish law enforcement agencies, there are specialised investigative units dedicated to such crimes. These units have existed for over 10 years and cooperate closely with the ACPO, and have allowed for an increase the number of investigations.

The Economic and Fiscal Crime Unit (UDEF) of the National Police and the Technical Unit of Judicial Police (UTPJ) of the Civil Guard are the central units that generate intelligence in relation to the connections between organized crime and economic and fiscal crimes. They also channel collaborations between police authorities in the framework of transnational investigations, in addition to participating actively in the most important forums for international cooperation and criminal intelligence. They coordinate investigations related to corruption of public officials abroad and foreign bribery involving money laundering activities in Spain.

The Asset Location Offices (OLAs) are in charge of locating assets in relevant investigations, aiming at recovering the proceeds of the bribery. These OLAs are coordinated by the Asset Recovery Office (ORA), integrated in the Intelligence Centre against Terrorism and Organized Crime (CITCO), and within the scope of the Ministry of the Interior.

These units also lead some operational actions within the framework of the EU in relation to cases of money laundering in Member State that originate from corruption crimes in third States.

The Central Brigade of Organized Crime of the National Police and the Central Operational Unit (UCO) of the Civil Guard are the organized crime investigation units of reference within of the law enforcement agencies in Spain. Within their structures, there is a Group of Economic Crimes and other on Patrimonial Investigations, respectively, which carry out relevant national and transnational operations in the framework of crimes of corruption by public officials, money laundering and bribery, among other crimes of a similar nature.

- 122. With respect to international cooperation,**
- a. Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.
 - b. Please describe how informal assistance is encouraged, in conformity with your jurisdiction's legal system, to facilitate international cooperation in relation to foreign bribery.

Response:

The Spanish Central Authority, located within the Ministry of Justice, attaches particular importance to handling MLA request in foreign bribery cases in a swift manner. Informal assistance is also sought and provided to speed up formal requests.

C. Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

- 123. If your country is already Party to the OECD Anti-Bribery Convention, please specify what phase of the evaluation process your country has reached (Phase 1, 2, 3 or 4); where relevant, please provide links to the latest evaluation report published by the WGB.**

Response:

Spain is a Party to the OECD Anti-Bribery Convention. The Phase 4 evaluation process is currently underway. The onsite visit will take place next September and the evaluation report is foreseen to be adopted in March 2022.

Latest reports published:

- Follow-up to the Phase 3 report (2015): <https://www.oecd.org/daf/anti-bribery/Spain-Phase-3-Written-Follow-Up-Report-EN.pdf>

- Phase 3 report (2012): <https://www.oecd.org/daf/anti-bribery/Spainphase3reportEN.pdf>

- 124. If your country is not Party to the OECD Anti-Bribery Convention, please indicate steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB). Specifically and where applicable, please indicate any plans to:**

- Attend meetings of the WGB in 2021;
- Attend the joint session between the G20 ACWG and WGB in June 2021;
- Engage in other types of meetings with the WGB in relation to implementation and enforcement of the foreign bribery offence (please specify);
- Open discussion for Participation in the WGB.

- 125. Please indicate steps taken or under consideration to adhere to the OECD Anti-Bribery Convention.**

Response:

N/A