



PHASE 3bis REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN ARGENTINA

March 2017

This Phase 3bis Report on Argentina by the OECD Working Group on Bribery evaluates and makes recommendations on Argentina's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 16 March 2017.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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EXECUTIVE SUMMARY

The Phase 3bis report on Argentina by the OECD Working Group on Bribery evaluates and makes recommendations to Argentina on its implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The Report results from the Working Group's exceptional decision in 2014 to conduct a supplemental evaluation of Argentina. It examines Argentina's implementation of the Working Group's 40 Phase 3 recommendations that were made in 2014; new developments since Phase 3; and issues that the Working Group was unable to fully assess in the Phase 3 evaluation.

Argentina remains in serious non-compliance with key articles of the Convention. The Working Group acknowledges that efforts to implement the Phase 3 recommendations began in earnest only after the current government took office in December 2015. A Corporate Liability Bill meant to address some of these issues was introduced into Congress in October 2016 but has yet to be adopted. As a result, Argentina still cannot hold legal persons liable for foreign bribery, or exercise jurisdiction to prosecute its citizens who commit this crime abroad. If enacted in its current form, the Corporate Liability Bill would not rectify all of the deficiencies in Argentina's foreign bribery offence that have been identified since Phase 1. It would address many but not all of the Working Group's concerns. It would not impose corporate liability for corruption-related false accounting, and would maintain a different set of rules for corporate liability for money laundering. Fines for foreign bribery and sanctions for accounting fraud would remain inadequate. Value confiscation would still be unavailable. Public and private sector whistleblowers would remain unprotected from discriminatory or disciplinary reprisals.

The Working Group is also seriously concerned about the enforcement of Argentina's foreign bribery laws. There are signs of politicisation and lack of neutrality of the Attorney General's Office which at a minimum create a perception of a lack of prosecutorial independence. The government needs to address the issue of politicisation without jeopardising the independence of the prosecutors. The composition of the Judicial Council should be adjusted to ensure that the Council effectively protects the independence of judges. Furthermore, complex economic crime investigations and prosecutions continue to suffer extraordinary delays. The Criminal Procedure Code that was enacted in 2014 was intended to reduce delay and its entry into force has been postponed to the second semester of 2017. Investigative judges in charge of complex corruption cases have heavy caseloads. Judicial vacancies and the use of surrogate judges remain widespread, which further impinges independence and contributes to delay. Steps should also be taken to enhance international co-operation in foreign bribery investigations and prosecutions, including through informal channels. More training should be provided to relevant investigative judges and prosecutors on foreign bribery, as well as on the practical aspects of and best practices on seeking MLA.

There are positive developments in other areas. The Corporate Liability Bill is an important development that is high on the agenda of the current government but it needs to be pursued to completion. An express prohibition on the tax deductibility of bribes has been enacted. Efforts have also been made to raise awareness of foreign bribery within the Argentine public administration (including tax authorities) and the private sector, including the promotion of corporate compliance programmes. Steps have been taken to monitor the media for foreign bribery allegations, though this measure has yet to lead to the opening of an investigation. New judicial investigations have been opened in several foreign bribery cases but some cases should be investigated more proactively, including by actively pursuing evidence abroad. Enforcement of the money laundering offence has significantly increased. Argentina has taken steps to extend the application of International Financial Reporting Standards.

The report and its recommendations reflect findings of experts from Spain and the Slovak Republic and were adopted by the Working Group on 16 March 2017. The report is based on legislation and other materials provided by Argentina, and research conducted by the evaluation team. It is also based on

information obtained by the evaluation team during its on-site visit to Buenos Aires on 25-28 October 2016, during which the team met with representatives of Argentina's public and private sectors, legislature, judiciary, and civil society. Argentina will report to the Working Group by October 2017 on the status of the Corporate Liability Bill. It will report on its implementation of certain recommendations by March 2018, and implementation of all recommendations by March 2019.

A. INTRODUCTION

1. The On-Site Visit

1. On 25-28 October 2016, an evaluation team from the OECD Working Group on Bribery in International Business Transactions (Working Group) visited Buenos Aires as part of the Phase 3bis evaluation of Argentina's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention); 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Anti-Bribery Recommendation); and 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation).

2. The evaluation team was composed of lead examiners (Spain and Slovak Republic) and the OECD Secretariat.¹ Before the on-site visit, Argentina responded to the Phase 3bis questionnaire and supplementary questions. Argentina provided relevant legislation and documents both before and after the on-site visit. The evaluation team also referred to publicly available information. During the on-site visit, the evaluation team met representatives of the Argentine public and private sectors, judiciary, parliamentarians, civil society, and media. Unlike in the 2014 Phase 3 evaluation, the prosecutors and investigative judges responsible for several foreign bribery cases took part in the on-site visit. (See Annex 2 for a list of participants.) Argentine officials absented themselves from panels with the private sector and civil society but not the panel with legal practitioners and academics.² The evaluation team expresses its appreciation to all participants for their openness during the discussions and to Argentina for its co-operation throughout the evaluation.

2. Summary of the Monitoring Steps Leading to Phase 3bis

3. The Working Group previously evaluated Argentina in [Phase 1](#) (September 2001), [Phase 2](#) (June 2008), [Phase 2 Written Follow-Up Report](#) (September 2010), and [Phase 3](#) (December 2014). At the conclusion of the Phase 3 evaluation, the Working Group expressed grave concerns about Argentina's commitment to fight foreign bribery. Argentina was in serious non-compliance with key articles of the Convention by failing to provide for corporate liability for foreign bribery and nationality jurisdiction over this crime. Longstanding recommendations to rectify deficiencies in the foreign bribery offence remained unimplemented. There was little or no improvement to problems in the criminal justice system that were identified in earlier evaluations, including widespread delays in economic crime investigations and executive interference in judicial and prosecutorial independence.

4. The Phase 3 Report also expressed serious concerns about the enforcement of actual foreign bribery cases. In several instances, the Argentine authorities did not proactively investigate foreign bribery

¹ [Spain](#) was represented by Mr. Juan B. Delgado Cánovas, Senior Judge, Spanish General Council of the Judiciary; and Mr. Manuel Toledano Torres, Chief, Area of Normalization and Accounting Technique, Accounting and Auditing Institute, Subdirection General for Normalization and Accounting Technique. The [Slovak Republic](#) was represented by Mr. Peter Jencik, Prosecutor, Fight against Organised Crime, Terrorism and International Crime, Office of the Special Prosecutor, General Prosecutor's Office; and Dr. Alexandra Kapišovská, General State Advisor, International Law Department, Ministry of Justice. The [OECD Secretariat](#) was represented by Mr. William Loo, Ms. Lise Née and Mr. Rashad Abelson, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

² See paragraph 26 of the [Phase 3 Procedure](#), which provides that an evaluated country may attend, but should not intervene, in non-government panels.

allegations or effectively seek the co-operation of foreign authorities. Furthermore, prosecutors and investigative judges in charge of these actual foreign bribery cases did not attend the on-site visit. Their absence seriously undermined the effectiveness of the on-site visit and precluded a full assessment of Argentina's enforcement efforts in practice.

5. For these reasons, the Working Group decided to conduct a supplemental Phase 3bis evaluation of Argentina. The evaluation would cover the implementation of the Recommendations set out in the Phase 3 Report; relevant new legislation and developments; and Argentina's foreign bribery enforcement actions. The evaluation's on-site visit would include meetings with investigative judges and prosecutors who have conducted Argentina's foreign bribery enforcement actions. The Phase 3bis evaluation report would be combined with Argentina's Phase 3 Written Follow-Up Report on its implementation of the Phase 3 Recommendations. The Working Group also conducted a high-level mission to Argentina in April 2016 to meet Argentine Ministers and senior officials, and to further engage with the Argentine authorities in order that they take the necessary steps to implement the Convention.

3. Outline of the Report

6. This report is structured as follows. Part B examines Argentina's efforts to implement and enforce the Convention and the 2009 Recommendations, having regard to Group-wide and country-specific issues. Particular attention is paid to enforcement efforts and results, and weaknesses identified in previous evaluations. This includes an assessment of Argentina's implementation of the Recommendations and developments on the Follow-Up Issues identified in the Phase 3 Report. Part C sets out the Working Group's recommendations and issues for follow-up.

4. Economic and Political Background

7. Argentina is Latin America's third largest economy. In 2015, Argentina was the 17th largest economy among the 41 Parties to the Convention. Among the 41 Parties, Argentina ranked 31st and 32nd in exports and imports of merchandise in 2015, and 33rd and 30th in exports and imports of services in 2014. The main merchandise export destinations in 2016 were Brazil (15%), China (9%), US (7%), Vietnam (4%) and India (4%). Agricultural products and animal feed were by far the most significant exports. Imports were mainly from Brazil (24%), China (19%), US (12%), Germany (6%) and Mexico (3%). Argentina is one of the founding members of the Mercosur regional trade agreement. In terms of foreign direct investment (FDI), Argentina had the 31st largest inward and outward stocks of FDI among the 41 Parties in 2015. Argentina is a G20 member country. It is not a member of the OECD but it is a full member of the Working Group since it is a Party to the Convention.³

8. Since Phase 3, a new government has taken office in December 2015 under President Mauricio Macri, succeeding the incumbent Cristina Fernández and her late husband Nestor Kirchner who had held the presidency since 2003. President Macri's Government controls neither the Chamber of Deputies nor the Senate in the National Congress (legislature). Nevertheless, the government has demonstrated an ability to push through some significant legislative reforms, including in the area of criminal justice.

³ Source: [OECD.stat](#); *Instituto Nacional de Estadística y Censos* (November 2016), "[Argentine Foreign Trade Statistics](#)"; International Monetary Fund World Economic Outlook; World Trade Organisation; UNCTADStat. GDP at current prices.

5. Cases Involving Bribery of Foreign Public Officials

9. Unlike in Phase 3, the evaluation team met the investigative judges and prosecutors who conducted several enforcement actions in Argentina. The meetings allowed the evaluation team to obtain invaluable information about Argentina's foreign bribery enforcement efforts. To date, there have been 13 known foreign bribery allegations involving Argentine companies and individuals, three of which surfaced in the media since Phase 3. At the time of this report, cases involving three of the allegations have been closed after some investigation and one allegation has not been investigated. One allegation was determined not to involve foreign bribery but other offences after an investigation. The eight remaining allegations are under investigation. Cases in this report are anonymised at Argentina's request.

(a) Terminated Foreign Bribery Cases

10. *Case #1 – River Dredging (Uruguay)*: The *Comisión Administradora del Río de la Plata* (CARP) was created by treaty between Argentina and Uruguay to regulate and manage the La Plata River. The Commission consists of government officials from Argentina and Uruguay. According to media reports,⁴ CARP had contracted a Uruguayan Company R to dredge a canal since 1991. As the contract neared its expiration in 2012, an Argentine CARP member allegedly offered a Uruguayan CARP member a bribe on behalf of Company R to facilitate the contract's renewal. The incident allegedly occurred in Buenos Aires. The allegations triggered a diplomatic row between Argentina and Uruguay, given that the alleged briber and bribed official were senior diplomats in the two countries.

11. The investigation was terminated in May 2014 largely because of insufficient evidence. Argentina opened an investigation in May 2012 after receiving complaints from two Parliamentarians. Uruguay refused two of Argentina's mutual legal assistance (MLA) requests and replied to two other requests after two years. A further MLA request to a third country seeking the testimony of the Uruguayan CARP member was denied because the official claimed diplomatic immunity. The investigative judge in charge of the case stated at the on-site visit that he did not terminate the case because of double jeopardy resulting from a parallel investigation in Uruguay, contrary to media reports.⁵

12. *Case #2 – Gas Plant (Bolivia)*: According to media reports,⁶ a joint-venture between Argentine Company C and a Bolivian Company U agreed to build a natural gas processing plant in Bolivia. A USD 86.3 million contract was signed in July 2008 with YPPF, the Bolivian state-owned energy company. (The Convention covers the bribery of officials of foreign state-owned enterprises under certain circumstances.)⁷ In January 2009, the joint venture received the first USD 4.5 million instalment under the contract. Days later, a Company U executive was killed in Bolivia just before a meeting with family

⁴ [El Observador](#) (5 May 2012); [Ambito Financiero](#) (12 May 2012); [La Nación](#) (25 July 2012); [MercoPress](#) (7 August 2012); [El Observador](#) (7 August 2012); [La Información](#) (10 August 2012); [El Observador](#) (29 December 2013); [Complaint of Graciela Ocaña and Manuel Garrido](#) (12 June 2014); [La Nación](#) (11 July 2014).

⁵ [Punta del Este News](#) (15 December 2012).

⁶ [Latin Petroleum Magazine](#) (1 April 2009); [Jornada](#) (1 May 2009); [Daily Express](#) (28 January 2012); [La Razón](#) (27 January 2012); [Latin American Herald Tribune](#) (12 February 2009); [Latin American Herald Tribune](#) (14 February 2009); [Business News Americas](#) (2 April 2009); [Achacachi Post](#) (19 May 2010); [EJU](#) (23 July 2009); [Hidrocarburosbolivia.com](#) (23 July 2009); [El Deber](#) (23 April 2010); [La Patria](#) (11 May 2010); [La Razón](#) (18 June 2010); [Daily Express](#) (28 January 2012); [Associated Press](#) (27 January 2012); [Los Andes](#) (28 January 2012).

⁷ See Convention Articles 1(4)(a) and Commentaries 14-15.

members of R, the head of YFPF. The executive was also robbed of USD 450 000 in cash which some speculated was a bribe to R valued at 10% of the first instalment. In January 2012, R was convicted in Bolivia of corruption and sentenced to 12 years' imprisonment. M, an Argentine national who is Company C's owner and president, returned to Argentina before being convicted *in absentia* in Bolivia and sentenced to six years.

13. The Argentine authorities provided limited information on the case. The investigative judge and the prosecutor in charge of the case could not attend the on-site visit. Argentina's Phase 3 and 3bis questionnaire responses state that the Ministry of Foreign Affairs referred the matter to the Public Prosecutor's Office (PPO) in June 2009, some five months after the corruption allegations were widely published in January 2009 in Bolivia. Proceedings were opened in Argentina in August 2009. The PPO sent an MLA request to Bolivia in September 2009 for "information [...] about the on-going investigation regarding several Argentine companies". Bolivia responded in March 2010. The case was then closed in March 2013 due to insufficient evidence. Media reports suggested that Argentina denied a request to extradite M to Bolivia⁸ but the Argentine authorities state that they have no record of such a request.

14. *Case #3 – Power Project (Philippines)*: According to media reports,⁹ Argentine Company M allegedly paid a USD 2 million bribe to the Philippine Secretary of Justice to win a USD 470 million contract to build a power plant. The bribe was allegedly paid through an intermediary and passed through bank accounts in Switzerland, Hong Kong, and the Cayman Islands. Argentina opened an investigation only after substantial delay. The allegation was reported in the media in the Philippines and Argentina in 2002 and 2003 respectively. In June 2005, the Working Group informed Argentina of the allegation. The MFA then passed the information to Argentine law enforcement authorities who opened proceedings in May 2006.

15. The Argentine investigative judge responsible for the case initially attempted to terminate the case before the investigation was completed. He requested MLA from Switzerland which was denied because of an insufficient connection between the proceedings and the evidence sought. The judge sent a second MLA request to the Philippines in August 2007, but then closed the case in November 2009 before receiving a reply. The Federal Court of Appeals reversed this decision, noting that the Philippine MLA request was still outstanding, and ordered the judge to take additional investigative steps.¹⁰ In June 2011, the Philippines responded to the MLA request. After Argentina sent a supplemental MLA request in July 2011, the Philippines replied that the case did not involve bribery to obtain a contract. The Argentine authorities then terminated their investigation in October 2012.

(b) Allegation Subsequently Determined Not to Involve Foreign Bribery

16. *Case #4 – Undeclared Cash (Venezuela)*: According to media reports,¹¹ W, a dual Venezuelan-US citizen, was on a private airplane hired by Argentine and Venezuelan officials on 4 August 2007. Upon landing in Argentina from Venezuela, he failed to declare USD 800 000 in a suitcase as required. In mid-

⁸ [Terra/Associated Press \(27 January 2012\)](#); [Noticias24 \(11 May 2010\)](#); [Eju \(23 July 2009\)](#).

⁹ [Philippine Center for Investigative Journalism \(2-3 April 2001\)](#); [Philippine Star \(16 January 2003\)](#); [La Nación \(15 January 2003\)](#); [Philippine Center for Investigative Journalism \(2 July 2005\)](#); [GMA News \(10 January 2007\)](#); [GMA News \(7 July 2009\)](#); [Philippine Center for Investigative Journalism \(17 April 2008\)](#); [GMA News \(8 January 2007\)](#); [Inquirer \(14 January 2014\)](#).

¹⁰ Investigative decision to terminate case no. 9421/2006 dated 17 October 2012, p. 2.

¹¹ [Clarín \(9 August 2007\)](#); [Parliamentario.com \(17 August 2007\)](#); [Clarín \(14 December 2007\)](#); [St. Petersburg Times \(17 December 2007\)](#); [Clarín \(1 January 2008\)](#).

August 2007, Argentine Parliamentarians filed a criminal complaint alleging transnational bribery and money laundering. W was investigated for smuggling and later money laundering. W subsequently fled Argentina and the case became time-barred. The Supreme Court ordered non-conviction-based confiscation of the funds in September 2016. The case is also relevant to the issue of Executive interference with judicial independence (see p. 30).

(c) Foreign Bribery Allegations that Have Not Been Investigated

17. *Case #5 – Inter-American Development Bank Debarment (Honduras)*: The Phase 3 Report (para. 21) noted that the Inter-American Development Bank (IDB) debarred several Argentine individuals and companies on 20 February 2008 for engaging in “corruptive practices” in relation to a project in Honduras.¹² Argentina was not aware of the decision until it received the Phase 3 questionnaire in 2014. IDB denied a request by MFA for more information, citing privilege over information relating to its investigation. On this basis, the Argentine authorities did not open an investigation.

(d) On-Going Foreign Bribery Cases

18. *Case #6 – Tax Collection (Guatemala)*: Argentine company KT specialises in tax revenue collection. According to media reports,¹³ in 2013 the then president of Guatemala wanted to hire KT to assist in Guatemala’s tax collection. Prior to a competitive bidding process, twelve Guatemalan tax officials allegedly travelled to Argentina to visit KT’s director and were hosted by KT in a luxurious hotel. KT may also have provided gifts to Guatemalan public officials. The contract was awarded to KT and then later reversed when Guatemala’s President faced corruption allegations.

19. The Argentine authorities are actively investigating these allegations. The Special Office for Economic Crimes and Money Laundering (PROCELAC) launched a preliminary investigation in November 2015 after learning of the matter through media reports. It then filed a complaint with the court which led to a formal investigation for money laundering and foreign bribery. In March 2016, the Argentine authorities searched seven premises of KT and its executives in two cities. Documents and computer records were seized.

20. The seized documents and records were received by PROCELAC for analysis in August 2016. PROCELAC is a unit in the Public Prosecutors’ Office (PPO) that provides specialised support (e.g. forensic accounting) to prosecutors conducting economic crime investigations (see p. 22). At the on-site visit in October 2016, the Argentine prosecutor in charge of the case stated that she was still waiting for the results of the analysis as there was a substantial backlog in PROCELAC. At the time of this report (March 2017), PROCELAC has partially analysed the seized evidence and provided the results to the prosecutor. It stated that there are no concerns with delay considering the amount of documentation. As explained at p. 26, the PPO may be experiencing significant resource issues. Additional information such as travel records have been obtained from other sources. An Argentine prosecutor has requested MLA from Guatemala and held a video-conference with her Guatemalan counterparts to discuss the request.

21. *Case #7 - Oil Sector Construction (Brazil)*: TC is Latin America’s largest steelmaker, with headquarters in Milan, Italy and Buenos Aires, and subsidiaries in Brazil. Beginning in December 2014,¹⁴

¹² [Ambito.com \(24 March 2010\)](#); IDB List of Sanctioned Individuals and Firms (www.iadb.org).

¹³ [Día a Día \(15 March 2016\)](#); [El Periódico \(16 March 2016\)](#); [La Política \(29 March 2016\)](#).

¹⁴ [La Nación \(5 December 2014\)](#); [Buenos Aires Herald \(5 December 2014\)](#); [Urgente24 \(28 January 2015\)](#); [Urgente24 \(1 April 2015\)](#).

the media reported that TC and other companies won contracts from PB (Brazil's state-owned oil company) by making payments to the country's ruling political party and senior PB officers. On 1 April 2015, Brazilian authorities opened proceedings against TC's Brazilian subsidiary for corruption.

22. The media reported a second foreign bribery allegation in July 2015.¹⁵ Brazilian police raided five firms - including TC's engineering subsidiary in Brazil – that were involved in building a nuclear reactor for a state majority-owned electricity utility in Brazil. A senior officer of TC's subsidiary was detained and questioned. In September 2015, a Brazilian official was charged with bribe-taking. In April 2016, the Brazilian Court of Audit found “serious irregularities” in the reactor project and threatened to punish the contractors involved, including TC.

23. A third foreign bribery allegation surfaced in May 2016.¹⁶ Through a chain of subsidiaries, TC co-owns AT, a Brazilian company that makes specialised steel products. Brazilian authorities allege that in 2009-2012 AT paid approximately BRL 40 million (USD 11.9 million) in bribes to executives of Brazil's state-owned oil company to win BRL 5 billion (USD 1.5 billion) of contracts. Brazilian police conducted two days of raids in May 2016.

24. Argentina opened an investigation into these allegations only after the evaluation team pressed the issue at the on-site visit in October 2016. At the time of the visit, the Office for Administrative Investigations (PIA) had conduct of the case. PIA, however, does not have jurisdiction to investigate foreign bribery (see p. 23). Its inquiry was therefore limited to determining whether TC had bribed Argentine officials to win Argentine government contracts. As PIA readily acknowledged, “the offence in question is not transnational bribery”. PROCELAC “did not want to interfere with another prosecutor's work”. After the on-site visit, PROCELAC received information about the case from PIA and from its website. In December 2016, Argentina informed the Working Group that PROCELAC had agreed to open a preliminary investigation into the first two allegations described. An investigation into the third allegation was opened in March 2017.

25. *Case #8 – Electricity Transmission (Brazil)*: TS is an Argentine electricity transmission company that was previously a subsidiary of PB, Brazil's state-owned oil company. According to media reports beginning in December 2015,¹⁷ a PB officer and a Brazilian businessman admitted to taking USD 300 000 in bribes in 2006-2007 from two former Argentine government ministers. The purpose of the alleged bribes was to divert the sale of TS from an American buyer to two Argentine firms. The Argentine firms eventually completed the purchase in 2007.

26. The case in Argentina commenced when a member of Congress filed a complaint on 20 December 2015 based on media reports. A prosecutor opened a preliminary investigation on 19 January 2016, almost a month later. The prosecutor then filed the case in court on 1 February 2016 and sought the indictment of a former minister who enjoys parliamentary immunity as a federal deputy. On 18 February 2016, the prosecutor sent an MLA request to Brazil to obtain relevant documents and the witness statements of the PB officer and the Brazilian businessman who allegedly received the bribes. During the October 2016 on-site visit, the prosecutor in charge of the case stated that Brazil had not

¹⁵ [Bloomberg \(28 July 2015\)](#); [Buenos Aires Herald \(29 July 2015\)](#); [Buenos Aires Herald \(30 July 2015\)](#); [Reuters \(3 September 2015\)](#); [Terra \(16 April 2016\)](#).

¹⁶ [Reuters \(24 May 2016\)](#); [El Diario \(25 May 2016\)](#).

¹⁷ [El Mundo \(19 December 2015\)](#); [Clarín \(19 December 2015\)](#); [La Nación \(20 December 2016\)](#); [América Economía \(20 December 2015\)](#); [UOL Noticias \(21 December 2015\)](#); [La Nación \(18 January 2016\)](#); [People's Daily \(19 January 2016\)](#); [Clarín \(10 February 2016\)](#); [Infobae \(10 February 2016\)](#).

responded to the request. No steps, however, had been taken to pursue the request. The investigative judge leading the case added that steps had been taken to gather additional evidence in Argentina, such as searches of company premises, seizure of documents, and tracing financial flows. According to Argentine authorities, the financial intelligence unit UIF (*Unidad de Información Financiera*) provided information in the case in 2011 and 2016. It is unclear to whom the information was provided, however, especially since the preliminary investigation in Argentina began only in January 2016.

27. *Case #9 – Mapping System (Panama)*: TZ is an Argentine subsidiary of an Italian-Franco multinational corporation headquartered in Rome, Italy. According to media reports beginning in October 2015,¹⁸ the Panamanian government signed a EUR 15.7 million contract in 2010 with TZ to purchase a digital mapping system. The price was allegedly inflated and included a 10% commission to a firm which ultimately benefitted the then Panamanian President. In September 2015, the Panamanian government suspended contract payments due to the alleged irregularities and later asked the courts to declare the contract “null and void”.¹⁹

28. The Argentine authorities became aware of the case through the Working Group in December 2015. PROCELAC then conducted a preliminary investigation and filed a formal complaint with the court on 2 August 2016. Two TZ executives have been charged in Argentina with foreign bribery. Argentina has sent MLA requests to Panama and Italy which are currently outstanding.

29. *Case #10 – Grain Export (Venezuela)*: According to media articles,²⁰ Argentina signed an agreement with Venezuela in 2013 to export grain. In February 2014, the owners of BT, an Argentine agricultural wholesaler, travelled to Caracas and met a family member of a Venezuelan public official at the highest level. Shortly thereafter, BT signed a contract to export grain to Venezuela at substantially over market prices. BT was the only company that received an export permit from the Argentine government under the 2013 agreement.

30. There was substantial delay before an investigation was opened in Argentina. The authorities did not react to the allegations when they were widely covered by the media in July 2014 or when they were mentioned in the December 2014 Phase 3 Report. In May 2016, PROCELAC opened a preliminary investigation “by means of information provided by the OECD Working Group on Bribery”. PROCELAC then filed a formal complaint with the court in August 2016 alleging bribery of a Venezuelan Minister. The Argentina authorities are gathering evidence in Argentina which may form the basis for an MLA request to Venezuela, among other things. In June 2016, a Venezuelan Deputy met Argentine officials in Buenos Aires and promised to share information regarding this case.²¹

¹⁸ [La Información](#) (28 October 2015); [Newsroom Panama](#) (25 August 2016); [La Prensa](#) (25 August 2016); [La Prensa](#) (26 August 2016); [La Prensa](#) (2 September 2015); [Newsroom Panama](#) (20 September 2015).

¹⁹ [Fiscales.gob.ar](#) (24 August 2016), “*Imputaron a dos empresarios por presuntas coimas a funcionarios panameños*”; [La Prensa](#) (25 August 2016); [La Prensa](#) (26 August 2016).

²⁰ [Clarín](#) (6 July 2014); [El Comercio](#) (6 July 2014); [Maduradas](#) (6 July 2014); [Reportero24](#) (7 July 2014); [Clarín](#) (8 July 2014); [Clarín](#) (8 July 2014); [Clarín](#) (8 July 2014); [Clarín](#) (8 July 2014); [Cubaencuentro](#) (10 July 2014); [El Carabobeño](#) (17 July 2014); [Clarín](#) (17 July 2014); [Clarín](#) (25 July 2016); [Clarín](#) (29 July 2014); [Informe21.com](#) (19 August 2014).

²¹ [Prensa Asamblea Nacional](#) (2 June 2016) “*Venezuela y Argentina investigarán casos de corrupción entre el gobierno y los Kirchner*”.

31. *Case #11 – Oil Refinery (Brazil)*: According to media reports,²² Argentine company OB agreed to purchase an oil refinery and petrol stations in Argentina from PB, Brazil’s state-owned oil company. OB allegedly secured the contract by making bribe payments that ultimately benefitted members of a Brazilian political party in the ruling coalition and their political campaigns. The payments were allegedly channelled through a Uruguayan company to intermediaries who facilitated the transaction. PB announced in May 2013 that the deal had been concluded but cancelled the sale in August 2013 after the media reported the alleged bribery. Additional media reports alleged that the sale grossly undervalued the assets in question. The assets were ultimately sold to another buyer in 2016. An investigation by Brazilian authorities into the alleged bribery has proceeded apace since April 2014.

32. The Argentine authorities opened an investigation after a member of Congress filed a complaint in May 2013. After the sale collapsed, the authorities sought to dismiss the case. The member of Congress then filed a second complaint based on a media article alleging that OB had paid bribes in Brazil. The investigative judge then issued an MLA request to Brazil in November 2013.²³ The judge believes that the response to the MLA request would be crucial to determining whether this is a foreign bribery case. Yet, no steps have been taken to pursue the request. Brazil eventually replied to the request in March 2017. Some additional investigative steps have been taken in Argentina, including an appearance order to PB’s Argentine subsidiary in 2014 and a court order to submit “new means of evidence” in September 2015. Additional measures to gather evidence were ordered in March 2017. The investigative judge is leading the investigation.

33. *Case #12 – Agribusiness Firms (Venezuela)*: In 2005, Argentina and Venezuela signed an agreement under which Argentina would sell agricultural machinery to Venezuela in return for fuel oil. Argentine companies that export machinery under the scheme had to pay a 15% commission. The funds were deposited in US bank accounts belonging to a company in Miami, Florida, and after 2008 to two Panamanian companies. Some 20 Argentine companies paid commissions under the scheme. In 2010, the media reported that the commissions had allegedly been channelled as bribes to unspecified officials. It is not entirely clear whether the officials in question are Argentine or Venezuelan.²⁴

34. The investigation in Argentina has progressed slowly. Proceedings began in February 2009²⁵ after several members of Congress filed a complaint. MLA requests sent to the US, Panama and France in 2011-2013 have been largely executed. Additional supplemental requests are outstanding since the beginning of 2016. Venezuela, however, has not responded to two requests that were sent in 2010. In addition, substantial documents and evidence have been gathered in Argentina. Forensic accountants are analysing financial information to determine the flow of funds. The UIF provided ten reports in 2016 as part of the investigation. The investigative judge is leading the investigation.

35. *Case #13 – Military Horses (Bolivia)*: According to media articles in November 2014,²⁶ Argentine company IP signed a contract with the Bolivian military in September 2014 to sell horses. The

²² [Epoca \(9 August 2013\)](#); [La Nación \(13 August 2013\)](#); [La Nación \(18 May 2013\)](#); [La Nación \(4 April 2014\)](#); [La Razón \(11 April 2014\)](#); [Revista Líderes \(14 April 2014\)](#); [La Vanguardia \(8 May 2014\)](#); [iProfessional \(29 November 2014\)](#); [Perfil \(21 December 2014\)](#); [El Cronista \(4 May 2016\)](#).

²³ In Phase 3 (para. 23), Argentine authorities stated that Brazil replied to the MLA request in June 2014.

²⁴ [Cadena Entrerriana \(27 April 2010\)](#); [Clarín \(6 May 2010\)](#); [Clarín \(7 May 2010\)](#); [Clarín \(7 January 2014\)](#); [Clarín \(8 January 2014\)](#); [Quinto Día \(10 January 2014\)](#); [Clarín \(27 April 2014\)](#).

²⁵ In Phase 3 (para. 25), the Argentine authorities stated that an investigation was opened in 2008.

²⁶ [El Deber Bolivia \(11 July 2014\)](#); [Página Siete \(31 October 2014\)](#); [El Deber Santa Cruz \(1 November 2014\)](#); [Gaceta Mercantil \(3 November 2014\)](#).

contract had been awarded without tender. The Bolivian Ministry of Defence, the Bolivian Army, and the Vice President of Bolivia gave conflicting statements on the amount paid and the number of horses received. The contract apparently stipulated a sale price of BOB 3.2 million (USD 460 000) but one letter from the military indicated that USD 15 million would be paid.

36. The Argentine authorities received information about the case from the Working Group. In May 2016, PROCELAC conducted a preliminary investigation before filing a complaint with the courts in August 2016. Argentine authorities state that they are gathering evidence and awaiting results but do not elaborate what these steps are.

Commentary

The lead examiners are encouraged that, compared to Phase 3, Argentina has been more responsive to foreign bribery allegations. Some enforcement actions have progressed. Investigative judges and prosecutors in charge of some of the cases took part in the on-site visit and provided important information about Argentina's enforcement efforts. A Corporate Liability Bill has been introduced into Congress.

The lead examiners, however, continue to have serious concerns about Argentina's foreign bribery enforcement and implementation of the Convention. As explained in this report, out of the 40 Working Group's 2014 Phase 3 Recommendations, 3 are fully implemented, 14 partially implemented and 23 not implemented. Many of the recommendations that have not been fully implemented relate to legislation. The lead examiners acknowledge that efforts to implement these Recommendations began in earnest only after the current government took office in December 2015. Nevertheless, the fact remains that Argentina continues to be in serious non-compliance with key articles of the Convention on corporate liability, nationality jurisdiction, and the foreign bribery offence. Argentina should ensure that the Corporate Liability Bill before Congress addresses all major legislative deficiencies identified by the Working Group and then promptly enact the Bill. Grave concerns remain about extraordinary delays in complex economic crime cases, the independence of the judiciary and prosecutors, and the politicisation of the Attorney General's office. Steps should also be taken to enhance international co-operation, including through informal channels.

B. IMPLEMENTATION AND APPLICATION BY ARGENTINA OF THE CONVENTION AND THE 2009 RECOMMENDATIONS

37. As in previous evaluations, Argentina has on-going legislative initiatives meant to address Working Group concerns. In Phase 3, Argentina had prepared a draft Bill to reform its Penal Code to address some deficiencies in its penal legislation. Those efforts have since been abandoned. Instead, just days before the Phase 3bis on-site visit in October 2016, Argentina introduced a Corporate Liability Bill into Congress that is meant to address several issues identified by the Working Group. At the time of this report, the Corporate Liability Bill is still under consideration in the Chamber of Deputies and has yet to arrive in the Senate.

38. Consistent with its established practice, the Working Group will only take into account legislation that has entered into force when assessing Argentina's implementation of the Convention. The Working Group will assess any relevant new legislation, including through a Phase 1bis evaluation, only if and when the legislation is enacted. This Phase 3bis Report will therefore refer to some aspects of the Corporate Liability Bill but will not give it the same level of scrutiny as the present law.

1. Foreign Bribery Offence

39. This section considers Argentina's foreign bribery offence, applicable defences, and jurisdiction to prosecute natural persons for this crime. The Working Group has identified all of these issues since Phase 2 in 2008 and in some cases since Phase 1 in 2001.

(a) *Elements of the Foreign Bribery Offence*

40. Argentina's foreign bribery offence is in Article 258bis of its Penal Code (PC):

Article 258bis. Any person who, directly or indirectly, offers or gives a public official from a foreign State or from an international public organisation, for this official's benefit or for the benefit of a third party, money or any object of pecuniary value, or other compensations, such as gifts, favours, promises or advantages, for the purpose of having such official do or not do an act in related to the performance of his official duties, or to use the influence derived from the office he holds, in a matter linked to a transaction of an economic, financial or commercial nature, shall be punished with reclusion from one (1) to six (6) years and special disqualification for life in respect of the exercise of any public office.

41. In previous evaluations, the Working Group noted that Article 258bis differs from the Convention by not requiring that the advantage offered to the official be "undue", or that the advantage obtained by the briber be "improper". This raises concerns that the offence may criminalise legitimate payments seeking proper official action.²⁷ The Working Group also decided to follow up whether the offence covers bribes paid in exchange for any use of the public official's position, whether or not within the official's authorised competence.²⁸

42. Article 258bis PC applies to bribery of a "public official", a term defined in Article 77 PC:

Article 77. The terms "public official" [*funcionario público*] and "civil servant" [*empleado público*] as used in this Code refer to any person who temporarily or permanently discharges public functions, whether as a result of popular election or appointment by the competent authority.

43. When applied to foreign bribery, this definition has also raised several issues, some of which have been identified since Phase 1.²⁹ First, the definition of a foreign official is not autonomous. Evidence of foreign law must be tendered to prove that the bribe recipient is a foreign public official, according to Argentine officials in Phases 2 and 3. Second, the definition does not cover employees of foreign state-owned or state-controlled enterprises (SOEs). Third, the definition does not expressly cover officials of "any organised foreign area or entity, such as an autonomous territory or a separate customs territory".

44. None of these issues have been resolved. Since Phase 3, Argentina has not amended its foreign bribery offence. There has not been case law on whether the offence covers bribes paid to induce a foreign official to act outside his/her authorised competence. The Corporate Liability Bill purports to deal with some issues, such as the coverage of foreign SOE officials. On other issues, the Bill does not go far

²⁷ Phase 3 Report para. 35 and Recommendation 1(c).

²⁸ Phase 3 Report para. 36 and Follow-up Issue 15(a).

²⁹ Phase 3 Report paras. 33-34 and Recommendation 1(a)-(b); Convention Article 1(4), Commentaries 12-18.

enough, e.g. the offence would be amended to cover officials of foreign territorial entities but only if such territories are “recognised by the Argentine Government”. In any event, the Bill has yet to be enacted. No steps have been taken to address the non-autonomous definition of a foreign public official or to exclude legitimate payments from the offence. Initially, Argentina merely reiterated its arguments from Phase 3.

Commentary

The lead examiners are disappointed that Argentina has not enacted legislation to address concerns about its foreign bribery offence. The Corporate Liability Bill is an invaluable occasion to enact explicit legislative language that would conclusively settle all of these issues. However, the Bill in its current form does not address all of these concerns. Phase 3 Recommendations 1(a)-(c) are therefore not implemented and Follow-up Issue 15(a) remains outstanding.

For these reasons, the lead examiners again recommend that Argentina (a) introduce an autonomous definition of foreign public officials; (b) ensure that the definition of foreign public officials covers, in a manner consistent with the Convention, officials of foreign public enterprises and public officials of organised foreign areas or entities that do not qualify or are not recognised as States; and (c) eliminate the vagueness in the offence resulting from the absence of a requirement that the advantage provided to an official be “undue”, or that the advantage obtained by the briber be “improper”. They also recommend that the Working Group continue to follow up whether Article 258bis PC covers cases where a bribe is paid in order that an official acts outside his/her authorised competence.

(b) Defence of Solicitation or “Illicit Demand”

45. The Working Group has queried whether solicitation is a defence to the active foreign bribery offence. Solicitation is a defence to active *domestic* bribery in Argentina. This is because the Argentine active domestic bribery offence in Article 258 PC is linked to the passive domestic bribery offence, as explained in detail in the Phase 3 Report (paras. 37-39). Argentina argued that the active *foreign* bribery offence in Article 258bis is not similarly linked to a corresponding passive foreign bribery offence. Solicitation is therefore not a defence to active foreign bribery. In the absence of supporting case law, the Working Group decided to follow up this issue (Phase 3 Follow-Up Issue 15(b)). Since Phase 3, there has not been jurisprudence on this issue.

Commentary

The lead examiners recommend that the Working Group continue to follow up whether the solicitation or “illicit demand” of an undue payment or other advantage by a foreign public official can exclude the liability of the active briber.

(c) Jurisdiction to Prosecute Foreign Bribery

46. Article 4(1) of the Convention requires Parties to establish jurisdiction over foreign bribery committed in whole or in part in its territory (territorial jurisdiction). Article 4(2) states that if a Party has jurisdiction to prosecute its nationals for extraterritorial offences (*i.e.* nationality jurisdiction), then it should establish jurisdiction according to the same principles over foreign bribery.

(i) Territorial Jurisdiction over Natural Persons

47. Argentina has jurisdiction to prosecute “crimes committed – or whose effects take place – in the territory of the Argentine Republic or in any place under its jurisdiction” (Article 1(1) PC). In previous

evaluations, Argentine authorities stated that any action performed toward the accomplishment of an offence (e.g. a telephone call, fax or email) would be sufficient for territorial jurisdiction. On-site visit participants, however, questioned whether Argentina had an effective basis for establishing territorial jurisdiction in foreign bribery cases occurring mainly abroad. Jurisprudence also raised questions over whether territorial jurisdiction would be as broad as claimed by Argentine authorities. The Working Group accordingly decided to follow up this issue (Phase 3 Follow-Up Issue 15(c)). There have not been jurisprudential developments since Phase 3 that would clarify the scope of territorial jurisdiction.

Commentary

The lead examiners recommend that the Working Group continue to follow up the application of territorial jurisdiction in foreign bribery cases.

(ii) Nationality Jurisdiction over Natural Persons

48. The Working Group has urged Argentina since Phase 1 in 2001 to adopt nationality jurisdiction to prosecute foreign bribery. Argentina has jurisdiction to prosecute an “agent or employee of the Argentine authorities” for offences (including foreign bribery) committed outside of Argentina in the performance of his/her duties (Article 1(2) PC). Yet there is no similar jurisdiction to prosecute Argentine nationals who are not officials and who commit foreign bribery extraterritorially. A Bill to rectify this problem was submitted to the Congress in 2010 only to be withdrawn the following year. Argentina claimed in Phase 3 that the 2014 draft Penal Code reform Bill would address this concern, but the Bill has since been abandoned.

49. The Corporate Liability Bill currently before Congress again contains a provision that is meant to address this issue. As noted at p. 14, the Working Group will only take into account legislation that has entered into force when assessing Argentina’s implementation of the Convention. Relevant new legislation is assessed only if and when it is enacted. Phase 3 Recommendation 2 is not implemented.

Commentary

The lead examiners reiterate their serious concerns expressed in the Phase 3 Report that Argentina still does not have nationality jurisdiction to prosecute foreign bribery. As the Working Group has noted,³⁰ the absence of nationality jurisdiction poses a serious challenge to a country’s ability to effectively prosecute foreign bribery cases. The lead examiners reiterate Phase 3 Recommendation 2 and recommend that Argentina adopt nationality jurisdiction to prosecute foreign bribery cases on a priority basis.

2. Responsibility of Legal Persons

50. The Phase 3 Report (paras. 49-53) expressed serious concerns that Argentina remained unable to impose liability against legal persons for foreign bribery. Argentina has corporate liability for tax offences, insider trading and other securities offences, money laundering, and terrorism financing, but not foreign bribery or corruption.³¹ Between 2001-2014, four legislative initiatives to address this deficiency were

³⁰ See [Phase 3 Canada](#), para. 121.

³¹ Law 24 769, Article 14; Articles 304 and 313 PC; Law 26 734, Article 6. In addition, since 1981 Law 22 415, Article 887 has provided joint liability for companies and individuals for customs offences. Corporate criminal liability for currency exchange offences has been available since 1995 under Law 19 359, Article 2(f) as amended.

started and then abandoned without Congress even voting on the matter. The government made a fifth attempt by preparing a Draft PC Bill with corporate liability provisions. At the time of Phase 3, it was considering the results of a public consultation on the Bill.

51. Given the lack of progress over a lengthy period of time, the December 2014 Phase 3 Report concluded that Argentina did not consider corporate liability for foreign bribery to be a matter of priority, and that it lacked political will to address this issue. Phase 3 Recommendation 3 urged Argentina to adopt legislation on a priority basis to ensure that legal persons can be held liable for foreign bribery.

52. At the time of this report, there is still no corporate liability for foreign bribery in Argentina, but yet another legislative effort to address this problem is under way. The Draft PC Bill that was mentioned in the Phase 3 Report did not progress beyond the public consultation and was eventually abandoned with no explanation by the Argentine authorities. One week before the Phase 3bis on-site visit in October 2016, the government submitted the Corporate Liability Bill to the Chamber of Deputies in Congress where it remains at the time of this report.

53. The Bill is high on the agenda of the current Argentine government. The Argentine President stated in a speech to Congress that the adoption of the Bill is top priority. The second reading of the Bill in the Chamber of Deputies is scheduled for mid-March. A Committee created in the Chamber of Deputies to address OECD-related matters reportedly has also prioritised the adoption of the Corporate Liability Bill. Argentina states that the Ministry of Justice has also enacted Executive Decree 103/17 to create a committee to overhaul the all penal legislation, including those provisions relevant to the implementation of the Convention.

54. Argentina has provided a copy of the Corporate Liability Bill to the evaluation team. If enacted in its current form, the Bill would provide for corporate criminal liability for a range of corruption offences, including foreign bribery. A legal person would be liable for corruption committed on its “behalf, representation or interest” if the crime resulted from the legal person’s ineffective control and supervision. The Bill sets out the requisite elements of an effective corporate compliance programme to prevent corruption, and a procedure for settlements of proceedings. Liability for money laundering would continue to be governed by the existing law with wholly different standards of liability. Corporate liability for false accounting would remain unavailable. As noted at p. 14, the Working Group will fully assess legislation only if and when it is enacted. Phase 3 Recommendation 3 is therefore not implemented.

Commentary

The lead examiners are concerned that Argentina remains in serious non-compliance with Articles 2 and 3 of the Convention by not providing corporate liability for foreign bribery. The Corporate Liability Bill is an important development but it needs to be pursued to completion. The lead examiners therefore reiterate the Working Group’s earlier Recommendations and urge Argentina to adopt legislation on a priority basis to ensure that legal persons can be held liable for foreign bribery. They also recommend that Argentina consider harmonising its corporate liability provisions so that a single regime of liability covers foreign bribery and related offences such as money laundering and false accounting.

3. Sanctions

55. This section assesses the sanctions available for foreign bribery. Debarment from public procurement contracts is considered at p. 60.

(a) ***Sanctions against Natural Persons for Foreign Bribery***

56. The Phase 3 Report (paras. 55-56) found that financial sanctions against natural persons were insufficient. Foreign bribery under Article 258bis PC is punishable by confinement (*reclusión*) of 1-6 years and permanent disqualification from exercising a public function. If an offence is committed “with the aim of monetary gain”, then a fine of up to ARS 90 000 (USD 5 800)³² may be imposed (Article 22bis PC). A fine is arguably not available at all if the gain is not pecuniary or goes not to the briber but his/her company. Phase 3 Recommendations 4(a) and (b) asked Argentina to address these deficiencies. Argentina has not implemented these Recommendations since Article 258bis PC has not been amended. The Corporate Liability Bill also does not address the matter.

57. In Phase 3 the Working Group could not assess the adequacy of sanctions in practice because of a lack of concluded foreign bribery cases. Statistics on sanctions imposed in domestic bribery cases, which could have offered some guidance, were also unavailable. The Phase 2 Report (para. 220) noted that sanctions for white-collar crime were generally low and that the courts had not developed coherent sentencing criteria. Phase 3 Recommendation 7 asked Argentina to maintain statistics of sanctions imposed in cases of bribery and other economic crimes.

58. Comprehensive statistics on sanctions in corruption cases continue to be unavailable and Phase 3 Recommendation 7 is not implemented. In Phase 3bis, Argentina referred only to three examples of corruption cases in which natural persons had been sanctioned for fraud, embezzlement or money laundering. Two of the cases involved convictions of corrupt officials - which tend to attract heavier sentences - and not those who corrupted them. In the third case, a businessman was sentenced to nine years’ imprisonment for corruption that resulted in a train accident with numerous fatalities. Given these extremely aggravating facts, the sentence is likely not representative of corruption cases generally. In any event, three cases are not a sufficient sample size for concluding that sanctions in practice are adequate. Lawyers at the Phase 3bis on-site visit said that corruption cases rarely result in custodial sentences.

59. In Phase 2 (para. 221), Argentina indicated that the prevalence of bribery in a foreign jurisdiction and the tolerance of such payments by the foreign authorities could be mitigating factors at sentencing. This raised concerns about compliance with Commentary 7 of the Convention.³³ In Phase 3, the Working Group also decided to continue following up this issue (Follow-up Issue 15(d)). Since then, there has not been practice that would clarify this matter.

60. In October 2016, Argentina enacted Law 27 304 on Repentance which provides sentence reductions to defendants who co-operate in the investigation of other crimes, including foreign bribery. To benefit from these provisions, the defendant must provide accurate and verifiable information about crimes in which he/she participated. The information must incriminate another person of equal or greater responsibility for the crime. The law lists the factors to be considered in deciding the size of the sentence discount. The reduction does not apply to disqualification penalties or fines. The defendant must enter into a written agreement before the commencement of proceedings, the closing of the preliminary investigation or other similar procedural act. A judge then either approves or rejects the agreement after a hearing.

³² Based on official exchange rate of the [Central Bank of Argentina](#) on 15 November 2016. The fine amount in USD is significantly lower than in Phase 3 because of exchange rate fluctuations.

³³ Commentary 7 states that the offence of foreign bribery should be “irrespective of, *inter alia*, the value of the advantage, its results, perceptions of local custom, the tolerance of such payments by local authorities, or the alleged necessity of the payment in order to obtain or retain business or other improper advantage.”

Commentary

As noted in Phase 3, the Working Group has stated in other evaluations³⁴ that the absence of fines for the foreign bribery offence may affect the effective, proportionate and dissuasive character of sanctions. Fines are available in Argentina, but with the maximum at USD 5 800, they are wholly inadequate for foreign bribery cases. The lead examiners therefore reiterate their recommendation that Argentina (a) substantially increase the maximum fine available for foreign bribery, (b) ensure that fines are available where the gain obtained by a briber is not pecuniary or does not go to the briber but his/her company, and (c) maintain detailed statistics of sanctions (including confiscation) imposed in cases of bribery and other economic crimes. The lead examiners also recommend that the Working Group continue to follow up sanctions imposed for foreign bribery in practice, including whether sentences imposed comply with Commentary 7 of the Convention.

(b) Sanctions against Legal Persons for Foreign Bribery

61. Argentina does not have corporate liability for foreign bribery and hence cannot impose sanctions against legal persons for this crime. The Corporate Liability Bill in its current form, if enacted, would impose a fine between 1-20% of a legal person's annual revenues in the year before the offence is committed. However, sanctions that are linked to the company's revenues before the offence took place may not necessarily be effective, proportionate and dissuasive. This concern is magnified given the delay in cases reaching the sentencing stage (see p. 24). The minimum fine increases to 10% of annual revenues if certain aggravating factors are present. The fine is reduced if the legal person reports the offence to the authorities and/or co-operated with the authorities. Other available sanctions would include total or partial suspension of activities, suspension of the use of patents and brands, publication of the judgment, suspension or prohibition from receiving state benefits, and dissolution of the legal person. As noted at p. 14, the Working Group will fully assess these provisions if and when they are enacted.

4. Confiscation of the Bribe and the Proceeds of Bribery

62. Argentina has not implemented Phase 3 Recommendation 4(c) to provide for confiscation of property the value of which corresponds to that of the bribe and the proceeds of bribery, or monetary sanctions of comparable effect (*i.e.* value confiscation). Article 23(1) PC provides for confiscation upon conviction of "things that have been used to commit the offence, and the things or profits that constitute the proceeds or gains from the offence". As noted in Phase 3 (para. 58), this provision allows the confiscation of the bribe and the direct proceeds of bribery but not value confiscation. In 2016, the Chamber of Deputies passed a Bill that would create non-conviction based confiscation - including value confiscation - of the proceeds of listed offences, including foreign bribery. The Bill is currently before the Senate.

63. Argentina also has not implemented Phase 3 Recommendation 4(d) to take further steps to ensure that confiscation is routinely ordered, represents the full benefits of the offence, and is executed without delay. The Phase 3 Report (para. 61) found that confiscation was infrequent in practice, with only 13 orders for confiscation of money and 7 of motor vehicles in 2012-2013. It was unclear how many bribery cases resulted in confiscation. Even when ordered, confiscation may be delayed or not for the full amount. In Phase 3bis, Argentina has not identified any steps taken to implement Recommendation 4(d). It provided statistics only on asset seizures but not confiscation. The media has continued to report an

³⁴ [Phase 3 Italy](#), para. 54 and Commentary after para. 71.

absence of confiscation, noting that only ARS 25 million (USD 1.6 million) in funds, 20 properties and 50 vehicles have been confiscated in 27 years.³⁵

64. The Phase 3 Report (paras. 59-60 and Follow-up Issue 15(e)) also identified two issues for follow up, namely the confiscation of indirect proceeds of foreign bribery, and confiscation against a legal person of the proceeds of offences committed by a *de facto* manager. Argentina did not report any developments since Phase 3 concerning these issues.

Commentary

The lead examiners reiterate their recommendation that Argentina (a) amend its legislation to provide for confiscation of property the value of which corresponds to that of the bribe and the proceeds of bribery, or monetary sanctions of comparable effect; and (b) take further steps to ensure that confiscation is routinely ordered in foreign bribery cases, that the amount of confiscation represents the full benefits of the offence, and that confiscation orders are executed without unreasonable delay. They also recommend that the Working Group continue to follow up the confiscation of indirect proceeds of foreign bribery, and confiscation against a legal person of the proceeds of offences committed by a de facto manager.

5. Investigation and Prosecution of the Foreign Bribery Offence

65. This section considers the investigation and prosecution of foreign bribery cases. It begins with an overview of the applicable criminal procedure. It then examines several issues related to enforcement, including in actual foreign bribery investigations and prosecutions that have been conducted (Phase 3 Follow-up Issue 15(f)). Of particular concern is the extraordinary delay in complex economic crime cases, and the related issues of a lack of resources and proactivity in investigations. Also of particular concern is judicial and prosecutorial independence under Article 5 of the Convention.

(a) Procedure for Foreign Bribery Investigations

66. This section describes the current legal framework for opening, conducting, and terminating foreign bribery investigations and prosecutions. The last part of the section briefly considers the new Criminal Procedure Code that was enacted in 2014 but which has yet to enter into force.

(i) Opening Foreign Bribery Investigations

67. Any person who becomes aware of a crime that is prosecutable *ex officio*, which includes domestic and foreign bribery, may report it to a judge, prosecutor or the police. A person who deems him/herself a victim of such a crime may also report (Article 174 CPC). Law enforcement authorities are legally required to commence an investigation (*instrucción*) once becoming aware of a foreign bribery allegation, including through a complaint (*denuncia*) (Article 71 PC).

68. Argentina has taken some steps to implement Phase 3 Recommendation 5(a) to routinely and systematically assess foreign bribery allegations in the media. Of the 13 foreign bribery allegations referred to in this report, 12 were brought to light by the media. Yet only one media report led directly to a preliminary investigation (in the *Tax Collection (Guatemala) Case*). The remaining cases started after the media reports were referred to prosecutors or judges by the Working Group (4 cases), members of

³⁵ La Nación (25 July 2016), “*El Estado sólo recuperó \$ 25 millones del lavado de dinero*”. See also La Nación (24 August 2016), “*La recuperación de activos de la corrupción*”.

Congress (4), and the Ministry of Foreign Affairs (1). Argentina opened an investigation into one of the foreign bribery allegations in the high-profile *Oil Sector Construction Case (Brazil) Case* only after the evaluation team pressed the issue at the on-site visit.

69. As mentioned in the Phase 3 Report (para. 77), the reasons for the unresponsiveness to allegations in the media may be institutional. The Anti-Corruption Office (OA) stated at the Phase 3bis on-site visit that it routinely monitors the media. However, it did not respond to any of the 12 foreign bribery allegations referred to in this report. In any event, the OA does not investigate foreign bribery (see p. 22). The OA also stated that PROCELAC is required to monitor the media, but PROCELAC did not acknowledge that it has this responsibility. At the on-site visit, the Attorney General's Office stated that it had launched a press service to disseminate news reports daily to each prosecutor's office, including PROCELAC. This measure had yet to lead to the detection of a foreign bribery allegation, however.

70. Unresponsiveness to media allegations has delayed the commencement of investigations in several cases. The Phase 2 Report (paras. 16-17 and 104) observed that the investigation in the *Power Project (Philippines) Case* was opened four years after the allegation was first published. More recently, preliminary investigations were opened almost two years after the allegations had surfaced in the *Grain Export (Venezuela) and Military Horses (Bolivia) Cases*.

71. Argentina has not taken steps to implement Phase 3 Recommendations 5(a) on commencing investigations based on anonymous information and 5(b) on diversifying the sources of allegations. The constituting legislation of OA and the Office for Administrative Investigations (*Procuraduría de Investigaciones Administrativas*, PIA) expressly allows them to rely on anonymous information in domestic corruption cases. No similar provisions apply to federal judges and prosecutors with jurisdiction over foreign bribery. Argentina indicated that PROCELAC can receive anonymous complaints through its webpage and email. Establishing a channel for receiving anonymous reports, however, does not necessarily mean the reports would be used to open investigations, which is the gist of Recommendation 5(a). No foreign bribery allegations have been detected through anonymous reports or any sources other than media reports.

Commentary

The lead examiners are encouraged that PROCELAC recently opened one foreign bribery investigation based directly on an allegation published in the media. However, other investigations were opened only after information provided by individual complainants or the Working Group. Media monitoring by the Attorney General's office has yet to yield results. The lead examiners therefore reiterate Phase 3 Recommendations 5(a) and (b) and recommend that Argentina continue to (a) take steps to ensure that its law enforcement authorities ensure that foreign bribery cases may be commenced based on information provided anonymously; and (b) use proactive steps to gather information from diverse sources of allegations and enhance investigations. The lead examiners also recommend that the Working Group follow up whether Argentine authorities routinely and systematically assess credible foreign bribery allegations that are reported in the media on a timely basis.

(ii) The Conduct of Foreign Bribery Investigations

72. A formal investigation (*instrucción*) is legally mandatory once the authorities become aware of a foreign bribery allegation, including through a complaint (*denuncia*) (Article 71 PC). The investigative judge (*juez de instrucción*) is responsible for conducting the formal investigation (Articles 174-353 CPC) but can delegate the investigation to a federal public prosecutor (Article 196 CPC). Federal prosecutors are

part of the *Ministerio Público* which is headed by the Attorney General (*Procurador General de la Nación*). The Federal Police (*Policía Federal Argentina*) provides police support in investigations.

73. A formal investigation may be preceded by a preliminary investigation in foreign bribery cases. A preliminary investigation is conducted by a prosecutor who learns of an allegation that a crime has been committed.³⁶ Preliminary investigations are limited to measures that do not require judicial authorisation. The evidence gathered may then be used to file a complaint with the court to start a formal investigation.

74. The prosecutor's office includes specialised units whose main role is to support other federal prosecutors who are investigating specific cases. The Special Office for Economic Crimes and Money Laundering (PROCELAC) consists of six operational areas including crimes against the public administration; money laundering and terrorism financing; and economic fraud and banking. PROCELAC has conducted preliminary investigations and provided specialised support in foreign bribery cases (see p. 8). The Unit for the Recovery of Assets and the Office for Economic Research and Financial Analysis may also in theory support foreign bribery cases but have yet to do so.

75. Two agencies with the most experience in domestic corruption investigations do not have jurisdiction over foreign bribery (except in very exceptional cases). The Anti-Corruption Office (*Oficina Anticorrupción*, OA) is within the Ministry of Justice and Human Rights. OA is responsible for "the development and co-ordination of programmes to fight corruption in the national public sector". It has jurisdiction over corruption offences involving the national public administration, companies and other entities.³⁷ The Office for Administrative Investigations (*Procuraduría de Investigaciones Administrativas*, PIA) within the MP is responsible for investigating, *inter alia*, administrative misconduct by Argentine officials and enterprises in which the State participates.³⁸ Both OA and PIA can investigate foreign bribery only if the crime is committed by an Argentine official, which will be rare. PROCELAC and PIA signed an agreement in November 2016 to delimit their respective competence.

(iii) *Terminating Investigations and Prosecutions, Including Settlements*

76. An investigative judge can terminate a case at any stage of the criminal proceedings (Article 334 CPC). A prosecutor may also close a case if a judge had not yet taken conduct of the case (Article 181 CPC). Article 336 CPC specifies the grounds for termination: (i) the penal action has been extinguished by the statute of limitations or Congressional amnesty; (ii) the alleged crime has not been committed; (iii) the act is not a crime; (iv) the subject of the investigation did not commit the crime; (v) justification, insanity or immunity. The prosecutor or complainant may appeal a decision to close a case. If the investigative judge has completed the investigation and decides the matter should go to an oral trial (*juicio*), then a separate judge or judicial panel conducts the trial to determine guilt (Articles 399, 401-403 CPC). The federal courts hear trials and appeals of foreign bribery cases.

77. Some forms of settlement are available. As described at p. 19, provisions enacted in 2016 allow co-operating offenders to receive sentence discounts. In addition, an "abbreviated procedure" is available in foreign bribery cases if the prosecution seeks a sentence of less than six years' imprisonment. The prosecution and the defence can reach an agreement about guilt and the sentence when the prosecutor commences the oral trial. A court may reject the agreement if it needs more information about the facts or

³⁶ Organic Law of the Public Prosecutor's Office, Law 27 148, Article 8; Article 426 CPC.

³⁷ Article 13 of Law 25 233 and Decree 102/1999.

³⁸ Law 27 148, Article 28. PIA replaced the National Prosecutor of Administrative Investigations (FIA) which was referred to in the Phase 3 Report.

disagrees with the legal classification of the case. The court cannot reject the settlement if it disagrees with the agreed sentence, or impose a more severe sentence than agreed (Article 431bis CPC). The procedure was applied in a domestic corruption case recently.³⁹ Foreign bribery cases do not qualify for a separate procedure for trial suspension (Article 76bis-76quater PC).

(iv) *Procedure under Criminal Procedure Code 2014*

78. In December 2014, Argentina enacted a new Criminal Procedure Code (CPC 2014) which substantially overhauls the federal criminal procedural system. The new Code introduces an accusatorial system of justice. Prosecutors would be given sole responsibility for conducting investigations and prosecutions (Articles 88 and 196). The current investigative judges would become “guarantee judges” who hear applications by the prosecutor, such as for investigative measures that require judicial authorisation or to transfer the case to trial.

79. The CPC 2014 would also replace the principle of mandatory prosecution with the opportunity principle (*i.e.* prosecutorial discretion). Article 59 PC was amended in 2015 to provide that “Penal action is extinguished by [...] the application of the principle of opportunity, in accordance with the provisions of the relevant procedural laws”. These procedural laws are found in Articles 30-31 and 215-225 CPC 2014. A prosecutor would have discretion to terminate a case that does not seriously affect the public interest or is insignificant (among other grounds). Termination may occur at any point from the receipt of the complaint to the formalisation of the investigation (which is akin to an indictment).⁴⁰

80. At the time of this report, the CPC 2014 still has not entered into force. The CPC 2014 was originally expected to enter into force in phases beginning in Buenos Aires City on 1 March 2016. By June 2015, Congress had enacted five new laws dealing with the implementation of the CPC 2014. But upon taking office in December 2015, the current government quickly suspended the implementation of the CPC 2014.⁴¹ In this evaluation, Argentina explained that its federal courts “were not in a condition to implement this new Code” that would introduce an oral procedure for investigations and would also give prosecutors responsibility for investigations. The government now intends to bring the CPC 2014 into force in stages from the second semester of 2017, starting with the Federal Courts of Salta and Comodoro Rivadavia. In any event, the CPC 2014 will not apply to the foreign bribery cases described in this report since these cases concern crimes that were allegedly committed before the CPC 2014 enters into force (Law 27 063 Article 4). The CPC 2014’s impact on delay in the justice system, as well as on prosecutorial and judicial independence, is further examined at pp. 24 and 33.

(b) *Statute of Limitation and Systemic Delay in Complex Economic Crime Cases*

81. The limitation period applicable to the foreign bribery offence remains unchanged since Phase 3. The offence is subject to a six-year limitation period that is restarted by major procedural acts. From the commission of the offence, the Argentine authorities have six years to summon a person (*declaración indagatoria*), another six years to investigate before filing the indictment (*requerimiento de elevación a juicio*), six further years to summon the accused for trial (*citación a juicio*), and a final six years from

³⁹ Juzgado Criminal y Correccional Federal 10 (13 October 2015), *Jaime, Cirigliano et al.*, CFP 2160/2009.

⁴⁰ Argentina states that Article 30 CPC 2014 does not permit termination based on the opportunity principle if such termination is “incompatible with international instruments provisions”. The Convention, however, permits the termination of foreign bribery cases based on prosecutorial discretion so long as other requirements of the Convention are met (see Commentary 27).

⁴¹ Emergency Executive Order, Decree No. 257/2015.

conviction (even if appealed) until the execution of the sentence. No suspension occurs where the accused is a fugitive or if an MLA request is outstanding. A further four-month limitation period on the length of investigations is not applied to complex economic crime cases in practice.⁴²

82. Despite this generous limitation period, many complex economic crime cases in Argentina are time-barred due to systemic delays in the criminal justice system. The Phase 2 and 3 Reports cited statistics indicating that extraordinary delays meant that few corruption cases ever reached the trial stage, let alone convictions. This situation has not changed since Phase 3. An audit of the federal courts in 2016 found current corruption cases that have been on-going for over a decade.⁴³ A separate 2016 study of 63 large corruption cases in the last two decades indicated that only 15% reached trial and 11% resulted in convictions. The average duration of a case was 14 years, with some lasting two decades.⁴⁴ A second study showed that the average time between the reporting of an offence and the start of the trial was more than 7 years. Many cases were time-barred.⁴⁵ A third 2016 report indicated that half of the 2 211 cases of fraud against the public administration handled by the federal courts in the last 20 years were still at a preliminary stage.⁴⁶

83. Similar delay can be observed in some of Argentina's foreign bribery enforcement actions. The investigation in the *Agribusiness Firms (Venezuela) Case* started in 2009 and is still on-going today, some eight years later. The *Oil Refinery (Brazil) Case* has been open since 2013. The *Power Project (Philippines) Case* dragged on for over six years before it was terminated without charge. As described at p. 21, there was also delay in opening several foreign bribery investigations after the media reported the allegations.

84. These extreme delays have been widely acknowledged as a major problem. During the on-site visits in both Phase 3 and 3bis, prosecutors, judges, lawyers, academics, parliamentarians, and civil society representatives unanimously acknowledged that delay was a major concern. One prosecutor recently stated publicly that "the efficiency of the justice [system] in the fight against corruption so far is practically null".⁴⁷ To address the problem, the Supreme Court has stated in a corruption case that lower courts should tend towards trying cases on their merits rather than applying the statute of limitations.⁴⁸ A lower court recently went further and declared the statute of limitations wholly inapplicable in corruption cases.⁴⁹ However, this ruling is unlikely to apply to foreign bribery cases because of the reasoning underlying the court's decision, according to some on-site visit participants.

85. The delay has been blamed, at least in part, on several features of the Argentine criminal procedural system. A frequently cited cause of delay is the ready availability of interlocutory proceedings

⁴² Articles 62(2) and 67 PC; Phase 3 Report paras. 87-88.

⁴³ Clarín (22 December 2016), "[Auditoría a la Justicia: hay 2000 causas abiertas por corrupción y jueces sobrecargados](#)".

⁴⁴ Télam (17 July 2016), "[Solo siete de 63 grandes causas de corrupción terminaron con condenas](#)"; Infobae (19 July 2016), "[Las causas judiciales por corrupción duran en Argentina un promedio de 14 años](#)".

⁴⁵ La Nación (3 May 2016), "[Oportuna auditoría de las causas de corrupción](#)".

⁴⁶ Entorno Inteligente (3 July 2016), "[La mitad de las denuncias de corrupción nunca avanzaron](#)".

⁴⁷ Infobae (17 November 2016) "[Para el fiscal Campagnoli, la eficacia de la Justicia en los casos de corrupción es nula](#)".

⁴⁸ Corte Suprema de Justicia de la Nación (26 August 2014), *Cirigliano, Sergio Claudio y Jaime, Ricardo Raúl*, n° 36/2013 y 38/2013", C. 1616. XLIX.

⁴⁹ La Cámara Federal de La Plata (6 October 2016), *M.D.M. y otros*, N° FLP 3290/2005.

and appeals which many defendants allegedly use as a delaying tactic. Another reason for delay is the use of both prosecutors and investigative judges to conduct an investigation (see p. 22), according to several on-site visit participants in both Phase 3 and 3bis. Other factors such as insufficient resources, lack of specialisation, judicial vacancies, and the use of surrogate judges are discussed below.

86. In Phase 3, Argentine authorities stated that the Criminal Procedure Code enacted in December 2014 would address some of these systemic causes of delay. As mentioned above, the new Code would give prosecutors sole responsibility for conducting investigations and prosecutions. It would impose time limits on prosecutors for completing the various stages of the criminal process from opening a case to trial (Articles 215-270). Articles 305-315 attempt to limit interlocutory appeals and the time for deciding appeals. Phase 3 Recommendation 5(c) thus recommended that Argentina promptly implement the CPC 2014 and ensure that the new law effectively reduces delay in practice. The Working Group would also follow up the effectiveness these measures in reducing delay (Phase 3 Follow-up Issue 15(g)). But as mentioned above, the CPC 2014 has not yet entered into force. Recommendation 5(c) is therefore not implemented. The Ministry of Justice added that there are other recent measures that may have reduced delay, such as allowing a single judge to hear trials of less serious crimes; and the creation of six new Federal Trial Courts in Buenos Aires City, reducing delays in federal criminal trials where significant delay in complex investigations occur, according to Argentine authorities. Argentine authorities say these measures have “effectively reduced delays” but there is no data to support this position. A new oral procedure for *flagrante delicto* cases would rarely apply in foreign bribery cases.

87. Comprehensive statistics on delay in corruption cases are unavailable from the Argentine authorities. The data referred to above was compiled by an NGO based on only a sample of cases. The Supreme Court unveiled a publicly accessible [on-line database of corruption cases](#) in October 2016. The database is an excellent initiative that would enhance transparency and allow the public to monitor the progress of corruption cases. However, statistics on delay in these cases are not available from the database. Argentine authorities added that such statistics may be available under the Open Data Initiative for Judicial Statistics launched in November 2016. The completion of the audit of federal courts in May 2017 may yield detailed statistics. In the meantime, Phase 3 Recommendation 5(d)(ii) is partially implemented.

Commentary

The lead examiners are extremely concerned that Argentina has not addressed the extraordinary delays in complex economic crime cases that have been identified since Phase 2 in 2008. Argentina stated that the CPC that was enacted in 2014 would address some of these concerns. The current government, which took office in December 2015, has postponed the CPC’s entry into force to the second semester of 2017.

For these reasons, the lead examiners reiterate Phase 3 Recommendation 5(c) and 5(d)(ii) and recommend that Argentina urgently take further steps to reduce delays in complex economic crime cases, including by addressing the causes of delay that originate in the criminal procedural system. They also recommend that Argentina maintain and analyse statistics on delay and economic crime cases to assess the effectiveness of its measures to reduce delay.

(c) Lack of Resources and Specialisation

88. The Working Group has noted since Phase 2 that the lack of resources and specialised expertise in corruption cases have contributed to delay. Phase 3 Recommendation 5(e) therefore recommended that Argentina ensure that adequate resources, including specialised and experienced investigative judges, are

made available for foreign bribery investigations and prosecutions. Unfortunately, Argentina has not implemented this Recommendation.

89. Investigative judges who are responsible for leading foreign bribery investigations appear to be substantially under-resourced. In the Buenos Aires City, just 12 investigative judges handle all cases under federal jurisdiction, including but not limited to corruption cases. At the on-site visit, one judge from Buenos Aires City who has conducted one foreign bribery case stated that he has 400-500 other on-going cases. This included around 80 complex cases, including several very high profile cases against officials at the highest levels in the previous government. Another investigative judge who also has a foreign bribery case stated that he is required to serve as an “on-duty” judge four weeks per year. During these periods, he receives around 2 000 new cases of relatively minor crimes such as low-level drug trafficking which take up much of his time. On top of this case load, he too has an on-going corruption case against officials at the highest levels in the previous government. A third judge stated he has 480 on-going cases, many of which also involve drug trafficking. All three judges stated that more resources are needed. Several lawyers from the private bar agreed. But as explained at p. 37, increasing the number of judges would be difficult given extraordinary delays in judicial appointments.

90. The preliminary results of an audit of the federal courts released after the on-site visit corroborate these observations about the lack of resources. The audit was conducted in June to November 2016 and covered all corruption cases in the Argentine federal courts in the 20 previous years. The report found that approximately 2 000 corruption cases were on-going. This included 922 in Buenos Aires City, of which 720 were at the investigative or prosecution stage. The 12 federal investigative judges in this jurisdiction thus had an average of 60 on-going corruption investigations and prosecutions. One judge had 96. This case load is in addition to cases involving other federal crimes, such as drug and human trafficking. Many judges complained about the lack of human resources and physical space to store their files. Communication between the investigative judges and external bodies was found to be slow.⁵⁰

91. Prosecutors can also lead investigations that have been delegated by an investigative judge (see p. 22) but they too may be under resource pressures. Under the previous government, the budget of the Public Prosecutor’s Office (PPO) doubled between 2014 and 2016. This increase is less substantial than it appears because it may not have kept up with inflation.⁵¹ The PPO’s budget for 2016 was later cut because of the delay in CPC 2014 implementation.⁵² However, in late 2016, the Attorney General had to publicly ask the government to unblock funds to pay for the PPO’s expenses till year end, which suggests that the budget cut went beyond funds allocated for CPC 2014 implementation. The PPO also explained that it did spend resources in 2016 on CPC 2014 implementation, e.g. by training prosecutors. The government, on the other hand, contends that the AG was short of funds because of excessive hiring (see p. 34). As explained below at p. 32, there are currently serious tensions between the government and the Attorney General.

⁵⁰ Clarín (22 December 2016), “*Auditoría a la Justicia: hay 2000 causas abiertas por corrupción y jueces sobrecargados*”; TN (22 December 2016), “*Avanza la auditoría a la Justicia: hay 2.000 causas de corrupción y magistrados sobrecargados*”; La Nación (22 December 2016), “*El Consejo define hoy si publica la primera auditoría de la Justicia*”; Infobae (22 December 2016), “*Será pública la auditoría de la Justicia: hay 2.000 causas de corrupción*”; La Nación (26 December 2016), “*El 80% de los casos de corrupción están en primera instancia*”. The audit’s preliminary report published in December 2016 noted that the data could change when the final results are published in May 2017.

⁵¹ Estimates of the real annual inflation rate during the same period ranged from 30-70% (The Economist (14 February 2014), “*New data, old qualms*”; The Economist (22 September 2016), “*How Mauricio Macri is trying to rehabilitate Argentina’s economy*”).

92. The lack of specialisation exacerbates the problem with resources. The federal investigative judges or prosecutors who lead foreign bribery investigations are not specialised in corruption or economic crime cases. As mentioned above, PROCELAC can provide technical support (e.g. in forensic accounting) upon the request of the prosecutor in charge of a case. It cannot, however, lead a foreign bribery investigation. Furthermore, PROCELAC itself may be under-resourced. According to the prosecutor in the *Tax Collection (Guatemala) Case*, backlogs in PROCELAC have delayed the investigation, though PROCELAC denies that this is the case (see p. 10). The Phase 3 Report (para. 97) referred to a group of ten experts created by the Supreme Court that would support corruption cases heard in federal criminal courts. There is no information, however, on the group's impact in actual cases. At the on-site visit, all of the investigative judges and representatives of the legal profession were strongly in favour of greater specialisation in law enforcement.

93. In terms of training, the PPO organised one course on the foreign bribery offence in June 2016 and expects to repeat the course annually. Additional training provided by the Ministry of Justice does not appear to target corruption or economic crimes. Investigative judges did not receive any relevant training. Phase 3 Recommendation 5(f) is partially implemented.

Commentary

The lead examiners are seriously concerned that the lack of resources and specialised expertise is contributing to delay in cases of foreign bribery and other economic crimes. The federal investigative judges who investigate these crimes have an overwhelming number of on-going cases, including many complex and high profile domestic corruption investigations. With such heavy caseloads, it is difficult to see how these investigative judges can devote sufficient time and attention to foreign bribery cases to ensure that they proceed swiftly. Likewise, the PPO has reported serious budgetary problems. Possible backlogs at PROCELAC may have repercussions for one on-going foreign bribery case.

For these reasons, the lead examiners reiterate Phase 3 Recommendations 5(e)-(f) and recommend that Argentina (a) take urgent steps to ensure that adequate resources are made available for foreign bribery investigations and prosecutions; (b) consider assigning foreign bribery and corruption investigations and prosecutions to specialised investigative judges and prosecutors who have expertise in complex economic crime cases; and (c) provide additional foreign bribery-specific training to all investigative judges and prosecutors who have jurisdiction to investigate and prosecute this crime.

(d) Pursuing MLA Requests and Proactive Investigation

94. During the on-site visit, the investigative judges and prosecutors stated that the delay in foreign bribery and other corruption cases was often due to a lack of mutual legal assistance (MLA). Requests to foreign countries were unanswered after long periods of time in the *Electricity Transmission (Brazil)*, *Oil Refinery (Brazil)*, *Agribusiness Firms (Venezuela)* and *Power Project (Philippines) Cases*. In the *River Dredging (Uruguay) Case*, the requested state was apparently uncooperative because of the diplomatic row with Argentina that resulted from the allegations in the case.

95. Argentina is far from being the lone Working Group member that has experienced difficulties in obtaining MLA, but it could do much more to improve the situation. When their MLA requests are unanswered, prosecutors and judges at the on-site visit stated that they would merely resend the request after several months. No attempt was made to contact foreign law enforcement authorities through informal channels such as IberRed (see p. 53) whether before or after the request is sent. In cases where a request is sent to a Party to the Convention, Argentine prosecutors and investigative judges have not

attended the Working Group's informal meetings of law enforcement officials to inquire with their counterparts in the requested state about outstanding requests. Nor have they raised the outstanding requests during Working Group plenary meetings. The only example of active follow-up is the *Tax Collection (Guatemala) Case*, in which the prosecutor has communicated with the law enforcement authorities in the requested state to facilitate the execution of Argentina's MLA request. In 2016 the Attorney General's Office created a General Directorate for Regional and International Co-operation to help draft and follow up requests, facilitate contact with foreign authorities, and provide training. This initiative is encouraging, but it is too soon to determine its impact.

96. The Ministry of Foreign Affairs (MFA), which is Argentina's central authority for MLA, states that it trains law enforcement officials on MLA regularly (see p. 53). It states that this training covers the practical aspects of seeking MLA. However, the training has not always been effective, since as described above some prosecutors and investigative judges continue not to make sufficient efforts to pursue MLA in actual cases. The MFA stated that the central authority and Argentine embassies actively follow up outstanding MLA requests with foreign authorities. But at the on-site visit, the investigative judges and prosecutors who conducted foreign bribery cases indicated that overseas Argentine embassies had not inquired about outstanding MLA requests on their behalf.

97. Argentina also has not taken sufficient steps to implement Phase 3 Recommendation 5(d)(i) to ensure that prosecutors and judges in economic crime cases act promptly and proactively without delay. In the *Gas Plant (Bolivia) Case*, an Argentine national returned to Argentina before he was convicted *in absentia* in Bolivia of bribing a Bolivian official. The Argentine authorities opened an investigation and made some inquiries with their Bolivian counterparts. However, there was no indication that they proactively investigated the Argentine individual or his company before closing the case. Information provided by Argentina only refers to two unrelated Argentine companies that were not suspected of engaging in bribery. Similarly in the *Oil Sector Construction (Brazil) Case*, the Argentine authorities opened investigations only after the evaluation team pressed the issue at the on-site visit.

Commentary

The lead examiners are sympathetic to the difficulties that Argentina has faced in obtaining MLA in foreign bribery cases. The creation of the General Directorate for Regional and International Co-operation in the Attorney General's Office is encouraging. That said, Argentina can and should make better efforts to try to secure MLA in these cases. In particular, prosecutor and investigative judges should be encouraged to routinely attend the Working Group's plenary meetings and informal meetings of law enforcement officials which are excellent opportunities for peer learning and for following up MLA requests.

For these reasons, the lead examiners recommend that investigative judges and prosecutors in foreign bribery cases use all available means to secure MLA, in particular through contact with foreign authorities via informal channels and through the Working Group. They also recommend that the MFA work more closely with prosecutors and judges to pursue MLA requests in specific foreign bribery cases. This should include engaging Argentine embassies overseas to facilitate the execution of requests, and providing training to law enforcement officials on the practical aspects of and best practices on seeking MLA.

The lead examiners also reiterate Phase 3 Recommendation 5(d)(i) and recommend that Argentina take steps to ensure that prosecutors and judges in economic crime cases act promptly and proactively without delay.

(e) *Judicial and Prosecutorial Independence under Article 5 of the Convention*

98. Under Article 5 of the Convention, foreign bribery investigations and prosecutions must not be influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved. Commentary 27 on the Convention adds that foreign bribery cases must not be subject to political influence, and that allegations must be seriously investigated by adequately-resourced bodies.

99. Since Phase 2, the Working Group has expressed serious concerns that “the Argentine judicial system has suffered from a significant degree of political interference”. In particular, Phase 3 Recommendation 6(a) asked Argentina to ensure that disciplinary action against judges and prosecutors does not adversely affect the effectiveness of foreign bribery investigations and prosecutions, and is not motivated by Article 5 factors. Recommendation 6(b) asked Argentine government officials to refrain from contacting judges and prosecutors about specific cases. The Working Group also decided to follow up the functioning of the Judicial Council, and disciplinary proceedings against judges and prosecutors arising out of foreign bribery cases (Follow-Up Issue 15(h)).

100. Since Phase 3, Argentina has made some progress in implementing these Recommendations. However, fresh concerns have arisen over the politicisation of the Office of the Attorney General and her interference in sensitive cases.

(i) *Executive Interference with the Judiciary*

101. Past Working Group reports have documented several examples of Executive contact with investigative judges handling sensitive cases. The 2008 Phase 2 Report (paras. 146-151) referred to a case in which intelligence service agents informed an investigative judge of the President’s interest in major tax fraud/corruption cases that the judge was investigating. A book by an investigative journalist referred more generally to relatively frequent direct and indirect contact between government ministers and federal judges. The December 2014 Phase 3 Report (paras. 115-117) described one case in which an investigative judge in a money laundering case halted a search after a telephone call from a senior government official. One on-site visit participant who had worked for a judge added that government officials regularly called the judge’s office.

102. Since Phase 3, there have not been documented instances of Executive contact with investigative judges in specific cases. After taking office in December 2015, the current government has publicly declared that it would not interfere with the work of judges and prosecutors.⁵³ The judge who halted the search in the case described above was eventually disciplined.

103. The Executive in Argentina has also had a history of pressuring the judiciary through threatened or actual disciplinary proceedings. In Phase 3 (paras. 123-124), one judge at the on-site visit stated that the threat of disciplinary action could be used as a pressure tactic. The December 2014 Phase 3 Report also referred to the *Undeclared Cash (Venezuela) Case* in which a senior Argentine official publicly threatened an investigative judge with disciplinary proceedings. In another case, an investigative judge searched a company in which an Argentine official at the highest level was a shareholder. Shortly thereafter, the Under-Secretary of Justice filed a complaint against the judge in the Judicial Council for “poor performance” in this case. The Under-Secretary and the official at the highest level also criticised the judge

⁵³ La Prensa (25 March 2016), “*Macri, sobre casos de corrupción: ‘No podemos meternos en causas que han iniciado otros y menos presionar a la Justicia’*”; Reuters (5 May 2016), “*Nuevo impulso de la justicia argentina contra la corrupción amenaza al propio Macri*”.

in social media. The Judicial Council then activated a pre-existing complaint against the judge for unreasonable delay in two unrelated cases and cut the judge's salary by 30% as a sanction. Two of the judges at the Phase 3bis on-site visit personally experienced formal complaints by the Executive while conducting sensitive cases. A 2016 NGO report concluded that the disciplinary process "has been used both to pressure judges and to protect allied judges."⁵⁴ Civil society representatives at the on-site visit concurred with this view.

104. In this evaluation, Argentina argues that judges are protected from abusive disciplinary proceedings. It points out that the Supreme Court eventually quashed the above-mentioned Council decision to dock the judge's salary by 30%. However, the Court's decision could also be interpreted as confirmation of that the Council's sanctions against the judge were inappropriate. Argentina also refers to four cases in 2016 and two other cases (date unknown) in which judges were disciplined without any suggestion of improper Executive interference. However, these additional cases do not sufficiently alleviate the concerns about the other cases described in paragraphs 100-103 above where Executive interference appeared to have occurred.

105. The Executive's ability to pressure the judiciary through disciplinary proceedings derives partly from its influence on the Judicial Council. The Council oversees the nomination, promotion and discipline of judges (except for those on the Supreme Court). It investigates and penalises misdemeanours, but refers cases of serious misconduct to an impeachment tribunal (*jurado de enjuiciamiento*). A 2006 reform handed 7 out of 13 seats on the Council to the political branches, giving them the majority needed for most decisions. The Executive and majority party also have in effect the power to appoint five Council members, which is sufficient to block the two-thirds majority vote needed to select and remove judges.⁵⁵

106. This composition of the Judicial Council led a court in November 2015 to find that there is a "remarkable dominance by the political establishment", contrary to the Constitution.⁵⁶ Likewise, a 2015 NGO report concluded that the Judicial Council is "over-represented by officials". Consequently, the judicial appointment process is "almost exclusively political" and disciplinary proceedings "have been exponentially influenced by political motivations".⁵⁷ A civil society representative at the Phase 3bis on-site visit said that the Judicial Council has not been operating properly because of its politicisation.

107. In this evaluation, Argentina rejects the above-mentioned concerns about the Judicial Council. It states that "there is no documentary or testimonial evidence which could support that *in 2016, when the Judicial Council changed*, disciplinary procedures were used as a form or modality of pressure against the actions of Judges" [emphasis added]. It is not clear what would stop the Council from changing back to its pre-2016 form when executive influence appeared more prevalent. Argentina also states that the Judicial Council is a constitutionally autonomous organ with due process rules that protect against political

⁵⁴ Asociación Civil por la Igualdad y la Justicia (ACIJ) (June 2016), *Situación de la independencia judicial en Argentina*, p. 8

⁵⁵ Articles 2, 7(7) and 13 of Decree Law 816/1999 to Law 24 937 as amended by Law 26 080. The 13 Council members include one representative of the Executive and six legislators. Four of the legislators are from the majority parties in the Senate and Chamber of Deputies.

⁵⁶ Federal Administrative Appeal Court, Second Chamber (19 November 2015). At the time of this report, the case is under appeal. According to Section 114 of the Constitution, the composition of the Council should provide for a "balance among the representation of the political bodies arising from popular election, of the judges of all instances, and of the lawyers with federal registration."

⁵⁷ Poder Ciudadano (November 2015), *Corrupción y Transparencia - Informe 2015*, p. 8.

interference. These rules, however, apply to the disciplinary procedure but do not concern the composition of the Council.

108. Draft reforms prepared in 2016 to address the recent court ruling on the Judicial Council's composition would be an improvement but may not go far enough. If passed, a current draft law would increase the number of Council members to 15 with four lawyers and one academic. Of the remaining members, one would be appointed by the Executive and four elected by Congress (but who would not be Congress members). This would limit the representation of the political branches to one-third of the Council. However, judges would also make up only one-third of the Council, which is not sufficient. In response, Argentina states that judges and appointees of the executive should be grouped together as representatives of the "branches of Government". The number of representatives of the "branches of Government" would then be well-balanced against "citizen participation" in the Council. However, this blurring of the line between the judiciary and the Executive by putting the two into the same category is precisely the root cause of Executive interference with the judiciary.

Commentary

The lead examiners commend Argentina for committing publicly not to contact law enforcement officials about specific cases. Nevertheless, concerns about political influence on the Judicial Council remain. They therefore recommend that Argentina adjust the composition of the Judicial Council, and ensure that the Council effectively protects the independence of judges.

(ii) Politicisation of the Offices of the Attorney General and the Public Prosecutor

109. The independence of the Attorney General (AG), who heads the Public Prosecutors' Office (PPO), is not subject to the same safeguards as those for judges. The Constitution (Article 120) states that the PPO is an independent body. But unlike for judges, it does not establish a body equivalent to the Judicial Council that plays a role in appointing, regulating, disciplining and dismissing prosecutors. Instead, these matters are governed by statute, which provides that the Executive appoints the AG with the approval of a two-thirds majority of the Senate. The appointment is for life subject only to impeachment. The lower house of Congress begins impeachment proceedings on grounds of "misconduct or crimes committed in the fulfilment of their duties" or of "ordinary crimes" (the latter requires the approval of a two-thirds majority of the lower house). The Senate must then confirm the impeachment by a two-thirds majority.⁵⁸

110. The AG plays a central role in the appointment, discipline and dismissal of prosecutors. The AG submits lists of candidates for prosecutors to the Executive for appointment with Senate approval. Disciplinary proceedings can be commenced by the AG or upon a complaint. Disciplinary sanctions against prosecutors are imposed by the AG after considering a non-binding opinion of an Evaluation Board, or by a court if the misconduct occurred during proceedings. Dismissals of prosecutors are referred to a seven-member impeachment tribunal. In Phase 3, the tribunal consisted of three members who met the constitutional requirements of being Supreme Court judges (one each appointed by the Executive, the Senate, and the Supreme Court); two lawyers appointed by the legal professional bodies; one prosecutor; and one public defender. Since 2015, the tribunal has been composed of three members who meet the constitutional requirements of being *prosecutors* (one each appointed by the Executive, the Senate, and the

⁵⁸ Organic Law of the PPO (Law 27 148), Articles 11 and 76.

National Inter-University Council); two lawyers who also meet the constitutional requirements of being prosecutors; and two prosecutors.⁵⁹

111. The AG also exerts substantial control over the PPO's operations. According to its constituting legislation (Law 27 148), the PPO is a hierarchical organisation with the AG at its apex (Article 9(a)). The AG exercises general supervision of all PPO officials (Article 12(f)). Each PPO official is responsible for monitoring and managing his/her subordinates, and must act according to his/her superiors' instructions (Article 9(a)). A unit in the AG's office prosecutes ordinary crimes (*delitos ordinarios*) committed in Buenos Aires City while cases in other jurisdictions are overseen by district prosecutors (Articles 17 and 21). Cases in each district are assigned by a co-ordinator (*fiscal coordinador de distrito*) who is appointed by the AG and who must provide information to the AG upon request (Articles 18-19). The AG can also assign additional prosecutors to specific cases where he/she deems appropriate (Article 12(d)). A recent NGO report concluded that all prosecutors are subordinate to the AG who has "the ultimate power of decision" and management responsibility for the PPO.⁶⁰ Argentina states that the AG can "design and establish the general policy of the PPO, exercise general superintendence over all members of the body, administer material and human resources, and prepare the budget". The AG also intervenes in cases at the Supreme Court.

112. The importance of the AG and PPO will increase greatly if the CPC 2014 enters into force. As mentioned above at p. 24, the CPC 2014 substantially overhauls the federal criminal procedural system by giving prosecutors sole responsibility for conducting investigations and prosecutions. Investigative judges would no longer investigate; they become guarantee judges hearing applications. The CPC 2014 also replaces the principle of mandatory prosecution with the opportunity principle, giving prosecutors discretion to terminate a case at any point from the receipt of the complaint to the formalisation of the investigation. As mentioned at p. 24, the CPC 2014 is now expected to enter into force in 2017. Congress is also considering a bill to amend the Organic Law of the Public Prosecutor's Office.

113. There has been criticism that the current AG overtly supports the (now former) President who appointed her in 2012, and the ex-President's political party which is now an opposition party in Congress. The AG is an official "principal spokesperson" of a civil association that was formed in 2013 to support the then-government's efforts to "democratise" the judiciary. These reforms, as described in the Phase 3 Report (para. 122), would have controversially strengthened the ruling party's grip on the Judicial Council. The proposal prompted vociferous protests from judges, lawyers, international organisations and civil society. The reforms were enacted by Congress but later declared unconstitutional by the Supreme Court. Since the change in government in December 2015, the association has publicly disagreed with several government decisions and policies.⁶¹

114. Even more seriously, there has been widespread criticism of the current AG for using her powers to influence the outcomes of specific cases in favour of the Executive. The Phase 3 Report (para. 123) referred to a corruption investigation of a businessman with reportedly close links to the President who appointed the current AG. After the businessman complained about the investigation publicly, the AG

⁵⁹ Organic Law of the PPO (Law 27 148), Article 12 and Title V, Chapters 1 and 3.

⁶⁰ Asociación Civil por la Igualdad y la Justicia (ACIJ) (June 2016), *Situación de la independencia judicial en Argentina*, p. 14.

⁶¹ Télam (7 March 2013), "*Rotundo apoyo de miembros del Poder Judicial al proyecto para democratizar la Justicia*"; [website](#) of *Justicia Legítima*.

openly called for the prosecutor's dismissal.⁶² The prosecutor was duly suspended a few days later and removed from the case before being reinstated by an impeachment court. When reviewing a draft of the Phase 3bis report, Argentina argued that the Attorney General was not involved in the disciplinary process because it was initiated on the basis of a complaint received from an unnamed private citizen and the decision to open proceedings was based on an opinion of an evaluation Council composed of five prosecutors. Whether this unidentified citizen was in fact the defendant in the case or someone linked to the defendant is unclear. In any event, whether the proceedings were initiated on the basis of a complaint does not alleviate the concerns that the AG supported publicly in several instances the opening of the disciplinary proceedings against the prosecutor.

115. More recently, the AG allegedly pressured and tried to transfer a prosecutor who was conducting an investigation in 2015 that implicated a government minister.⁶³ In 2016, the AG has also been accused of leaking confidential information to a government Minister about alleged interference by intelligence agents in a criminal trial.⁶⁴ A law professor has stated publicly that the current AG "punishes those who investigate alleged corruption by officials in or close to the government".⁶⁵ Several lawyers at the on-site visit believe that the opportunity principle in the CPC 2014 would increase the AG's ability to influence and pressure prosecutors in future cases.

116. There have also been allegations that the current AG has made irregular appointments of PPO staff, including surrogate prosecutors. One criminal complaint alleges that posts were filled with individuals linked to the civil association described above in which the AG is a member.⁶⁶ In January 2015, the Prosecutors' Association stated that there was an "exorbitant increase" in the number of employees in the PPO that were hired without competition and evaluation.⁶⁷ This may have been the cause of the PPO's budget shortfall in 2016 as described at p. 27, according to Argentine authorities.

117. These allegations have led many to voice concerns about the current AG's political neutrality. Several lawyers, civil society representatives and parliamentarians expressed this concern at the Phase 3bis

⁶² Clarín (23 May 2013); La Nación (6 December 2013); Infobae (12 December 2013); Clarín (12 December 2013); Fiscales Federales (13 December 2013); Clarín (29 April 2014); La Nación (29 April 2014); La Nación (17 July 2014); Wall Street Journal (28 July 2014).

⁶³ La Nación (21 November 2016), "*Un fiscal denunció que lo desplazaron por investigar a Oscar Parrilli*"; TN (21 November 2016), "*El fiscal de General Roca que desplazó Gils Carbó denunció que lo presionan para que no investigue a Parrilli*"; Diario Alfil (29 November 2016), "*El Congreso aborda por primera vez el modus operandi de Gils Carbó*"; Infobae (2 December 2016), "*Otro caso Campagnoli: Gils Carbó quiere apartar al fiscal que investigó a Oscar Parrilli*".

⁶⁴ Nexofin (28 October 2016) "*La venganza: dura denuncia penal de Campagnoli contra Gils Carbó*"; Clarín (8 November 2016) "*Imputaron a Gils Carbó por filtrar expedientes a la SIDE*"; Urgente24 (8 November 2016) "*Gils Carbó cercada: Otra imputación y suma más de 20 causas penales*"; Diario Hoy (24 November 2016) "*Imputaron a Gils Carbó y se agudiza su situación como procuradora*".

⁶⁵ Reuters (15 February 2015), "*Intimidation, meddlers stalk Argentine state prosecutors*".

⁶⁶ Clarín (8 November 2016) "*Una Procuradora con un récord de 24 denuncias penales*"; La Capital (2 December 2014) "*Poder Judicial: presentaron una denuncia penal contra Alejandra Gils Carbó*".

⁶⁷ Infobae (3 January 2015), "*La Asociación de Fiscales acusó a Gils Carbó de generar "un enorme daño" al Ministerio Público*"; La Nación (4 January 2015), "*Los Fiscales se plantaron ante Gils Carbó y calificaron su accionar de 'peligroso'*".

on-site visit. The Prosecutors' Association has stated that the PPO has become politicised.⁶⁸ Asked about the current AG, the Association's President said more recently that, "The introduction of militancy to the PPO has done a lot of damage. [...] We can all have our own political ideas, but they cannot be applied when working on cases".⁶⁹ The above-mentioned law professor said that the current AG "acts as if she were a branch of the executive power."⁷⁰ The President and senior government officials have also been very vocal on this issue.⁷¹ In this evaluation, the government stated that it has "strong reasons to believe that the AG does not conduct the office fully independent from political motivations which cause serious interferences whenever prosecutors were investigating corruption charges against members of the previous administration". The AG's Office disagrees with this assessment. It points out that the prosecutors at the on-site visit, including some who were conducting very important corruption cases, did not indicate that they had been subject to any undue pressure or influence from the AG's Office.

118. The current government's response to these concerns, however, risks reducing prosecutorial independence as much as repairing it. Since coming into office in December 2015, the President and other officials have repeatedly called for the AG's resignation,⁷² which undercuts somewhat the government's public pledge not to interfere with justice (see p. 30). The government has also sought to enact legislation to undermine the AG's powers. A Bill prepared in April 2016 would have restructured the PPO by creating four "sub-prosecutors" that would in effect take over the AG's functions. But as one NGO noted, these four appointments would be made by the Executive with a simple majority in the Senate. The process is thus even less insulated from political influence than the current method for appointing the AG.⁷³ An amendment to the Bill in October 2016 would have created a bicameral Congressional committee that would appoint the AG to a five-year term renewable once. If applied retroactively, the provision would end the current AG's term in 2017. At the on-site visit, several lawyers and civil society representatives stated that government attempts to remove the AG ought to abide by existing laws in order to respect the AG's institutional independence. The President of the Prosecutors' Association recently expressed the same view publicly despite his criticisms of the current AG.⁷⁴ In March 2017, the Argentine authorities informed the Working Group that the two proposals referred to above have been abandoned. New requests are underway to impeach the AG under the procedure provided for in the Constitution.

⁶⁸ Infobae (3 January 2015), "[La Asociación de Fiscales acusó a Gils Carbó de generar "un enorme daño" al Ministerio Público](#)"; La Nación (4 January 2015), "[Los Fiscales se plantaron ante Gils Carbó y calificaron su accionar de 'peligroso'](#)".

⁶⁹ La Gaceta (19 December 2016), "[El fiscal Rívolo negó que la Justicia persiga a kirchneristas](#)".

⁷⁰ Reuters (15 February 2015), "[Intimidation, meddlers stalk Argentine state prosecutors](#)".

⁷¹ For example, see Diario Chaco (14 April 2016), "[Macri insistió en que Gils Carbó "es una procuradora militante" y volvió a pedir su renuncia](#)"; Río Negro (16 October 2016), "[Garavano volvió a la carga contra la procuradora Gils Carbó](#)".

⁷² Buenos Aires Herald (10 August 2016) "[Gils Carbó handed hikes role](#)"; Clarins (8 October 2016) "[Aunque Macri quiere su salida, Gils Carbó lo visitará en Casa Rosada](#)"; Télam (19 October 2016), "[El oficialismo defendió la reforma del Ministerio Público Fiscal, pero con modificaciones](#)"; La Nación (4 January 2017), "[Germán Garavano: 'Gils Carbó no debiera seguir siendo Procuradora General'](#)".

⁷³ Asociación Civil por la Igualdad y la Justicia (ACIJ) (June 2016), *Situación de la independencia judicial en Argentina*, pp. 15-16.

⁷⁴ La Prensa (19 December 2016), "[El fiscal Rívolo rechaza que haya una "persecución política" contra ex funcionarios](#)".

Commentary

The lead examiners are seriously concerned about the signs of politicisation of the Office of the Attorney General (AG). The current legislative framework does not sufficiently ensure that the AG's office is shielded from undue political influence. Furthermore, the AG has substantial hierarchical powers over prosecutors, including in the initiation of disciplinary proceedings. Consequently, sensitive investigations and prosecutions risk being exposed to political interference. The 2014 Phase 3 Report noted one instance in which the AG allegedly interfered with an investigation that implicated an Argentine official at the highest level. Since then, other allegations have surfaced suggesting that the AG lacks political neutrality. The lead examiners acknowledge that many of these allegations have yet to be proven. Nevertheless, these repeated incidents at a minimum create a perception that the AG and PPO lack independence.

This matter will become even more important if the CPC 2014 enters into force. Under the new Code, prosecutors would replace investigative judges and lead criminal investigations. The Code would also introduce the opportunity principle and give prosecutors discretion not to open or to discontinue investigations and prosecutions. A politicised AG's office under the CPC 2014 would thus further expose sensitive cases to political interference.

The lead examiners are also concerned about the current Argentine government's repeated calls for the AG's resignation. As the Working Group has noted in another evaluation,⁷⁵ this risks creating a perception of political interference. Furthermore, government legislative initiatives to remove the AG, had they been enacted, could have inflicted lasting damage to the PPO as an institution by further eroding its independence from the Executive. Future AGs and prosecutors could then become even more susceptible to political interference when the PPO investigates in good faith sensitive corruption cases. The government needs to address not only the current AG whom it deems to be politically-biased, but also a system which apparently allows a politically-biased AG to be appointed. Argentine authorities may now share the Working Group's concerns, as they have decided to use existing legal means to address concerns about the politicisation of the AG's Office.

For these reasons, the lead examiners conclude that Argentina has only partially implemented Phase 3 Recommendations 6(a) and (b). They recommend that Argentina take urgent steps to ensure that the independence of the Offices of the federal Attorney General and Public Prosecutors, including by taking specific measures to (a) protect the appointment, transfer and dismissal of the Attorney General and prosecutors from political influence; and (b) ensure that prosecutors who conduct foreign bribery cases are not subjected to political or other undue interference, including through the use of actual or threatened disciplinary action, the application of the opportunity principle, and the AG's power of supervision and general direction over prosecutors.

(iii) Raising Awareness of Article 5

119. The Argentine authorities have not raised awareness of Article 5 of the Convention among investigative judges and prosecutors. In the *River Dredging (Uruguay) Case*, the foreign bribery allegations led to a diplomatic row between Argentina and Uruguay, and neither the Uruguayan authorities nor the *Comisión Administradora del Río de la Plata* was willing to co-operate with the investigation (see

⁷⁵ For instance, see the Phase 2 Report of Latvia (paras. 133-137).

p. 8). The Argentine investigative judge in charge of the case stated at the on-site visit that it was not possible to obtain the necessary evidence “without creating a diplomatic conflict”.

Commentary

The lead examiners recommend that Argentina raise awareness of Article 5 of the Convention among investigative judges and prosecutors, to ensure that foreign bribery investigations and prosecutions are not influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved.

(f) *Judicial Vacancies and Surrogate Judges*

120. Since Phase 2, the Working Group has expressed significant concerns about an extraordinary number of vacant judicial positions, and the resultant impact on delay and judicial independence. Phase 3 Recommendation 6(c) asked Argentina to substantially reduce the number of judicial vacancies and surrogate judges, and increase continuity of investigative personnel for particular cases to the greatest degree possible. Unfortunately, the situation has not improved since Phase 3 as Argentina has taken limited steps to implement this Recommendation.

121. The number of vacancies has increased since Phase 3. Information provided by Argentine authorities in September 2016 indicates that 166 out of 681 positions (24.4%) were vacant in Buenos Aires City. For the rest of the country, 98 out of 312 positions (31.4%) were vacant, up from 22.2% in May 2014. Updated figures provided by Argentine authorities in February 2017 put the number of vacancies at 25.6%. In 2015, the Supreme Court stated that the situation had worsened since 2007 and that approximately a quarter of the positions in national and federal courts were permanently vacant.⁷⁶ Investigative judges at the Phase 3bis on-site visit also stated that vacancies have increased over the last two years.

122. Judicial vacancies in turn give rise to the prevalent use of surrogate judges to fill vacant positions until a permanent appointment can be made. According to the Argentine authorities, surrogate judges have filled all of the vacancies described above. The Supreme Court has said that “today the rule is to appoint surrogate judges [to fill vacancies] and to select judges through the constitutional procedure is rather the exception”.⁷⁷ Surrogate judges are required to be chosen first from existing judges from another court or jurisdiction or from retired judges. Argentina states that, “in the last months, there have been limited instances in which court secretaries and two cases where lawyers were appointed” as surrogates because sitting judges were not available. Previously, if no such judge was available, then surrogate judges were selected from a list of eligible persons maintained by the government and approved by the Senate.⁷⁸ Argentina states that this practice has since stopped. In addition, rules enacted in June 2015 allowing the

⁷⁶ Corte Suprema de Justicia de la Nación (4 November 2015), *Uriarte, Rodolfo Marcelo y otro c/ Consejo de la Magistratura de la Nación*, section 31.

⁷⁷ Corte Suprema de Justicia de la Nación (4 November 2015), *Uriarte, Rodolfo Marcelo y otro c/ Consejo de la Magistratura de la Nación*, section 31.

⁷⁸ Laws 26 372 and 26 376.

Judicial Council to appoint surrogates were later struck down by the Supreme Court.⁷⁹ Congress has yet to pass a new law to address this issue.

123. The use of surrogate judges impinges upon judicial independence. Surrogate judges are selected without the same Constitutional safeguards of independence and qualifications as regular judges since they are not appointed using the same procedure as required for judicial appointments (Phase 3 Report para. 109). Surrogate judges also often apply for permanent judicial positions. Delay in processing these candidates thus increases the risk of Executive interference and perceptions that these surrogate judges favour the Executive to avoid jeopardising their candidacy. One investigative judge at the Phase 3bis on-site visit opined that the use surrogate judges is “a perverse system” and “an attack to the independence of judges”. Another investigative judge stated that surrogate judges are used “to influence justice”. A prosecutor has stated publicly that “one of the main problems currently for the judiciary to ensure its independence is the system of surrogate judges”.⁸⁰ In this evaluation, Argentine authorities disagree with these concerns since retired judges, lawyers, and court secretaries serve as surrogates exceptionally.

124. Vacancies and surrogate judges also contribute to delay in investigations and proceedings. The Phase 2 Report (paras. 132-134) noted that important domestic corruption cases did not have judges assigned and thus could not proceed. A more recent article also noted that vacancies delay the trial of corruption cases.⁸¹ When vacancies are filled by existing judges acting as surrogates, these judges have to cope with both their regular work and act as a surrogate. The doubling of their workload can only add to delay.

125. The concerns with delay and judicial independence are exacerbated by the break in continuity of investigative personnel. Investigations are disrupted when the investigative judge in a case resigns and is replaced by a surrogate. Surrogates in turn can be replaced. The Phase 3 Report (para. 110) referred to a case in which a surrogate investigative judge conducted a corruption investigation against an individual who reportedly had close ties to an official at the highest levels of government. The government replaced the surrogate judge as the case neared the indictment stage after years of investigation, thus giving rise to perceptions of governmental interference in the case.

126. The extraordinarily high number of vacancies is the result of substantial delay by the Judicial Council in appointing new judges, according to the Supreme Court.⁸² For each vacant federal judgeship (except for the Supreme Court), the Judicial Council assembles a list of candidates based on a public competition and the candidates’ qualifications. The President chooses from the panel, but the decision must be confirmed by two-thirds of the Senate. In practice, the process is stuck at the Judicial Council. According to a 2015 report,⁸³ 203 out of the 217 vacant positions at that time were under consideration by the Judicial Council. The figure was 215 as of February 2017, according to the Judicial Council. But despite the numerous vacancies, the number of open competitions held by the Council annually had dropped from 16 in 2006 to 3 in 2015. The number of lists of candidates prepared by the Council had also

⁷⁹ Corte Suprema de Justicia de la Nación (4 November 2015), *Uriarte, Rodolfo Marcelo y otro c/ Consejo de la Magistratura de la Nación*. The Judicial Council is considering the Supreme Court ruling (Resolution 1/2016, Plenary Chamber of the Judicial Council of the Judicial Power of the Nation).

⁸⁰ Infobae (17 November 2016) “*Para el fiscal Campagnoli, la eficacia de la Justicia en los casos de corrupción es nula*”.

⁸¹ La Nación (4 October 2016), “*Nuevo reclamo de la Corte Suprema al Consejo de la Magistratura*”.

⁸² Corte Suprema de Justicia de la Nación (4 November 2015), *Uriarte, Rodolfo Marcelo y otro c/ Consejo de la Magistratura de la Nación*, section 31.

⁸³ Poder Ciudadano (November 2015), *Corrupción y Transparencia - Informe 2015*, pp. 12 & 14.

fallen sharply from an average of 56 per year in 2006-10 to just 13 in 2011-2015.⁸⁴ The number has encouragingly increased to 38 in 2016. The Argentine authorities believe that the problem with vacancies is being reversed, but it is not clear yet whether the increase in the number of shortlists is sufficient to fill the existing and future vacancies.

127. As a result, few judicial appointments are made. The Phase 3 Report (para. 105) noted that just one appointment was made in 2013. A law was enacted in May 2008 to create a new court to reduce judicial delay, but judges still had not been appointed to the court some five years later. In September 2016, the Supreme Court took the extraordinary measure of writing an official letter appealing to the Judicial Council to proceed more quickly.⁸⁵ At the on-site visit and later again in public, the Judicial Council undertook to accelerate the process.⁸⁶ The government also intends to create a programme to assess the situation of vacancies, but there is no indication of how long this would take or what the outcomes would be.

Commentary

The lead examiners are concerned with the lack of improvement to judicial vacancies and the use of surrogate judges in Argentina since Phase 2. The Judicial Council has taken some steps to address judicial vacancies in 2016, but the overall number of vacancies has in fact increased since Phase 3. As noted in previous Working Group reports, the high level of vacancies and pervasive use of surrogate judges negatively impacts the independence of the judiciary and generates delays in the Argentine justice system. The Supreme Court has struck down the rules for surrogate judge appointments. The lead examiners therefore reiterate Phase 3 Recommendation 6(c) and recommend that Argentina take additional measures to substantially reduce the number of judicial vacancies and surrogate judges, and increase continuity of investigative personnel for particular cases, including judges and prosecutors, to the greatest degree possible.

(g) Investigative Techniques

128. This section considers the means of gathering information in foreign bribery investigations, which are largely unchanged since Phase 3. Obtaining information from the financial intelligence unit and tax authorities are discussed at pp. 43 and 51.

129. Special investigative techniques are available in investigations of all crimes, including foreign bribery. Wiretapping and surreptitious video recording have been used in domestic corruption investigations. Articles 234-236 CPC address wiretapping and interception of correspondence but there are no provisions on surreptitious recording or controlled deliveries. Shortly after taking office in December 2015, the current government transferred the department responsible for executing wiretaps from the Public Prosecutor's Office to the Supreme Court.⁸⁷

⁸⁴ La Nación (2 October 2016), "[La Corte se endureció con el Consejo después de recibir la queja de los jueces](#)". Additional data for 2011-2016 were provided by Argentina.

⁸⁵ Centro de Información Judicial (27 September 2016), "[La Corte reclama al Consejo de la Magistratura la cobertura de vacantes en el Poder Judicial](#)".

⁸⁶ El Patagónico (4 January 2017), "[Consejo de la Magistratura cuestionó los cargos vacantes en la Justicia](#)".

⁸⁷ Presidential Decree 256/2015.

130. Freezing and seizure of assets are available under Article 231 CPC and Article 23(9)-(10) PC which allow seizure of objects as evidence or for subsequent confiscation. Article 23 PC also allows seizure to avoid “the consolidation of the benefit” of the crime or to “prevent the impunity of the offenders”. Article 518 CPC allows seizure to secure payment of monetary sanction, civil compensation and costs. Information subject to bank secrecy may be obtained during an investigation with judicial authorisation (Article 39 of Law 21 526).

131. There remains no national corporate registry with information on all Argentine companies, which makes it difficult for prosecutors and judges to obtain corporate information. Company registries are generally under provincial jurisdiction. Law 26 047 was enacted in 2005 to create a national registry, but each state is required to pass laws to participate in the project. As in Phase 3, only 16 out of 24 jurisdictions have approved Law 26 047,⁸⁸ 4 have partially approved, and 4 not at all. A two-day conference on public registries in August 2016 discussed implementation of the Law. The *Inspección General de Justicia* (IGJ) has issued General Resolution 3/2016 to give the public full access to its registry, but this registry only covers companies in Buenos Aires City. Phase 3 Recommendation 5(g) is not implemented.

Commentary

The lead examiners reiterate Phase 3 Recommendation 5(g) and recommend that Argentina accelerate efforts to implement an effective national register of information relating to all Argentine companies.

6. Money Laundering

132. This section considers Argentina’s criminal money laundering offence and its enforcement in practice. The section then examines Argentina’s anti-money laundering system and the reporting of suspicious transactions to Argentina’s financial intelligence unit, *Unidad de Información Financiera* (UIF). The section ends by discussing the sharing of information between UIF and law enforcement.

(a) Money Laundering Offence

(i) Elements of the Money Laundering Offence

133. Argentina money laundering offence is unchanged since Phase 3. Under Article 303(1) PC, it is an offence to “transform, transfer, manage, sell, tax, conceal or in any other way circulate goods originating from criminal offences, with the possible consequence of having the origin of the original or surrogate goods appear lawful”. The offence is punishable by imprisonment of six months to three years. If the laundered property equals or exceeds ARS 300 000 (approximately USD 19 300), then the punishment increases to three to ten years’ imprisonment, and a fine equal to two to ten times the value of the laundered property. The maximum penalty further increases by one-third and the minimum by one-half for offenders who are public officials, who regularly engage in money laundering, or who are members of a group that does so (Article 303(2) PC). The offence covers self-laundering. Receiving money or goods originating from a criminal offence for the purpose of laundering is a separate offence (Article 303(3) PC). Legal persons can be held liable for money laundering under Article 304 PC (Phase 3 Report paras. 133-134 and 138).

⁸⁸

Argentina states that the Phase 3 Report (para. 131) should have stated that 24 instead of 23 jurisdictions.

134. In Phase 3, the Working Group decided to follow-up the application of specific elements of the money laundering offence.⁸⁹ Article 303 does not expressly cover the laundering of instrumentalities of a crime (*i.e.* the bribe) or of indirect proceeds of crime. Argentina referred to the *Sánchez* court decision which covered the laundering of indirect proceeds.⁹⁰ However, the case dealt with the predecessor of Article 303 PC; whether the same reasoning would apply to Article 303 PC was not certain. The Working Group also decided to follow up whether foreign bribery is always a predicate offence to money laundering under Article 303, without regard to the place where the bribery occurred. There were doubts whether Article 303 met this requirement since it only covers the laundering of the proceeds of an offence committed outside of Argentina when the predicate offence is punishable in the jurisdiction where it occurred (*i.e.* dual criminality).

135. There has not been practice or jurisprudence that would clarify these issues. In Phase 3bis, Argentina states that Article 303 covers the laundering of “surrogate goods”, which it states would apply to instrumentalities and indirect proceeds of crime. Argentina also referred again to the *Sánchez* court decision which was already considered in Phase 3. Argentina further referred to 26 other cases, but these were on-going investigations, not court decisions. They are therefore not jurisprudence that would resolve the doubts identified in the Phase 3 Report. Nor is it clear that these cases address the Phase 3 Follow-Up Issues.

(ii) *Enforcement of the Money Laundering Offence*

136. The Phase 3 Report identified the enforcement of the money laundering offence as a major challenge in Argentina. There were 250 on-going proceedings as of December 2014. But given the delay in economic crime cases, there had only been convictions of 13 individuals in 4 cases since money laundering was criminalised in 1989. No legal persons had been convicted. The Working Group therefore recommended following up the enforcement of the money laundering offence in practice.⁹¹

137. Enforcement appears to have picked up, albeit from a low base. Since the December 2014 Phase 3 Report, there have been 36 more money laundering convictions in 12 cases, according to UIF. This represents convictions of as many individuals and in more cases than the total over 25 years leading up to Phase 3. Sanctions imposed ranged from an 18-month suspended prison sentence to 15 years for aggravated money laundering. Foreign bribery was not the predicate offence in any of these cases. As of September 2016, there were 26 on-going corruption-related money laundering cases with at least 92 natural persons under investigation and 6 persons charged in 2 cases. Argentine officials agree that these enforcement figures are an improvement but are still too low. PROCELAC provided slightly different data that lead to the same conclusion.

Commentary

The lead examiners are encouraged that enforcement of the money laundering offence has significantly increased since Phase 3. The lead examiners recommend that the Working Group continue to follow up the application of the money laundering offence in Argentina, including: (a) whether the offence covers the laundering of a bribe and the laundering of indirect proceeds of crime, (b) whether foreign bribery is always a predicate offence to money

⁸⁹ Phase 3 Report para. 135-137; Follow-up Issue 15(i)(a)-(b).

⁹⁰ Federal Criminal Oral Tribunal in Corrientes (10 May 2013), *Pedro Norberto Sánchez y otros*, Case 721/2010. See also [FATF \(2014\), Mutual Evaluation of Argentina – 11th Follow-up Report](#), p. 12.

⁹¹ Phase 3 report paras. 139-140; Follow-up Issue 15(i)(c).

laundering, without regard to the place where the bribery occurred, and (c) enforcement of the money laundering offence in practice.

(b) Prevention, Detection, and Suspicious Transaction Reporting

138. Argentina's anti-money laundering (AML) framework has changed slightly since Phase 3. Law 25 246 (AML Law) sets out the AML system. In July 2016, the financial intelligence unit UIF was transferred from the Ministry of Justice and Human Rights (MOJ) to the Ministry of Finance (MOF) (Law 27 260). Argentina explains that the purpose of the transfer was to foster better co-operation between UIF and other regulatory agencies under MOF. The executive continues to have the power to appoint and remove the Head of UIF following suggestions by MOF.

139. Argentina has not implemented Phase 3 Recommendation 9(b) concerning AML measures relating to politically exposed persons (PEPs). Under Resolution 11/2011, the definition of PEPs is restricted to individuals who have held prominent functions in the past two years and is not based on an assessment of risk. Important officials of political parties do not qualify as PEPs. The required measures for preventing and detecting money laundering by PEPs were also unclear (Phase 3 Report para. 143). UIF is preparing an amendment of Resolution 11/2011.

140. Legal professionals and *síndicos* who are also lawyers are still not required to detect potential money laundering and submit suspicious transactions reports (STRs) to UIF.⁹² These obligations were extended to other non-financial businesses and professionals such as accountants and auditors in 2011 under Article 20 of Law 25 246. Phase 3 Recommendation 9(a) is not implemented.

141. The number of STRs submitted to UIF peaked at 35 947 in 2013 but has since fallen significantly to 20 724 in 2015.⁹³ UIF and the banks explained that the decrease was due to a more risk-based approach to reporting. No criminal foreign bribery investigation has originated from an STR received by UIF, however. UIF states that STRs have led to some "renowned" domestic corruption investigations. Banks at the on-site visit stated that they did not receive feedback from UIF on the STRs that they submitted.

142. UIF's financial and human resources have continued to increase. In the five years prior to Phase 3, its budget increased fivefold and staff size had more than doubled. Since Phase 3, its annual budget has further grown by 63%. Some additional resources are available through confiscation and fines. Staff size has also grown from 213 to 231 since 2014, with 14 analysts processing STRs. Money laundering-related STRs are first analysed through a matrix within 24 hours. More detailed analysis and evaluation, if necessary, is conducted within 6-8 months.

143. Substantial training has been provided to UIF staff since Phase 3, though much of the training did not specifically address money laundering predicated on foreign bribery. Additional training will be developed by a National Co-ordination Program for the Fight against Money Laundering and Terrorist Financing that was set up in July 2016 (Decree 360/2016). UIF is working with the Anti-Corruption Office to develop typologies, guidance and training that would specifically address money laundering predicated on foreign bribery. Phase 3 Recommendation 9(c) is partially implemented.

⁹² Under Argentine corporate law, *síndicos* are a type of statutory auditor entrusted with observing that the corporation abides by the law. A *síndico* must be an accountant or a lawyer. The appointment of a *síndico* is not mandatory, except for corporations that are publicly held or public utilities, or whose capital exceeds ARS 10 million (USD 643 000) (Phase 3 Report para. 142).

⁹³ In Phase 3, Argentina stated that 36 079 STRs were filed in 2013.

Commentary

The lead examiners reiterate Phase 3 Recommendations 9(a)-(c) and recommend that Argentina (a) extend money laundering reporting, due diligence and record keeping obligations to lawyers, síndicos and other legal professionals (subject to appropriate qualifications); (b) further enhance AML measures for financial transactions involving PEPs, including by adding important political party officials to the definition of PEPs; ensuring that due diligence of former PEPs is based on an assessment of risk and not on prescribed time limits; and issuing guidelines on the handling of PEPs; (c) provide better feedback to entities who file STRs to improve the quality of these reports; and (d) raise awareness about foreign bribery as a predicate offence to money laundering, including by preparing typologies on foreign bribery-related money laundering.

(c) *Sharing Information with Law Enforcement Authorities*

144. The Phase 3 Report (paras. 147-151) referred to substantial concerns that UIF mishandled information that it had received. Media reports alleged that UIF withheld numerous STRs that should have been forwarded to law enforcement. The only ones that were transmitted concerned a media group which was reputed to be critical of the government. This led an investigative judge to issue an order requiring UIF to produce materials for use in a corruption investigation. According to a more recent article,⁹⁴ one WGB member suspended its co-operation with UIF amid concerns that confidential information sent to Argentina was leaked and used for political purposes in a court case. The Working Group therefore recommended that Argentina take steps to ensure that UIF processes and forwards STRs to law enforcement without undue delay (Phase 3 Recommendation 9(d)).

145. UIF now forwards more information to law enforcement, even as the number of STRs it receives has decreased. It transmitted 1 710 financial intelligence reports to law enforcement in 2015. The corresponding figures in 2014 and 2013 were only 384 and 324 respectively. In the five years to 2014, UIF applied to be a plaintiff in 46 criminal cases (Phase 3 Report para 147). In the roughly two years since, it has filed an additional 61 complaints. The WGB member referred to above resumed its co-operation with UIF in March 2016. In January 2017, the media reported that the UIF may have withheld information in May 2016 concerning payments made to a senior intelligence official in the current government before he became an official.⁹⁵ However, UIF stated that in January 2017 it assisted an investigative judge to obtain evidence from a foreign financial intelligence unit in this particular case, which has been confirmed by other media articles.⁹⁶

⁹⁴ Wall Street Journal (27 January 2016), “[New Head of Argentina’s Financial-Crimes Agency Aims to Repair Ties with US](#)”.

⁹⁵ La Nación (11 January 2017), “[Un operador de Odebrecht le giró US\\$ 600.000 al jefe de inteligencia argentino](#)”; La Nación (11 January 2017), “[Los detalles de la investigación sobre los pagos de Odebrecht a Gustavo Arribas](#)”; La Nación (11 January 2017), “[Arribas sólo admite una transferencia y la adjudica a la venta de un inmueble en Brasil](#)”; Entorno Inteligente (12 January 2017), “[Odebrecht: la UIF recibió una alerta sobre giro a Arribas, pero no investigó](#)”; La Nación (12 January 2017), “[La agencia antilavado había recibido una alerta, pero no investigó](#)”; UIF (12 January 2017), “[Aclaración De La Uif Sobre Su Funcionamiento](#)”; La Nación (13 January 2017), “[La UIF justificó su actuación y ratificó que no recibe presiones](#)”.

⁹⁶ BAE (2 March 2017) [La UIF desligó a Arribas del Lava Jato, pero fiscal pide revisar más cuentas](#); La Nación (3 March 2017), “[Arribas: un informe de la UIF avala su defensa](#)”; Ambito (3 March 2017); “[Filial de Odebrecht en Argentina informó a la OA que no registra giros a Arribas](#)”; Infobae (3 March 2017); “[Odebrecht aclaró que no tiene ninguna vinculación con Gustavo Arribas](#)”; Diario (3 March 2017) “[UIF negó transferencias a Arribas](#)”; TN (4 March 2017); “[Odebrecht negó operaciones comerciales con](#)

146. Additional measures were adopted to address the earlier concerns about confidentiality. The UIF head was replaced in January 2016 soon after the current government took office. Under a 2016 amendment to the AML Law, UIF may communicate information to intelligence and law enforcement authorities only if the UIF Head issues a resolution demonstrating that there are “serious, precise, and concordant indications” of a serious offense.⁹⁷ UIF also only forwards unsourced intelligence reports to law enforcement instead of STRs (Law 25 246 Articles 17, 21(c) and 22). In a recent domestic corruption case, the information contained in a UIF intelligence report could not be used as admissible evidence. Instead, the investigative judge had to use the information as the basis for an MLA request to foreign authorities asking for the evidence in an admissible form.⁹⁸

Commentary

The lead examiners are encouraged that UIF has increased the amount of information that it sends to law enforcement. However, the improvements have been very recent. They therefore recommend that Argentina continue to ensure that UIF processes and forwards relevant information contained in STRs to law enforcement without undue delay.

7. Accounting Requirements, External Audit, Corporate Compliance and Ethics

147. This section considers Argentina’s accounting standards that prohibit the types of misconduct described in Article 8(1) of the Convention. It then considers the role of external auditing in detecting and reporting foreign bribery. The last part concerns Argentina’s efforts to promote corporate compliance, internal controls, and ethics measures for preventing and detecting foreign bribery.

(a) Accounting Standards

148. Since Phase 3, a new Civil and Commercial Code (Law 26 994) has replaced the books and records provisions in Articles 43-54 of the Code of Commerce. Article 320 of the new Code states that “All private legal persons and those who conduct organised economic activity or are holders of a business or commercial, industrial, agricultural or service establishment are required to maintain accounting records.” Article 321 states that “Bookkeeping should be carried out on a uniform basis showing a true picture of the activities and acts to be registered, so that it shows the individualisation of operations and the corresponding asset and liability accounts. The records must be supported by relevant documentation, all of which must be filed methodically and enable their location and consultation”. Articles 322-331 contain further requirements.

149. Beyond these Civil and Commercial Code provisions, accounting and auditing standards are set by the Argentine Federation of Expert Councils on Economics (FACPCE, *Federación Argentina de Consejos Profesionales de Ciencias Económicas*). FACPCE consists of 24 Councils (for the 23 provinces and Buenos Aires City). Through the 2002 Minutes of Catamarca and 2015 Minutes of Tucumán, the provincial Councils committed to harmonising accounting, auditing, and ethical standards by adopting national standards set by the FACPCE. All accountants must be registered with the relevant Council.

Arribas ante la Oficina Anticorrupción”; El Economista Noticias Argentinas (22 March 2017), “*UIF: no hallan “vínculos” de Arribas con el caso Odebrecht*”.

⁹⁷ Law 27 260, Article 88 and Decree 895/2016.

⁹⁸ Urgente 24 (4 July 2016) “*El informe de la UIF sobre las cuentas de los Báez en Suiza no podrá usarse como prueba*”; La Nación (6 July 2016) “*Los hijos de Báez replicaron a la UIF y negaron las cuentas en Suiza*”.

150. FACPCE accounting standards are in turn adopted by some government regulators such as CNV which regulates entities listed on exchanges.⁹⁹ The *Inspección General de Justicia* (IGJ) in the city of Buenos Aires¹⁰⁰ and their counterparts in the 23 provinces apply FACPCE standards to unlisted companies under their jurisdiction. State-owned enterprises (SOEs) are subject to a separate standards set by the National Accounting Office (*Contaduría General de la Nación*; Financial Administration Law 24 156), and audits conducted by the Office of the Comptroller General (*Sindicatura General de la Nación*, SIGEN) and the Office of the National Auditor General (*Auditoría General de la Nación*, AGN). The National Insurance Superintendent (*Superintendencia Nacional de Seguros*) and the Central Bank issue standards that apply to the institutions under their supervision.

151. Argentina has taken steps to extend IFRS application. Argentina provided copies of resolutions from all 24 FACPCE member Councils adopting [Technical Resolution 26](#) which ostensibly allows unlisted companies to apply IFRS.¹⁰¹ However, the IGJ still only allows the application of IFRS to some but not all unlisted companies in Buenos Aires City, though it is considering a change in this position. Argentine authorities indicate that efforts are underway to expand IFRS application to insurance companies and to issue a clearer regulation for SOEs on this issue.

Commentary

The lead examiners reiterate Phase 3 Recommendations 10(a) and (b) and recommend that Argentina (a) continue to strengthen accounting standards, such as by allowing all unlisted companies and SOEs to choose IFRS, and (b) work with the accounting profession to raise awareness of the foreign bribery offence, and encourage the profession to develop training on foreign bribery in the framework of their professional education and training systems.

(b) False Accounting Offence

152. Argentina has not increased the applicable sanctions for false accounting. As in Phase 3, Article 300(2) PC applies to a legal person's incorporator, director, administrator, liquidator or *síndico* who knowingly publishes, certifies or authorises omissions and falsifications of books, records, accounts and financial statements. The offence is punishable by imprisonment of six months to two years. A fine of up to ARS 90 000 (USD 5 800) may also be imposed if the offence is committed "with the aim of monetary gain" (Article 22bis PC). The available sanctions are far lower than those for tax fraud and hence most cases are dealt with as tax cases. The provision has not been amended since Phase 3, though sanctions have been increased for accounting misconduct by financial institutions. The Corporate Liability Bill would impose liability against companies for corruption but not false accounting.

153. As noted in the Phase 3 Report (paras. 160-161), additional administrative offences do not fully meet the requirements of the Convention. The National Securities Commission (CNV, *Comisión Nacional de Valores*) may impose administrative fines of up to ARS 20 million (USD 1.3 million) that may be increased to five times the advantage gained or damage caused.¹⁰² However, the provision also does not apply to entities not regulated by CNV, e.g. unlisted companies. The *Inspección General de Justicia* (IGJ) can impose administrative fines of ARS 100 000 (USD 6 400) against limited liability companies and

⁹⁹ Laws 17 811, 22 169 and 26 831, Article 19.

¹⁰⁰ Law 22 315, Articles 2, 3 and 7.

¹⁰¹ Argentina authorities state that the information in the www.ifrs.org (16 June 2016), "[IFRS Jurisdictional Profile: Argentina](#)" is incorrect in this respect.

¹⁰² Law 26 831, Articles 132-133. Additional administrative sanctions may also apply.

ARS 11 543 (USD 740) against capitalisation companies and associations.¹⁰³ These provisions, however, do not apply to all types of accounting misconduct, but only to a failure to present financial statements in legal terms or in accordance with certain formal requirements. The maximum available fines are also very low.

154. Argentina also has not taken any measures to enforce the accounting fraud offence and accounting requirements more effectively in bribery cases (Phase 3 Recommendation 10(a)). As in Phase 3, Argentina does not have data on the enforcement of Article 300(2). In Phase 3, CNV stated that it usually imposes administrative fines only for companies who reoffended or failed to heed official warnings. In Phase 3bis, CNV state that it has not concluded an accounting fraud case in the last 10 years and does not have any on-going cases. The IGJ states that it has very few cases of false accounting or corporate fraud. Argentina also refers to initiatives related to international and domestic sharing of tax information. These may improve detection but do not directly impact the enforcement of false accounting offences.

Commentary

The lead examiners are disappointed that Argentina has only increased sanctions for accounting misconduct by financial institutions. The maximum sanctions available for accounting fraud under Article 300(2) PC remain inadequate. Additional provisions relating to CNV and IGJ do not adequately remedy these shortcomings. There has been little enforcement of these provisions. The lead examiners therefore reiterate Phase 3 Recommendation 10(a) and recommend that Argentina (a) increase applicable sanctions where appropriate, (b) ensure that the Corporate Liability Bill, if enacted, applies to foreign bribery-related accounting misconduct, and (c) take measures to enforce the accounting fraud offence and accounting requirements more effectively in bribery cases.

(c) External Auditing

(i) Entities Subject to External Audits and External Auditing Standards

155. Argentina has not adopted any new measures since Phase 3 to further improve requirements to submit to external audit and to implement Recommendation 10(c). As in Phase 3, listed companies, banks and insurance companies are audited annually by an independent external auditor.¹⁰⁴ SOEs are externally audited by the National Auditor General (AGN, *Auditoría General de la Nación*).¹⁰⁵ Unlisted companies are externally audited if they have set up a *consejo de vigilancia* and do not have *síndicos*.¹⁰⁶ Unlisted companies in Buenos Aires City that meet the capital requirements in Article 299 of Law 19 550 are also audited by an independent public accountant (*contador público independiente*).¹⁰⁷ It is unclear, however, whether other unlisted commercial companies (both inside and outside Buenos Aires) must also be

¹⁰³ Organic Law of IGJ 22 315, Articles 12-14.

¹⁰⁴ Law 26 831, Article 105; CNV Decree 677/2001, Article 13; Law 21 526, Articles 36 and 37 (audits by the Central Bank) and Central Bank Resolution No. A5541 requiring banks to submit an external auditor report and financial statements as of the first half of 2015; Central Bank Communication “A” 5589; Resolution of the National Insurance Superintendent 21 523/1992, Articles 39.1.4 and 39.12 (annual external audit requirement for insurance companies).

¹⁰⁵ Law 24 156, Articles 116-118; AGN Resolution 145/1993.

¹⁰⁶ Articles 280-283 of Law 19 550.

¹⁰⁷ Article 264(4) of IGJ Resolution 7/2005.

externally audited. Argentina provided a long list of corporations (SA) and limited liability companies that in practice are duly audited and file their financial statements with local authorities for public use. However, there is no strict legal obligation for these entities to do so.

156. Argentina has only partially implemented Phase 3 Recommendation 10(c) to ensure full implementation of the International Standards on Auditing (ISAs) in Buenos Aires City and all 23 provinces. As noted in the Phase 3 Report (para. 166), the ISAs are mandatory only for listed companies and for SOEs that have adopted IFRS.¹⁰⁸ The remaining companies apply ISAs or Argentine audit standards which are said to be significantly less demanding than the ISAs. Private sector auditors at the Phase 3bis on-site visit added that international standards are more detailed than Argentine standards, particularly in areas such as restrictions on providing non-audit services. The Argentine authorities, however, maintain that Argentine audit standards have the same “audit fundamentals” and use ISAs as a main source of guidance.

157. Argentina has also not taken steps to implement Phase 3 Recommendation 10(d) on ensuring that external auditors and audit firms take greater account of the risks of foreign bribery in the companies that they audit. None of the on-site visit participants could identify any training or awareness-raising efforts. CNV and FACPCE have formed an Inter-Institutional Commission to address foreign bribery risks in auditing. The Office of the Comptroller General (SIGEN, *Sindicatura General de la Nación*) discussed the training of *sindicos*. FACPCE plans to include foreign bribery in its 2017 training programme for all accountants. However, all of these training activities are only planned and have yet to materialise. Recommendation 10(d) is thus only partially implemented. External auditors from the major audit firms stated at the on-site visit added that they would consider foreign bribery risks when performing audits.

Commentary

The lead examiners reiterate Phase 3 Recommendations 10(b) and (c) and recommend that Argentina (a) clarify the entities that are legally required to submit to external audit; (b) ensure full ISA implementation in Buenos Aires and all 23 provinces; and (c) take steps to ensure that external auditors and audit firms take greater account of the risks of foreign bribery in the companies that they audit.

(ii) Auditor Independence and Qualifications, and Quality Control of Audits

158. Argentina also has only partially implemented Phase 3 Recommendation 10(c) to continue efforts to improve audit quality standards. Qualification requirements (including those set by CNV and the Central Bank) for external auditors remain unchanged from Phase 3 (para. 169). An external auditor must be a chartered accountant and provide an affidavit indicating their qualifications and certifications.¹⁰⁹ However, they are not required to have practical experience or undergo professional examinations. Argentine authorities also do not scrutinise the affidavits provided by auditors.

159. Additional developments slightly alter the quality control of audits. Since Phase 3, CNV has adopted General Resolution 663/2016 which requires external auditors to apply FACPCE Technical Resolution 34 on International Standards of Quality Control and Rules on Independence (ISQCs). The CNV Resolution also abolished rotation requirements for audit firms and aligned rotation requirements for

¹⁰⁸ Argentina states that these standards are based on those established by the International Organisation of Supreme Audit Institutions (INTOSAI).

¹⁰⁹ Law 26 831 Article 104; CNV Decree 677/2001, Articles 12 and 13; CNV Norms 2013, Title I, Chapter III, Article 23.

audit partners with international standards. However, as noted in the Phase 3 Report (para. 170), Technical Resolution 34 imports ISQCs on quality control virtually verbatim without adaptation to the Argentine context. There is also no information on the Resolution's implementation in Buenos Aires and the 23 provinces. External auditors at the on-site visit added that in practice quality control is applied only to individual audit engagements but not to audit firms. CNV state that it has created an audit register but only intends now to create auditor supervision for listed companies. It also states that firms auditing financial statements of listed companies implement their quality control system according to ISQC 1. BCRA (Central Bank) stated that it has a department for external auditor quality control. But this obviously only applies to audits within the Bank's jurisdiction. The department was also created in 1997 and hence was not created to address the Working Group's Phase 3 Recommendation.

Commentary

The lead examiners reiterate Phase 3 Recommendation 10(c) and recommend that Argentina further improve audit quality standards, including with regard to certification of auditor qualifications and quality control of audits.

(iii) Awareness-raising and Reporting Obligations of External Auditors

160. Argentina has not implemented Phase 3 Recommendation 10(e) to ensure that external auditors report foreign bribery. The Argentine authorities agreed in Phase 3 (para. 172) that strengthened reporting obligations could lead to more foreign bribery investigations. They have not, however, changed the rules on reporting since Phase 3. ISAs 240 and 250 concern material misstatements in a company's financial statements due to fraud or non-compliance of laws. An external auditor is required to report such misstatements to the audited company's management or corporate monitoring bodies. Both ISAs require the auditor to further report to competent authorities only if there is a legal requirement to do so. No such requirement to report exists in Argentina. Argentina reiterates at length that, as chartered accountants, external auditors are required to report suspected money laundering. However, the Working Group already considered this measure in Phase 3 (footnote 80), which in any event is not equivalent to an obligation to report foreign bribery. For SOEs, Argentina states that external auditors and *síndicos* are required to report possible crimes to SIGEN (SIGEN Resolution 74/2011).

161. When it enters into force, Article 204(c) of the CPC 2014 would require accountants to report "cases of fraud, tax evasion, money laundering, trafficking and exploitation of persons". However, reporting is not mandatory if "the facts had been known under professional secrecy". According to external auditors at the on-site visit, the provision therefore would not require them to report foreign bribery discovered during audits.

162. Argentina has not implemented Phase 3 Recommendation 10(b). Argentine authorities and representatives of the accounting profession did not report any training or activities to raise awareness of foreign bribery.

Commentary

The lead examiners reiterate Phase 3 Recommendation 10(b) and 10(e) and recommend that Argentina (a) continue its efforts to ensure that auditors and síndicos that are not in SOEs promptly report suspicions of foreign bribery by employees or agents of the company to the competent authorities, notably in the face of inaction after appropriate disclosure within the company; and (b) work with the accounting profession to raise awareness of the foreign bribery offence, and encourage the profession to develop training on foreign bribery in the framework of their professional education and training systems.

(d) Corporate Compliance, Internal Controls and Ethics Programmes

163. The Phase 3 Report (paras. 173-176) found that Argentine authorities had not made efforts to promote corporate compliance, internal controls and ethics programmes to prevent and detect foreign bribery. Consequently, the Argentine private sector did not have such measures. Some companies had codes of conduct, but many of these codes did not adequately address foreign bribery issues. Particular concerns were expressed about the lack of measures among SMEs. Phase 3 Recommendation 10(f) recommended that Argentina take more effective steps to promote compliance programmes.

164. The Argentine authorities have made substantial efforts to engage the private sector and promote corporate compliance programmes. In the months prior to introducing the Corporate Liability Bill to Congress in October 2016, the Anti-Corruption Office (OA) conducted a series of workshops to consult private companies, SOEs, and business associations on the Bill. Part of OA's message was to encourage companies to adopt compliance programmes in order to benefit from the Bill's compliance defence. The OA also explained the key elements of an effective compliance programme. Representatives of companies and business associations at the on-site visit expressed appreciation of the current government's rapprochement with the private sector and ambition to fight corruption. In addition, the websites of the MFA and *Fundación Exportar*, Argentina's trade promotion agency attached to the MFA, refer to the Good Practice Guidance on Internal Controls, Ethics, and Compliance (2009 Anti-Bribery Recommendation, Annex II). OA is also promoting compliance and integrity in SOEs.

165. Corporate compliance programmes have yet to become widespread, however, given that efforts to promote them began only recently. As in Phase 3, few Argentine companies appear to have adequate anti-bribery compliance programmes. Most of the 17 companies and business associations that attended the on-site visit vaguely referred to codes of ethics and reporting hotlines. Only one company that is subject to the jurisdiction of the US Foreign Corrupt Practices Act (FCPA) described a fairly sophisticated and extensive compliance programme. The participants were invited to provide after the meeting documentation of corporate compliance programmes that they had adopted. Eight responded by providing their codes of ethics, most of which only discussed rules on gift giving. Only three mentioned foreign bribery and corruption. None of the companies referred to Argentina's foreign bribery offence. Some business associations asserted that their members had adopted corporate compliance programmes. When pressed, they acknowledged that their belief was not based on any actual surveys or evidence. Several companies admitted that they are only beginning to develop anti-corruption measures.

166. As in Phase 3, particular concerns were expressed about SMEs. An association representing SMEs at on-site visit said that some exporting SMEs have encountered foreign bribery issues. By and large, however, SMEs do not have corporate compliance measures to address bribery and corruption. Some are said to be taking more interest in these issues, and the association plans to provide training to its members in the future.

Commentary

The lead examiners commend Argentine authorities for promoting corporate compliance programmes. That said, these efforts are too recent to bear fruit, and whether they will in the future may depend substantially on the passage of the Corporate Liability Bill. In the meantime, the corporate compliance landscape in Argentina remains much the same as in Phase 3. The only companies that have invested in compliance programmes are largely those that are subject to foreign bribery laws in other jurisdictions. Other companies have rudimentary measures that do not sufficiently address foreign bribery. SMEs generally do not have any measures at all. Phase 3 Recommendation 10(f) is therefore partially implemented.

For these reasons, the lead examiners reiterate Phase 3 Recommendation 10(f) and recommend that Argentina continue to promote corporate compliance, internal controls and ethics programmes to prevent and detect foreign bribery. These efforts should include SMEs that are internationally active.

As in Phase 3, the lead examiners also reiterate their recommendation at p. 18 that Argentina adopt legislation on corporate liability for foreign bribery on a priority basis. Robust enforcement of foreign bribery laws against companies is possibly the strongest incentive for Argentine companies to adopt effective compliance programmes.

8. Tax Measures for Combating Bribery

167. This section addresses efforts to combat foreign bribery by the *Administración Federal de Ingresos Públicos* (AFIP), the Argentine federal tax authorities. It covers the tax deduction of bribes followed by detection and awareness-raising. The section ends by considering information sharing with law enforcement, including difficulties in providing information to foreign authorities.

(a) Tax Deduction of Bribes

168. On 12 December 2016, Argentina enacted Decree 1246/2016 which amended Decree 1344/1998 Regulating the Income Tax Law (ITL). The amendment added an express prohibition of the tax deduction of bribes to foreign officials after Section 116 of the Decree 1344:

For the purposes of section 80 of the [ITL], expenses generated or linked to the commission of the crime of bribery of foreign public officials in international economic transactions, shall not be considered expenses necessary to obtain, maintain and conserve taxable income, the deduction of which is therefore disallowed.

169. The Argentine authorities explained that the amendment is legally binding even though it is made to the Regulatory Decree and not the ITL. This is because, in their view, bribes are already non-deductible under the ITL before the enactment of this amendment. The amendment thus merely codifies existing law and does not go beyond the scope of the ITL. The amendment is sufficient to comply with the facial requirements of the 2009 Tax Recommendation and implement Phase 3 Recommendation 11(a).

(b) Detection of Bribe Payments

170. The Phase 3 Report (para. 182) found that AFIP had not enhanced its ability to detect foreign bribery. It had not used the 2013 version of the OECD Bribery Awareness Handbook for Tax Examiners in its work or updated its guidelines on detection in General Instruction 794/2007 (as amended in 2008). No cases of bribery had ever been detected through a tax examination. Phase 3 Recommendation 11(b) therefore asked Argentina to improve AFIP's ability to detect foreign bribery by disseminating the 2013 OECD Bribery Awareness Handbook for Tax Examiners and by training AFIP officials on detecting bribery.

171. Argentina has partially implemented Recommendation 11(b). Roughly two weeks before the on-site visit, AFIP passed Resolution 1001/2016 which replaced General Instruction 794/2007 and officially adopted the 2013 version of the Handbook. However, given the recency of this development, AFIP has not had time to provide training based on the 2013 Handbook. AFIP's official website also contains a page on bribery that addresses "international bribery". After the on-site visit, almost 1 500 AFIP staff took an online course that covered foreign bribery and the Convention. The course is expected to be offered again in 2017.

Commentary

The lead examiners commend AFIP for enacting Resolution 1001/2016 to adopt the 2013 Bribery Awareness Handbook. They recommend that AFIP continue to train its officials on detecting foreign bribery and remind them of their obligations to report suspected crime.

(c) Tax Secrecy and Sharing Information with Domestic and Foreign Law Enforcement

172. Tax information may be shared with Argentine law enforcement authorities for use in a foreign bribery investigation only if a judge lifts tax secrecy. Tax secrecy covers all financial and asset-related tax returns, statements and reports in AFIP's possession.¹¹⁰ Judicial authorisation is required when OA investigates domestic corruption but not when UIF (the financial intelligence unit) inquires into money laundering.¹¹¹ The duty of AFIP officials to report suspected foreign bribery detected during a tax examination is discussed at p. 58.

173. The Phase 3 Report (para. 186-187) found that sharing tax information with *foreign* authorities for use in *criminal* investigations was more problematic. Article 101(3) of the Tax Procedure Law 11 683 (TPL) allows the lifting of secrecy for *domestic* criminal investigations but not *foreign* ones. Article 101(6)(d) TPL lifts secrecy for foreign proceedings, but only in *tax* - not criminal - proceedings by authorities concerned with the enforcement or collection of taxes or tax-related procedures. The provision also requires information to be exchanged pursuant to an international agreement to which AFIP – not Argentina – is a party,¹¹² which would exclude bilateral and multilateral treaties on MLA in criminal matters.

174. Without domestic implementing legal provisions, tax treaties to which Argentina is party arguably cannot be used to provide tax information to foreign authorities for use in criminal foreign bribery investigations. Argentina is party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCMAATM) and amending protocol. Article 22(4) MCMAATM allows information provided under the Convention to be used for other (*e.g.* criminal investigation) purposes when “such information may be used for such other purposes under the laws of the supplying Party” and the supplying Party authorises such use. As mentioned above, Argentine law arguably does not allow tax information to be used in a foreign criminal investigation; Article 22(4) thus cannot be used to share tax information with foreign authorities for non-tax use. Argentine authorities also cannot authorise the non-tax use of information by foreign authorities since the TPL does not empower them to do so.

175. Bilateral tax treaties do not overcome this obstacle. Argentina states that double taxation agreements and exchange of information agreements like those are superior to national laws in the legal hierarchy. That said, bilateral treaties such as those with Spain and Switzerland follow the OECD Model Tax Convention and thus contain language similar to the Multilateral Convention. In other words, they also allow the sharing of information for criminal investigation purposes only when “such information may be used for such other purposes under the laws of the supplying Party” and the supplying Party authorises such use. Hence, for the reasons explained above, they too may not be used to allow tax information to be used in foreign criminal proceedings. In practice, no tax treaty partner has requested AFIP for permission

¹¹⁰ Tax Procedure Law 11 683 Article 101; AFIP Instruction 98/2009.

¹¹¹ Law 26 683, Article 14; AFIP Instruction 98/2009, sections 4.1 and 4.2; Phase 2 Report para. 121.

¹¹² In contrast, AFIP Instruction 98/2009 (section 3.2.1) states that information may be exchanged pursuant to a treaty to which the Federal State of Argentina – as opposed to AFIP – is party.

to use Argentine tax information for a non-tax purpose.¹¹³ Phase 3 Recommendation 11(c) thus asked Argentina to promptly amend its legislation to allow tax information to be provided to foreign authorities for use in foreign bribery investigation.

176. Argentina has not implemented Recommendation 11(c). Its Phase 3bis questionnaire responses merely indicate that it disagrees with the Recommendation. Recently concluded bilateral double taxation treaties with Chile and Mexico suffer the same limitations as they allow the sharing of tax information for non-tax use only if the law of the supplying Party (*i.e.* Argentina) so allows. As mentioned above, no provision in TPL appears to contemplate the use of tax information for criminal investigations by non-Argentine authorities. Neither AFIP nor MFA (Argentina's central authority for MLA) could provide any data or examples in which tax information was provided to foreign authorities for use in criminal proceedings.

177. Just before the adoption of this report, Argentina stated that it agrees with the assessment that the current TPL and existing treaties do not allow the sharing of tax information for use in foreign criminal proceedings. It proposes to rectify the concern by amending existing tax agreements. However, a better solution would be to amend the TPL as it would allow existing tax treaties to be used as a means to share information. It would also cover cases to which treaties do not apply.

Commentary

The lead examiners reiterate Phase 3 Recommendation 11(c) and recommend that Argentina promptly take steps to ensure that tax information can be provided to foreign authorities for use in foreign bribery investigation.

9. International Co-operation

(a) Mutual Legal Assistance

178. This section concerns the general application of MLA in foreign bribery cases. MLA in specific foreign bribery cases and sharing of tax information are discussed at pp. 28 and 51.

(i) Treaty and Legislative Framework for MLA

179. Additional MLA treaties have entered into force since Phase 3. Argentina now has bilateral MLA treaties in force with 16 countries, including 12 Working Group members. Further treaties are under negotiation or have been signed but are not in force.¹¹⁴ Argentina considers that the Anti-Bribery Convention provides a treaty-basis for MLA. Argentina has received four requests under each of the following three multilateral conventions, namely the OECD Convention, the UN Convention against Corruption (UNCAC) and the Inter-American Convention against Corruption. Other applicable multilateral treaties include the MERCOSUR Protocol on Mutual Legal Assistance in Criminal Matters; MERCOSUR, Bolivia and Chile Agreement on Mutual Legal Assistance in Criminal Matters; and the Inter-American Convention on Mutual Assistance in Criminal Matters.

^{113.} OECD (2013), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews*, para. 257.

^{114.} Treaties are in force with Australia, Canada, China, Colombia, El Salvador, France, Italy, Korea, Mexico, Peru, Portugal, South Africa, Spain, Switzerland, Tunisia, and US. Treaties with Hong Kong and the Russian Federation are signed but not in force.

180. Other aspects of the framework for extradition and MLA have not changed since Phase 3. MLA is regulated by Law 24 767 on International Co-operation in Criminal Matters (LICCM). Article 134 CPC also deals with international rogatory requests. In the absence of a treaty, MLA may be granted if the requesting state provides an “express offer of reciprocity” (Article 3 LICCM). Argentina is a member of IberRed, an informal judicial co-operation network under the auspices of the Conference of Ministers of Justice of Ibero-American Countries (COMJIB).¹¹⁵ It is also a member of the *Red Hemisférica de Cooperación Jurídica en Materia Penal* (OEA) under the auspices of the OAS.

(ii) *Dual Criminality and Other Preconditions for MLA*

181. The Working Group has decided to follow up two issues relating to dual criminality (Follow-up Issue 15(j)). Argentina can grant coercive measures (e.g. search and seizure, surveillance and wiretapping) as MLA only if the conduct underlying the request is a crime in both the requesting and requested states (Article 68(2) LICCM). Since Argentina has not established criminal liability of legal persons for foreign bribery, incoming requests for coercive MLA in cases involving legal persons arguably would not meet the dual criminality requirement. Phase 2 Recommendation 8(b)) asked Argentina to address this matter but it was converted to a Follow-Up Issue in 2010. In Phase 3 (para. 193) Argentina stated that MLA would be granted in such cases because Article 1 LICCM and the Convention require broad co-operation. Furthermore, the dual criminality test in the LICCM focuses on the conduct underlying the request, not whether the investigation target is a legal person.

182. The Working Group has also decided to follow up whether Argentina can provide MLA to a foreign country that is taking non-criminal foreign bribery proceedings against a legal person. Some Parties to the Convention impose civil or administrative liability against legal persons for foreign bribery. Argentina cannot provide MLA for use in these proceedings because the LICCM only concerns criminal matters. Argentina stated that co-operation in these cases might be available under its regime of mutual legal assistance in civil matters. However, at least some criminal investigative measures (e.g. wiretapping and surreptitious surveillance) likely would not be available under the civil regime.

183. In Phase 3bis, Argentina states that it “does not have a record” of denying MLA against a legal person. It has provided bank information and corporate records to foreign authorities in a case concerning a legal person under the UN Convention on Transnational Organised Crime for offences of corruption, transnational organised crime and terrorism. The case therefore involves non-coercive measures for use in criminal proceedings and does not alleviate the concerns identified by the Working Group.

Commentary

The lead examiners recommend that the Working Group continue to follow up whether Argentina can grant MLA requests submitted in the context of criminal and non-criminal proceedings within the scope of the Convention and brought by a Party against a legal person.

(iii) *Delay and Resources in Executing Incoming MLA Requests*

184. Phase 3 Recommendation 8 asked Argentina to continue to take further steps to ensure that MLA requests from foreign authorities are executed without undue delay. Argentina has accordingly continued to provide training on international co-operation. Two seminars on international co-operation were held in 2015, and a third was held in the second half of 2016. DILA gave additional lectures in the Foreign Service

¹¹⁵ DILA recently appointed two legal officers as European Judicial Network Contact Points. Formal designation of these officers is pending.

Institute and a university that addressed international co-operation and the Convention. DILA has maintained the website on international co-operation and continued to distribute its publication on the same topic. Recommendation 8 is fully implemented.

185. Despite these efforts, however, the time taken by Argentina to respond to incoming MLA requests has slightly increased since Phase 3. Argentina provided data on 970 incoming MLA requests received from 2010 to June 2016.¹¹⁶ As of September 2016, the average time for executing these requests was 139 days (*i.e.* 4.6 months), which is higher than in Phase 3 (113 days, *i.e.* 3.8 months). Over the same period, Argentina received 148 incoming MLA requests related to corruption offences. 60% of the executed requests were completed in less than 5 months, and 9.78% in over one year. Of the remaining 56 requests that are outstanding, 40 requests (71%) had been outstanding for 9 months or more.

186. The Phase 3 Report (para. 202) noted that delay in executing MLA may be exacerbated by insufficient resources. MLA requests to and from Argentina are transmitted through the Direction on International Legal Assistance (DILA) in the MFA's Legal Advisor's Office.¹¹⁷ In Phase 3, DILA had 10 lawyers and 20 support staff, which the MFA considered adequate. However, with approximately 500 outgoing and 350 incoming MLA requests annually, each DILA lawyer received on average almost 100 new files per year. This did not include managing outstanding MLA files and files on extradition, for which DILA is also the central authority. Since Phase 3, DILA has the same number of lawyers but support staff has decreased to 13, six of which are dedicated to assisting in documentation related to MLA and extradition. Argentina adds that it has new software to process MLA requests and an express mail account for urgent requests. There is also a database system to track files and to produce statistics.

Commentary

The lead examiners commend the MFA for continuing to provide training on MLA. They recommend that the Working Group follow up whether Argentina executes MLA requests from foreign authorities without undue delay.

(b) Extradition

(i) Treaty and Legislative Framework for Extradition

187. Additional extradition treaties have also entered into force since Phase 3. Argentina has bilateral extradition treaties in force with 17 countries including 13 Working Group members. Additional bilateral treaties are also under negotiation or have been signed but are not in force.¹¹⁸ In addition to the Anti-Bribery Convention, other multilateral treaties that could provide extradition in foreign bribery cases include the Inter-American Treaty on Extradition; Inter-American Convention against Corruption; and UNCAC. The bilateral extradition treaty with Bolivia has supplanted the 1889 Montevideo Treaty on Criminal International Law.

188. The legislative framework for extradition has not changed since Phase 3 (para. 204). The LICCM and Article 53 CPC apply to extradition. Extradition may be based on an applicable treaty or reciprocity.

¹¹⁶ The data covered cases involving all offences.

¹¹⁷ Pursuant to the applicable bilateral treaty, the central authority for requests to and from the US is the Ministry of Justice and Human Rights.

¹¹⁸ Treaties are in force with Australia, Belgium, Bolivia, Brazil, France, Italy, Korea, Mexico, Netherlands, Paraguay, Peru, South Africa, Spain, Switzerland, UK, US, and Uruguay. Treaties with Colombia, China, Russia, and Tunisia are not in force.

Extraditable offences are those punishable under the laws of Argentina and the requesting State by imprisonment or other deprivation of liberty, for such minimum and maximum terms the average of which must be at least one year (Article 6 LICCM). Argentine jurisdiction over the offence does not prevent extradition provided that one of the following conditions is met: (i) the offence for which extradition is requested is part of significantly more serious punishable conduct which falls under the jurisdiction of the requesting State and not under Argentine jurisdiction; or (ii) the requesting State has better access to the evidence (Article 5 LICCM). Requests must be sent through the diplomatic channel via the MFA's DILA.

189. An Argentine national whose extradition is sought may demand to be prosecuted in Argentina in lieu of extradition unless an applicable treaty mandates extradition (Article 12 LICCM). The final decision is made by the Argentine Executive. If the extradition request is ultimately denied on the basis of nationality, then the Argentine national would be prosecuted in Argentina if the requesting State consents and waives its jurisdiction; and provides the necessary evidence.

(ii) *Delay in Extradition*

190. The Working Group has decided to follow up “the time needed to reach a final decision in extradition procedures related to corruption cases (Follow-up Issue 15(k)). The Phase 2 Report (para. 169) referred to a case in which Argentina extradited four suspects in a high profile corruption investigation to a neighbouring country after a four-year delay. Argentina stated that the main reason for the delay was because the case had been appealed to the Supreme Court. In Phase 3, Argentina stated that the average time to extradite a person was under five months. In Phase 3bis, Argentina stated that from 2014 to June 2016, the average time taken to extradite a person from “initial arrest” to surrender to a foreign state was 129 days (4.3 months). Some of these cases involved appeals to the Supreme Court while others were simplified consent extraditions.

Commentary

The lead examiners reiterate Phase 3 Follow-up Issue 15(k) and recommend that the Working Group follow up the time needed to reach a final decision on extradition in corruption cases.

(c) *Denial of Co-operation Due to “Essential Public Interests”*

191. Argentina may deny extradition or MLA if the granting of the request “would prejudice Argentina’s sovereignty, security, public order or other essential public interests” (Article 10 LICCM). The Argentine central authority, judicial authorities, and Executive successively assess whether this condition is met. The decisions of the central authority and judicial authorities - but not the Executive - can be appealed (Phase 3 Report para. 209).

192. The Working Group has expressed concerns about Article 10 LICCM since Phase 2. The broad wording of the provision allows for the consideration of a wide range of factors, conceivably including those listed in Article 5 of the Convention. The provision was applied in a 2001-2002 case to deny the extradition of individuals who were accused of crimes against humanity during a military government in Argentina in 1976-1983. Argentina refused extradition on grounds of national sovereignty and the principle of *non bis in idem*. The Argentine authorities were investigating the individuals when extradition was denied and later prosecuted one of the individuals. Concerned that the provision could allow Article 5 factors to influence the provision of MLA and extradition, the Working Group decided to follow up this matter (Follow-up Issue 15(l) and Phase 3 Report paras. 209-210).

193. Since Phase 3, the provision has been invoked once. According to media articles,¹¹⁹ the US sought the extradition of a US national to face charges relating to his wife's 2002 murder. The fugitive claimed that he had proof that the US government knew of the 11 September 2001 terrorist attacks in New York before they occurred, and that US prosecutors framed him for his wife's death to silence him. The US authorities denied this allegation, and also gave a diplomatic assurance that the death penalty would not be imposed or exercised against the fugitive if extradition was granted. In December 2014, the Argentine Supreme Court approved the extradition.

194. On 16 September 2015, however, the Minister of Foreign Affairs issued an Executive order under Article 10 LICCM overriding the Supreme Court and refusing extradition. The order stated that the decision was based on grounds of "public order in the human rights field". The evaluation team inquired whether steps had been taken to substantiate the fugitive's claims that he would be persecuted in the US, but the Argentine authorities replied that the information was confidential under international law. Argentina adds that it followed the "Procedural Standards for Refugee Status Determination under the Mandate of the United Nations High Commission for Refugees".

195. At the on-site visit, officials sought to distinguish the case by pointing out that it did not involve transnational bribery. That said, nothing precludes the application of Article 10 LICCM to future foreign bribery cases, which by their nature are even more likely to attract the consideration of Article 5 factors than murder cases. Argentine authorities also reiterated their earlier arguments that the provision would be narrowly applied and that this was the only case out of 700 extradition requests in 2010-2016 in which it applied Article 10 LICCM.

Commentary

The lead examiners recommend that the Working Group continue to follow up whether Article 5 factors influence extradition or MLA in Argentina.

10. Public Awareness and the Reporting of Foreign Bribery

196. This section considers efforts to raise awareness of foreign bribery and to encourage reporting of this crime to law enforcement. Reporting by external auditors is found at p. 48. Awareness-raising efforts by tax authorities are described at p. 50.

(a) Awareness of the Convention and the Offence of Foreign Bribery

197. The Phase 3 Report (paras. 212-216) noted that Argentina had taken only limited steps to raise awareness of the Convention and the foreign bribery offence. Some measures had been taken by the Ministry of Foreign Affairs and Worship (MFA) and the Anti-Corruption Office (OA). However, other important bodies such as *Fundación Exportar*, Argentina's official trade promotion agency, had been inactive. Civil society and private sector representatives could not identify any government awareness-raising initiatives. Phase 3 Recommendation 12 therefore asked Argentina to greatly increase its efforts to proactively raise awareness of foreign bribery within: (a) the Argentine public administration, especially

¹¹⁹ The Guardian (3 January 2015), "[Argentina agrees to extradite US man charged with wife's murder](#)"; Denver Post (17 November 2015), "[Argentine president overrides extradition of man charged in Denver murder](#)"; Denver 7 (19 November 2015), "[Argentine president bars extradition of FEMA photographer Kurt Sonnenfeld in Denver murder case](#)"; New York Daily News (22 November 2015), "[Kurt Sonnenfeld is accused of murdering his wife and claims 9/11 was an inside job — and Argentina won't give him up](#)"; GQ (28 June 2016), "[The Fugitive, His Dead Wife, and the 9/11 Conspiracy Theory That Explains Everything](#)".

among agencies that can play an important role in preventing and detecting foreign bribery, such as overseas diplomats, *Fundación Exportar* and trade promotion officials, and (b) the private sector, including through activities such as seminars, conferences, technical assistance and partnerships with business associations.

198. Since Phase 3, the Argentine government that took office in December 2015 has repeatedly stated its commitment to fight corruption. As part of its overall anti-corruption strategy, the government has introduced a legislative programme known as *Justicia 2020*. Some of the legislative measures described in this report, such as the Corporate Liability Bill and the Repentance Law, form part of this initiative. The OA, which oversees *Justicia 2020*, has consulted the private sector extensively on the Corporate Liability Bill (see p. 49 for details). These activities included presentations and meetings which touched upon foreign bribery. Representatives of the private sector and the legal profession at the on-site visit expressed appreciation of the OA's efforts and demonstrated a reasonable awareness of the foreign bribery offence and the Convention.

199. The MFA has continued to raise awareness of foreign bribery since Phase 3 in Argentina and overseas, including among *Fundación Exportar* and trade promotion officials. The Foreign Service Institute (ISEN) continues to hold annual seminars for future diplomats that address the Convention. The most recent seminar in August 2016 was also attended by *Fundación Exportar* and other MFA officials involved in trade and investment promotion. The programme for first year ISEN students now includes a specific unit on fighting international corruption and the Convention. The MFA sends two circulars to its internal agencies and overseas missions (embassies, consulates and trade promotion centres) biannually. One circular reminds officials in these missions of their duty to report foreign bribery allegations to Argentine law enforcement. The other states that overseas MFA officials should inform Argentine businesses operating overseas of the Convention and the Argentine foreign bribery offence.

200. In addition, the MFA and OA have prepared a booklet covering the Convention, the Phase 3 Recommendations, and the OECD Guidelines for Multinational Enterprises. This booklet is featured on multiple government trade/investment related websites, including those of *Fundación Exportar*, [Argentina Trade Net](#) (the MFA's Directory of Exporters) and *Inversiones* (the agency responsible for promoting foreign investment in Argentina). The booklet is also distributed to Argentine companies seeking to trade or invest overseas. The National Institute for Public Administration (INAP) provided an online course in July 2016 on criminal law and corruption which touched upon the Convention. INAP plans to expand the course in 2017.

201. As in Phase 3, however, some important bodies have remained inactive. The Ministry of Industry's Secretariat for SMEs and Regional Development has not raise awareness of foreign bribery and did not attend the Phase 3 or Phase 3bis on-site visits. As described at p. 49, there are substantial concerns that SMEs remain ill-equipped to address foreign bribery issues. CNV has taken no steps apart from putting links to OECD reports on foreign bribery on its website. Recommendation 12(a) is therefore fully implemented but Recommendation 12(b) is only partially implemented.

Commentary

The lead examiners welcome efforts by the MFA and OA to raise awareness of foreign bribery within the Argentine public administration, especially among agencies that can play an important role in preventing and detecting foreign bribery, such as overseas diplomats, Fundación Exportar and trade promotion officials. However, further efforts could have been made by CNV and the Ministry of Industry's Secretariat for SMEs and Regional Development to reach out to listed companies and Argentina's roughly 600 000 SMEs. The lead examiners therefore recommend that Argentina continue its efforts to proactively raise awareness of

foreign bribery within the private sector, with particular emphasis on SMEs that are at risk of committing foreign bribery.

(b) Reporting Suspected Acts of Foreign Bribery

202. Since Phase 2, the Working Group has raised several issues concerning the duty of Argentine officials to report foreign bribery, namely inconsistent reporting obligations and channels; inadequate sanctions for non-reporting; and a lack of awareness of the duty to report. Since Phase 3, Argentina has taken only limited steps to address these issues. Phase 3 Recommendation 13(a) is therefore only partially implemented.

203. The Phase 3 Report (para. 218) noted that Argentine public officials were subject to rules with inconsistent thresholds for reporting. Article 177(1) CPC required officials to report “crimes” that they notice in the course of their duties. Executive Decree 1162/2000 (Reporting Decree) imposed a lower threshold by requiring the reporting of “allegations” of foreign bribery and all other crimes. (An even lower threshold applies to domestic corruption by requiring the reporting of “presumptions” of this crime to the OA within 24 hours.) An MFA circular asked embassy officials to report the “possible commission” of foreign bribery. Tax officials in AFIP were subject to a higher threshold, as they were required to report when he/she can “conclude the effective commission” of an offence.

204. Since Phase 3, the reporting threshold for tax officials has been brought closer to Article 177 CPC and the Reporting Decree. The recent AFIP Resolution 1001/2016 repealed the earlier reporting obligations and states that AFIP officials are bound by Article 177 CPC. The obligation to report arises when “there are sufficient elements to suspect that a crime was committed without the requirement of convincing certainty that the fact exists and is an offence. It is sufficient that the fact has the external characteristics of a crime so as to give rise to the duty to file the complaint.” The MFA has amended its circular which now quotes Article 177 CPC and the Reporting Decree. Argentina states that the circular reflects and is compatible with the CPC and Reporting Decree. The circular, however, continues to require officials to report the “possible commission” of foreign bribery, as in Phase 3. MFA argues that Article 177 CPC necessarily requires the reporting of suspicions of crimes since only a court can determine whether a crime has in fact occurred.

205. No changes have been made to the inconsistent reporting channels that were noted in the Phase 3 Report (paras. 219-220). The Reporting Decree requires public officials to report alleged criminal offences directly to law enforcement authorities. However, Article 23(h) of the Public Service Law 25 164 requires an official to report to a superior. AFIP Resolution 1001/2016 states that a tax official “should directly submit the complaint” to the prosecutors’ office. But at the on-site visit, AFIP explained that an official must seek a non-binding opinion from the AFIP legal office on whether to report a matter to the prosecutors’ office. The MFA biannual circular continues to require reports to be channelled to the Head of Mission and then the General Directorate of Legal Matters who may – not shall – report the matter to the prosecutor. As a result of this process, the foreign bribery allegations in the *Gas Plant (Bolivia) Case* that surfaced in the foreign media took five months to reach the prosecutor’s office as they wended through five different offices in the MFA.

206. The CPC 2014, if it enters into force, would replace Article 177 CPC. Article 204(a) requires judges and other public officials to report “crimes of public action” that they learn of in the exercise of their functions. The provision does not specify the reporting threshold or to whom the report should be made. At the on-site visit, the Ministry of Justice stated that the new provision would require public officials to follow the existing channels. The provision therefore would not resolve the issue of inconsistent reporting channels. In Phase 3bis, Argentina also discussed at length new reporting channels available in

various government ministries. These measures, however, deal with the reporting of corruption in these Argentine government bodies, and not of bribery of foreign officials.

207. Argentina has not implemented Phase 3 Recommendation 13(a)(iii) as there have not been changes to the sanctions for failure to report foreign bribery. Article 177(1) CPC and the Reporting Decree do not specify the sanctions for failure to report. The Public Service Law provides for sanctions for breach of the reporting obligations under that Law and not the CPC or the Reporting Decree. As in previous evaluations, Argentina states that non-reporting could be sanctioned by 1-6 years' imprisonment as an aggravated offence of concealment (Article 277 PC). As the Working Group noted, these relatively draconian sanctions are likely to be applied only to cases of active concealment and not failure to report a crime. Argentina added that there were 80 cases under Article 277 PC but could not indicate whether any of them concerned public officials who had failed to report crimes. Article 204(a) of the CPC 2014 also does not specify the sanctions for failure to report under that provision.

208. Since Phase 3, only the MFA has reminded its officials of their reporting obligations. The MFA sends circulars to its foreign missions (embassies, consulates, and trade promotions centres) biannually in this regard. AFIP has not had time to raise awareness of the new reporting obligation in Resolution 1001/2016 which was enacted just before the October 2016 on-site visit. No efforts have been made to raise awareness among other Argentine public officials.

209. As in Phase 3, private individuals (including SOE employees) may - but are not obliged - to report crimes to a judge, prosecutor or the police.¹²⁰ Parliamentarians filed complaints in four of the foreign bribery cases to date; other citizens have not reported foreign bribery allegations.

Commentary

The lead examiners welcome the MFA's efforts to ensure the reporting of foreign bribery allegations by overseas missions. They also welcome the steps taken by AFIP. However, Argentina has made only some efforts to rectify issues concerning the duty of its public officials to report foreign bribery. Article 204 of CPC 2014, if it enters into force, will not resolve the matter. The lead examiners therefore reiterate Phase 3 Recommendation 13(a) and recommend that Argentina (i) ensure the consistency of the reporting thresholds and channels in administrative instruments, the Reporting Decree and the CPC; (ii) ensure that sanctions for non-reporting of alleged foreign bribery are appropriate and effective; and (iii) further remind all public officials, and not only those in MFA and AFIP, of their obligations under the CPC and Reporting Decree to report alleged offences of foreign bribery directly to Argentine law enforcement.

(c) Whistleblowing and Whistleblower Protection

210. The Phase 3 Report (paras. 224-226) noted that Argentina had not taken steps to implement the Working Group's recommendation since Phase 2 to provide whistleblower protection in the public or private sectors. Measures such as witness protection and unjust dismissal laws were not sufficient to protect whistleblowers.

211. Nothing has changed since Phase 3. Argentina has not enacted a specific law on whistleblowing, nor are there plans to do so. It refers to the new Repentance Law (see p. 19). However, this law covers only offenders who co-operate with the authorities in the investigation of other crimes. Furthermore, the only

¹²⁰ See p. 23. Some entities and individuals are obliged to report suspected money laundering (see p. 34).

remedy is sentence reduction, not protection from workplace reprisals, for example. Argentina also refers to the Corporate Liability Bill, in particular the co-operation and deferred prosecution agreement provisions. However, these provisions apply to companies, not the whistleblowers in them. Argentina is also reforming its witness protection programme. But as the Working Group has said on numerous occasions, witness protection only covers witnesses and generally only offers protection from physical danger. At the on-site visit, private sector participants largely agreed with the need for a whistleblower protection law. During this evaluation, the Argentine authorities recognise the need to reform this important issue. In the meantime, Phase 3 Recommendation 13(b) is not implemented.

Commentary

The lead examiners are seriously concerned that the absence of whistleblower protection deprives the authorities of a powerful tool to detect corruption cases. The Working Group has recommended that Argentina rectify this deficiency since Phase 2 in 2008. The lead examiners therefore reiterate Phase 3 Recommendation 13(b) and recommend that Argentina ensure as a matter of priority that appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of bribery of foreign public officials in international business transactions.

11. Public Advantages

212. This section concerns the role of Argentine agencies involved in public procurement, official development assistance, and officially supported export credits in fighting foreign bribery.

(a) Public Procurement

213. A person who has been convicted of “fraudulent offences” (*delitos dolosos*) or who is subject to criminal proceedings for an offence established by the Inter-American Convention against Corruption (IACAC) is debarred from obtaining public contracts with the Argentine National Public Administration. This debarment covers contracts with the federal government, including those for public works. The maximum debarment period is “twice the conviction” (*doble de la condena*), or the period of probation if no prison sentence is imposed.¹²¹ The National Procurement Office (*Oficina Nacional de Contrataciones*, ONC) oversees federal public procurement.

214. The Working Group has identified several concerns with these provisions since Phase 2. The IACAC does not cover certain types of foreign bribery, *e.g.* bribery of officials of public international organisations. These cases therefore would not result in debarment under the Argentine legislation. As well, ONC did not check whether a person should be debarred. Persons seeking public procurement contracts are merely required to state in an affidavit that there are no grounds for debarment. The ONC does not verify the debarment lists of multilateral development banks. Phase 3 Recommendation 4(e) asked Argentina to address these deficiencies.

215. Argentina adopted Decree 1030/2016 in October 2016 to address this Recommendation. Article 68(h) of the Decree provides that legal persons that have received a “final sentence” from a foreign court for committing foreign bribery under the Convention would be debarred for “twice the conviction”. Article 68(i) provides that natural and legal persons who are debarred by the World Bank or Inter-

¹²¹ Phase 3 Report paras. 228-229; Decrees 436/2000 Article 136 and 1023/2001 Article 28.

American Development Bank (IDB) for engaging in foreign bribery would also be barred in Argentina simultaneously.

216. There are limitations to these provisions, however. Decree 1030/2016 is meant to supplement the existing debarment provisions; it therefore does not address the deficiencies identified by the Working Group earlier. Furthermore, Article 68(h) applies to legal persons found liable of foreign bribery by courts in a foreign country, not Argentina. In practice, ONC does not have the ability to verify this. The provision states that the length of the debarment is “twice the conviction”. Argentina agrees that since legal persons cannot be sentenced to imprisonment, the provision could apply only if the foreign court imposed a time-based sanction against the legal person (such as debarment). Furthermore, given that the Decree was adopted recently, ONC has only just begun to train federal procuring bodies on these provisions, including on the need to systematically verify the debarment lists of the World Bank and IDB. Decree 1030/2016 also does not apply to federal procurement contracts for public works. Recommendation 4(e) is therefore only partially implemented.

217. The Argentine authorities referred to two other measures that do not relate to debarment for foreign bribery under the 2009 Anti-Bribery Recommendation. The standard public procurement agreement includes a clause terminating the contract if a company engages in corruption. A draft Transparency and Access to Information Law would also allow debarment on the same ground. These measures, however, apply only if the company had bribed an Argentine official to win the procurement contract, not if the company had engaged in foreign bribery in an earlier, unrelated transaction.

Commentary

The lead examiners are encouraged that Argentina has adopted Articles 68(h)-(i) of Decree 1030/2016 to expand its debarment regime. The Decree, however, does not apply to federal procurement for public works, or to legal persons found liable in Argentina for foreign bribery. The Decree’s implementation in practice is uncertain. If a provision on debarment in the Corporate Liability Bill is enacted, then the current debarment regime would have to be harmonised with the new provision.

For these reasons, the lead examiners reiterate Phase 3 Recommendation 4(e) and recommend that Argentina, for all federal procurement (including public works) where appropriate, (a) extend the grounds for debarment to cover all offences falling within Article 1 of the Convention; (b) ensure the effectiveness of the exclusion mechanism, including by routinely checking debarment lists of multilateral development banks; and (c) in conjunction with the reform of the liability of legal persons for bribery, extend the disqualification to legal persons engaged in foreign bribery where appropriate.

(b) Official Development Assistance

218. Issues such as detection, reporting and debarment by agencies involved in official development assistance (ODA) are not relevant in Argentina. As was the case in Phases 2 and 3 (para. 231), Argentina provides ODA only in the form of technical assistance, e.g. financing Argentine experts’ foreign missions based on the principles of South-South co-operation. Argentina does not provide direct financial assistance or project funding.

(c) Export Credits

219. Argentina has not implemented Phase 3 Recommendation 14 to adhere to the 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits. As in Phase 3 (para. 232), Argentina does not have an export credit programme. However, the Argentine authorities state

that they aim to resume providing export credits. If that happens, then Argentina would consider adhering to the 2006 Export Credits Recommendation.

Commentary

The lead examiners reiterate Phase 3 Recommendation 14 and recommend that Argentina adhere to the 2006 Recommendation on Bribery and Officially Supported Export Credits if and when it resumes the provision of officially supported export credits.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

220. The Working Group is encouraged that Argentina has made some progress in its implementation of the Convention since its Phase 3 evaluation in December 2014. Argentina has been more responsive to foreign bribery allegations and some enforcement actions have progressed. A Corporate Liability Bill meant to address several legislative issues identified by the Working Group was introduced into Congress in October 2016. To promote the Bill's passage, Argentine authorities have actively engaged the private sector and promoted corporate compliance programmes. An express prohibition on the tax deduction of bribes to foreign public officials was enacted in December 2016.

221. That said, the Working Group continues to have many of the concerns that were expressed in its previous evaluations. The Corporate Liability Bill has not yet been enacted at the time of this report. As a result, Argentina continues to be in serious non-compliance with key articles of the Convention. It still cannot hold legal persons liable for foreign bribery, or exercise nationality jurisdiction to prosecute this offence. Its foreign bribery offence continues to have several deficiencies that have been identified since Phase 1 in 2001. If enacted in its current form, the Corporate Liability Bill would address many but not all of the Working Group's concerns related to legislation. The effectiveness of enforcement efforts may be compromised by serious risks to judicial and prosecutorial independence, the politicisation of the Office of the Attorney General, and a lack of adequate resources and specialised expertise. The investigation and prosecution of complex economic crimes continue to show extraordinary delay. The entry into force of the Criminal Procedure Code 2014 has yet to occur after a postponement to the second semester of 2017. High numbers of judicial vacancies and the pervasive use of surrogate judges contribute to delay and threaten judicial independence. There is no legislation to specifically protect whistleblowers.

222. Regarding recommendations from its Phase 3 evaluation (see Annex 1), Argentina has fully implemented Recommendations 8, 11(a), and 12(a); partially implemented Recommendations 4(e), 5(a), 5(d), 5(f), 6(a), 6(b), 9(c), 9(d), 10(c), 10(d), 10(f), 11(b), 12(b), and 13(a); and not implemented Recommendations 1(a), 1(b), 1(c), 2, 3, 4(a), 4(b), 4(c), 4(d), 5(b), 5(c), 5(e), 5(g), 6(c), 7, 9(a), 9(b), 10(a), 10(b), 10(e), 11(c), 13(b), and 14. The Follow-Up Issues 15(a)-(l) remain outstanding.

223. In conclusion, based on the findings in this report on Argentina's implementation of the Convention, the 2009 Recommendation and related OECD anti-bribery instruments, the Working Group (1) makes the following recommendations in Part 1 to enhance implementation of these instruments; and (2) will follow up the issues identified in Part 2. The Working Group invites Argentina to report in writing within six months (i.e. by October 2017) on the status of the Corporate Liability Bill, and in writing in one year (i.e. by March 2018) on the implementation of Phase 3bis Recommendations 1, 2, 3, 5(d), 5(e)(i), 6(a), 6(b), 6(e), and 8(e). Argentina is further invited to submit a written follow-up report within two years (i.e., by March 2019) on its foreign bribery enforcement actions, implementation of all Phase 3bis Recommendations, and developments concerning follow-up issues. The Working Group may take additional measures depending on Argentina's progress in implementing the Phase 3bis Recommendations, including a supplemental Phase 1bis evaluation to assess any major legislation that is enacted.

1. Recommendations of the Working Group

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

1. With regards to the foreign bribery offence, the Working Group recommends that Argentina:
 - (a) introduce an autonomous definition of foreign public officials(Convention Article 1(4); 2009 Recommendations III.ii and V);
 - (b) ensure that the definition of foreign public officials covers, in a manner consistent with the Convention, officials of foreign public enterprises and public officials of organised foreign areas or entities that do not qualify or are not recognised as States (Convention Article 1(4) and Commentaries 12-18; 2009 Recommendations III.ii and V);
 - (c) eliminate the vagueness in the offence resulting from the absence of a requirement that the advantage provided to an official be “undue”, or that the advantage obtained by the briber be “improper” (Convention Article 1; 2009 Recommendations III.ii and V).
2. With regards to jurisdiction over foreign bribery cases, the Working group recommends that Argentina adopt nationality jurisdiction to prosecute foreign bribery cases on a priority basis (Convention Article 4(2); 2009 Recommendation V).
3. With respect to liability of legal persons, the Working Group recommends that Argentina:
 - (a) urgently adopt legislation on a priority basis to ensure that legal persons can be held liable for foreign bribery (Convention Articles 2 and 3; 2009 Recommendation Annex I.B);
 - (b) consider harmonising its corporate liability provisions so that a single regime of liability covers foreign bribery and related offences such as money laundering and false accounting (Convention Articles 2 and 3; 2009 Recommendation Annex I.B).
4. With regard to sanctions and confiscation, the Working Group recommends that Argentina:
 - (a) substantially increase the maximum fine available for foreign bribery (Convention Article 3(1));
 - (b) ensure that fines are available where the gain obtained by a briber is not pecuniary or does not go to the briber but his/her company (Convention Article 3(1) and Commentary 7);
 - (c) maintain detailed statistics of sanctions (including confiscation) imposed in cases of bribery and other economic crimes (Convention Articles 3(1)-(3));
 - (d) amend its legislation to provide for confiscation of property the value of which corresponds to that of the bribe and the proceeds of bribery, or monetary sanctions of comparable effect; (Convention Article 3(3));
 - (e) take further steps to ensure that confiscation is routinely ordered in foreign bribery cases, that the amount of confiscation represents the full benefits of the offence, and that confiscation orders are executed without unreasonable delay (Convention Article 3(3));
 - (f) regarding debarment, (i) extend the grounds for debarment for all federal procurement (including public works) where appropriate to cover all offences falling within Article 1 of the

Convention; (b) ensure the effectiveness of the exclusion mechanism, including by routinely checking debarment lists of multilateral development banks; and (c) in conjunction with the reform of the liability of legal persons for bribery, extend the disqualification to legal persons engaged in foreign bribery where appropriate (Convention Article 3(4); 2009 Recommendation X).

5. Regarding investigations and prosecutions, the Working Group recommends that Argentina:

- (a) continue to take steps to ensure that foreign bribery cases may be commenced based on information provided anonymously (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (b) continue to use proactive steps to gather information from diverse sources of allegations and enhance investigations (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (c) take steps to ensure that prosecutors and judges in economic crime cases act promptly and proactively without delay.
- (d) promptly implement the CPC 2014, and ensure that the law effectively reduces delay in practice (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (e) regarding delay, (i) urgently take further steps to reduce delays in complex economic crime cases, including by addressing the causes of delay that originate in the criminal procedural system and (ii) maintain and analyse statistics on delay and economic crime cases to assess the effectiveness of the measures to reduce delay; (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (f) take urgent steps to ensure that adequate resources are made available for foreign bribery investigations and prosecutions and consider assigning foreign bribery and corruption investigations and prosecutions to specialised investigative judges and prosecutors who have expertise in complex economic crime cases (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (g) provide additional foreign bribery-specific training, including on the practical aspects of and best practices on seeking MLA, to all investigative judges and prosecutors who have jurisdiction to investigate and prosecute this crime (Convention Article 5 and Commentary 27; 2009 Recommendation III.(ii) and V);
- (h) accelerate efforts to implement an effective national register of information relating to all Argentine companies (2009 Recommendation II).

6. With regard to judicial and prosecutorial independence, the Working Group recommends that Argentina:

- (a) adjust the composition of the Judicial Council, and ensure that the Council effectively protects the independence of judges (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (b) take urgent steps to ensure the independence of the Offices of the federal Attorney General and Public Prosecutors, including by protecting the appointment, transfer and dismissal of the

Attorney General and prosecutors from political influence (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);

- (c) ensure that prosecutors who conduct foreign bribery cases are not subjected to political or other undue interference, including through the use of actual or threatened disciplinary action, the application of the opportunity principle, and the AG's power of supervision and general direction over prosecutors (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (d) raise awareness of Article 5 of the Convention among investigative judges and prosecutors, to ensure that foreign bribery investigations and prosecutions are not influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (e) take additional measures to substantially reduce the number of judicial vacancies and surrogate judges, and increase continuity of investigative personnel for particular cases, including judges and prosecutors, to the greatest degree possible (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D).

7. Regarding mutual legal assistance, the Working Group recommends that:

- (a) investigative judges and prosecutors in foreign bribery cases use all available means to secure MLA, in particular through contact with foreign authorities via informal channels and through the Working Group (Convention Article 9(1); 2009 Recommendation XIII.v);
- (b) the MFA work more closely with prosecutors and judges to pursue MLA requests in specific foreign bribery cases, include engaging Argentine embassies overseas to facilitate the execution of requests (Convention Article 9(1); 2009 Recommendation XIII.v).

Recommendations for ensuring effective prevention, detection, and reporting of foreign bribery

8. With regard to money laundering, the Working Group recommends that Argentina:

- (a) extend money laundering reporting, due diligence and record keeping obligations to lawyers, *síndicos* and other legal professionals (subject to appropriate qualifications) (Convention Article 7);
- (b) further enhance AML measures for financial transactions involving PEPs, including by adding important political party officials to the definition of PEPs; ensuring that due diligence of former PEPs is based on an assessment of risk and not on prescribed time limits; and issuing guidelines on the handling of PEPs (Convention Article 7; 2009 Recommendation III.i);
- (c) provide better feedback to entities who file STRs to improve the quality of these reports (Convention Article 7; 2009 Recommendation III.i);
- (d) raise awareness about foreign bribery as a predicate offence to money laundering, including by preparing typologies on foreign bribery-related money laundering (Convention Article 7; 2009 Recommendation III.i);
- (e) continue to ensure that UIF processes and forwards relevant information contained in STRs to law enforcement without undue delay (Convention Article 7; 2009 Recommendation IX.i).

9. With regards to accounting and auditing, corporate compliance, internal control and ethics, the Working Group recommends that Argentina:

- (a) continue to strengthen accounting standards, such as by allowing all unlisted companies and SOEs to choose IFRS (Convention Article 8; 2009 Recommendations X.A.i and iii);
- (b) take measures to enforce the accounting fraud offence and accounting requirements more effectively in bribery cases; increase applicable sanctions where appropriate; and ensure that the Corporate Liability Bill, if enacted, applies to foreign bribery-related accounting misconduct (Convention Article 8; 2009 Recommendations X.A.i and iii);
- (c) work with the accounting profession to raise awareness of the foreign bribery offence, and encourage the profession to develop specific training on foreign bribery in the framework of their professional education and training systems (Convention Article 8; 2009 Recommendation III.i);
- (d) clarify the entities that are legally required to submit to external audit; ensure full ISA implementation in Buenos Aires and all 23 provinces; and further improve audit quality standards, including with regard to certification of auditor qualifications and quality control of audits (Convention Article 8; 2009 Recommendations X.B.i and ii);
- (e) ensure that external auditors and audit firms take greater account of the risks of foreign bribery in the companies that they audit (Convention Article 8; 2009 Recommendation III.i);
- (f) continue its efforts to ensure that auditors and *síndicos* that are not in SOEs promptly report suspicions of foreign bribery by employees or agents of the company to the competent authorities, notably in the face of inaction after appropriate disclosure within the company (2009 Recommendations X.B.iii and v);
- (g) continue to promote corporate compliance, internal controls and ethics programmes to prevent and detect foreign bribery, including for SMEs that are internationally active (2009 Recommendation X.C).

10. With regard to tax-related measures, the Working Group recommends that Argentina:

- (a) continue to train its officials at AFIP on detecting foreign bribery and remind them of their obligations to report suspected crime (2009 Recommendation III.i and VIII.i; 2009 Tax Recommendation II);
- (b) promptly take steps to ensure that tax information can be provided to foreign authorities for use in foreign bribery investigations (Convention Article 9(1); 2009 Recommendation XIII.iv; 2009 Tax Recommendation I.iii).

11. With regard to awareness-raising, the Working Group recommends that Argentina continue its efforts to proactively raise awareness of foreign bribery within the private sector, with particular emphasis on SMEs that are at risk of committing foreign bribery (2009 Recommendation III.i).

12. With regards to reporting and whistleblower protection, the Working Group recommends that Argentina:

- (a) (i) ensure the consistency of the reporting thresholds and channels in administrative instruments, the Reporting Decree and the CPC; (ii) ensure that sanctions for non-reporting of

alleged foreign bribery are appropriate and effective; and (iii) further remind all public officials, and not only those in MFA and AFIP, of their obligations under the CPC and Reporting Decree to report alleged offences of foreign bribery directly to Argentine law enforcement (2009 Recommendations IX.i and ii);

- (b) ensure as a matter of priority that appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of bribery of foreign public officials in international business transactions. (2009 Recommendation IX.iii).

13. With regards to export credits, the Working Group recommends that Argentina adhere to the 2006 Recommendation on Bribery and Officially Supported Export Credits if and when it resumes the provision of officially supported export credits (2009 Recommendation XII.i).

2. Follow-up by the Working Group

14. The Working Group will follow up the issues below as case law and practice develop:

- (a) Whether Article 258bis PC covers cases where a bribe is paid in order that an official acts outside his/her authorised competence (Convention Article 1 and Commentary 19);
- (b) Whether the solicitation or “illicit demand” of an undue payment or other advantage by a foreign public official can exclude the liability of the active briber (Convention Article 1; 2009 Recommendation Annex I.A);
- (c) Application of territorial jurisdiction in foreign bribery cases (Convention Article 4(1));
- (d) Sanctions imposed for foreign bribery in practice, including whether sentences imposed comply with Commentary 7 of the Convention (Convention Article 3);
- (e) Confiscation of indirect proceeds of foreign bribery, and confiscation against a legal person of the proceeds of offences committed by a *de facto* manager (Convention Article 3);
- (f) Whether law enforcement authorities routinely and systematically assess credible foreign bribery allegations that are reported in the media on a timely basis (Convention Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (g) Application of the money laundering offence in Argentina, including: (i) whether the offence covers the laundering of a bribe and the laundering of indirect proceeds of crime, (ii) whether foreign bribery is always a predicate offence to money laundering, without regard to the place where the bribery occurred, and (iii) enforcement of the money laundering offence in practice (Convention Article 7);
- (h) Whether Argentina can grant MLA requests submitted in the context of criminal and non-criminal proceedings within the scope of the Convention and brought by a Party against a legal person (Convention Article 9);
- (i) Whether Argentina executes MLA requests from foreign authorities without undue delay (Convention Article 9(1); 2009 Recommendation XIII.v);
- (j) Whether Article 5 factors influence extradition or MLA in Argentina (Convention Articles 5 and 9);

(k) Time needed to reach a final decision on extradition in corruption cases (Convention Article 10).

ANNEX 1 WORKING GROUP PHASE 3 RECOMMENDATIONS TO ARGENTINA

1. With regards to the foreign bribery offence, the Working Group recommends that Argentina:
 - a) introduce an autonomous definition of foreign public officials (Convention, Article 1(4); 2009 Recommendation III.ii and V);
 - b) ensure that the definition of foreign public officials covers, in a manner consistent with the Convention, officials of foreign public enterprises and public officials of organised foreign areas or entities that do not qualify or are not recognised as States (Convention, Article 1(4) and Commentaries 12-18; 2009 Recommendation III.ii and V); and
 - c) eliminate the vagueness in the offence resulting from the absence of a requirement that the advantage provided to an official be “undue”, or that the advantage obtained by the briber be “improper” (Convention, Article 1; 2009 Recommendation III.ii and V).
2. Regarding jurisdiction over foreign bribery cases, the Working Group recommends that Argentina adopt nationality jurisdiction to prosecute foreign bribery cases on a priority basis (Convention, Article 4(2); 2009 Recommendation V).
3. With regards to liability of legal persons, the Working Group recommends that Argentina adopt legislation on a priority basis to ensure that legal persons can be held liable for foreign bribery (Convention, Articles 2 and 3; 2009 Recommendation Annex I.B).
4. With regards to sanctions and confiscation, the Working Group recommends that Argentina:
 - (a) substantially increase the maximum fine available for foreign bribery (Convention, Article 3(1));
 - (b) take steps to ensure that fines are available where the gain obtained by a briber is not pecuniary or does not go to the briber but his/her company (Convention, Article 3(1) and Commentary 7);
 - (c) amend its legislation to provide for confiscation of property the value of which corresponds to that of the bribe and the proceeds of bribery, or that monetary sanctions of comparable effect are applicable (Convention, Article 3(3));
 - (d) take further steps to ensure (i) that confiscation is routinely ordered in foreign bribery cases, (ii) that the amount of confiscation represents the full benefits of the offence, and (iii) that confiscation orders are executed without unreasonable delay (Convention, Article 3(3)); and
 - (e) regarding debarment, (i) extend the grounds for debarment from public procurement to cover all offences falling within the scope of Article 1 of the Convention; (ii) ensure the effectiveness of the exclusion mechanism, including by routinely checking debarment lists of multilateral development banks in relation to public procurement contracting; and (iii) in conjunction with reform of the liability of legal persons for bribery, extend the disqualification to legal persons engaged in foreign bribery where appropriate (Convention, Article 3(4); 2009 Recommendation X).
5. Regarding investigations and prosecutions, the Working Group recommends that Argentina:
 - (a) take steps to ensure that its law enforcement authorities routinely and systematically assess credible foreign bribery allegations that are reported in the media on a timely basis; and ensure that foreign bribery cases may be commenced based on information provided anonymously (Convention, Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
 - (b) use proactive steps to gather information from diverse sources of allegations and enhance investigations (Convention, Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
 - (c) take steps to promptly implement the new CPC enacted on 4 December 2014, and ensure that the new law effectively reduces delay in practice (Convention, Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
 - (d) take steps to (i) ensure that prosecutors and investigative judges in economic crime cases act promptly and proactively without delay, and (ii) actively assess the effectiveness of its measures to reduce delay by maintaining and analysing statistics on delay and economic crime cases that have been time-barred (Convention, Articles 5 and 6, and Commentary 27; 2009 Recommendation Annex I.D);
 - (e) ensure that adequate resources, including specialised and experienced investigative judges, are made available for foreign bribery investigations and prosecutions (Convention, Article 5 and Commentary 27; 2009 Recommendation Annex I.D);

- (f) provide foreign bribery-specific training to all judges and prosecutors that have jurisdiction to investigate and prosecute this crime (Convention, Article 5 and Commentary 27; 2009 Recommendation III.(ii) and V); and
 - (g) accelerate efforts to implement an effective national register of information relating to all Argentine companies (2009 Recommendation II).
6. With regards to judicial and prosecutorial independence, the Working Group recommends that Argentina take steps to ensure that the exercise of investigative and prosecutorial powers, in particular for the foreign bribery offence, is not subject to improper influence by factors listed in Article 5 of the Convention, including concerns of a political nature. In particular, Argentina should take all necessary steps to ensure:
- (a) actual or threatened disciplinary action against judges and prosecutors does not adversely affect the effectiveness of foreign bribery investigations and prosecutions, and is not motivated by considerations of national economic interest, potential effect upon relations with another State, or identity of the natural or legal person involved;
 - (b) government officials refrain from contacting judges and prosecutors about specific cases; and
 - (c) a substantial reduction in the number of judicial vacancies and surrogate judges, and increased continuity of investigative personnel for particular cases, including judges and prosecutors, to the greatest degree possible (Convention, Article 5 and Commentary 27; 2009 Recommendation Annex I.D).
7. With regards to statistics, the Working Group recommends that Argentina maintain detailed statistics of sanctions (including confiscation) imposed in cases of bribery and other economic crimes (Convention, Articles 3(1)-(3)).
8. Regarding mutual legal assistance, the Working Group recommends that Argentina continue to take further steps to ensure that MLA requests from foreign authorities are executed without undue delay (Convention, Article 9.1; 2009 Recommendation XIII.v).
9. With regards to money laundering, the Working Group recommends that Argentina:
- (a) extend money laundering reporting, due diligence and record keeping obligations to lawyers, *síndicos* and other legal professionals (subject to appropriate qualifications) (Convention, Article 7);
 - (b) further enhance AML measures for financial transactions involving PEPs, including by adding important political party officials to the definition of PEPs; ensuring that due diligence of former PEPs is based on an assessment of risk and not on prescribed time limits; and issuing guidelines on the handling of PEPs (Convention, Article 7; 2009 Recommendation III.i);
 - (c) raise awareness about foreign bribery as a predicate offence to money laundering, including by preparing typologies on foreign bribery-related money laundering (Convention, Article 7; 2009 Recommendation III.i); and
 - (d) take steps to ensure that UIF processes and forwards STRs to law enforcement without undue delay (Convention, Article 7; 2009 Recommendation IX.i).
10. With regards to accounting and auditing, corporate compliance, internal control and ethics, the Working Group recommends that Argentina:
- (a) continue to strengthen accounting standards such as considering to allow all unlisted companies and SOEs to choose IFRS; take measures to enforce the accounting fraud offence and accounting requirements more effectively in bribery cases; and increase applicable sanctions where appropriate (Convention, Article 8; 2009 Recommendation X.A.i and iii);
 - (b) work with the accounting profession to raise awareness of the foreign bribery offence, and encourage the profession to develop specific training on foreign bribery in the framework of their professional education and training systems (Convention, Article 8; 2009 Recommendation III.i);
 - (c) further improve requirements to submit to external audit; ensure full ISA implementation in Buenos Aires and all 23 provinces; and continue efforts to improve audit quality standards, including with regard to certification of auditor qualifications and quality control of audits (Convention, Article 8; 2009 Recommendation X.B.i and ii);
 - (d) ensure that external auditors and audit firms take greater account of the risks of foreign bribery in the companies that they audit (Convention, Article 8; 2009 Recommendation III.i);
 - (e) continue its efforts to ensure that auditors and *síndicos* that are not in SOEs promptly report suspicions of foreign bribery by employees or agents of the company to the competent authorities, notably in the face of inaction after appropriate disclosure within the company (2009 Recommendation X.B.iii and v); and

- (f) take more effective steps to promote corporate compliance, internal controls and ethics programmes to prevent and detect foreign bribery (2009 Recommendation X.C).

11. With regards to tax-related measures, the Working Group recommends that Argentina:

- (a) explicitly disallow the tax deductibility of bribes to foreign public officials for all tax purposes in an effective manner (2009 Recommendation VIII.i; 2009 Tax Recommendation I);
- (b) improve AFIP's ability to detect foreign bribery by disseminating the 2013 OECD Bribery Awareness Handbook for Tax Examiners and training AFIP officials on detecting bribery (2009 Recommendation III.i and VIII.i; 2009 Tax Recommendation II); and,
- (c) promptly amend its legislation to allow tax information to be provided to foreign authorities for use in foreign bribery investigation (Convention Article 9(1); 2009 Recommendation XIII.iv; 2009 Tax Recommendation I.iii).

12. With regards to awareness-raising, the Working Group recommends that Argentina greatly increase its efforts to proactively raise awareness of foreign bribery within:

- (a) the Argentine public administration, especially among agencies that can play an important role in preventing and detecting foreign bribery, such as overseas diplomats, Fundación ExportAr and trade promotion officials (2009 Recommendation III.i); and,
- (b) the private sector, including through activities such as seminars, conferences, technical assistance and partnerships with business associations (2009 Recommendation III.i).

13. With regards to reporting and whistleblower protection, the Working Group recommends that Argentina:

- (a) (i) further remind public officials, including diplomatic missions, trade promotion and tax officials of their obligation under Article 177(1) CPC and Article 2 of the Reporting Decree to report alleged offences of foreign bribery directly to competent law enforcement officials; (ii) ensure that administrative reporting duties in other instruments reflect and are compatible with the CPC and Reporting Decree; and (iii) consider whether sanctions for non-reporting of alleged foreign bribery are appropriate and effective (2009 Recommendation IX.i and ii); and,
- (b) ensure that appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of bribery of foreign public officials in international business transactions (2009 Recommendation IX.iii).

14. With regards to export credits, the Working Group recommends that Argentina adhere to the 2006 Recommendation on Bribery and Officially Supported Export Credits if and when it resumes the provision of officially supported export credits (2009 Recommendation XII.i).

Follow-up by the Working Group

15. The Working Group will follow up the issues below as case law and practice develop:

- (a) Application of Article 258bis PC, including cases where a bribe is paid in order that an official acts outside his/her authorised competence (Convention, Article 1 and Commentary 19);
- (b) Whether the solicitation or "illicit demand" of an undue payment or other advantage by a foreign public official can exclude the liability of the active briber (Convention, Article 1; 2009 Recommendation Annex I.A);
- (c) Application of territorial jurisdiction in foreign bribery cases (Convention, Article 4(1));
- (d) Sanctions imposed for foreign bribery in practice, including whether the sentences imposed comply with Commentary 7 of the Convention (Convention, Article 3);
- (e) Confiscation of indirect proceeds of foreign bribery, and confiscation against a legal person of the proceeds of offences committed by a *de facto* manager (Convention, Article 3);
- (f) Issues arising from Argentina's actual foreign bribery enforcement actions which the Working Group could not fully assess because of the absence from the on-site visit of the prosecutors and investigative judges who conducted these cases (Convention, Article 5; 2009 Recommendation Annex I);
- (g) Effectiveness of measures taken to address delay in investigations and prosecutions of complex economic crimes, including the new CPC and the experts group in the federal courts (Convention, Article 5 and Commentary 27; 2009 Recommendation Annex I.D);

- (h) Functioning of the Judicial Council and disciplinary proceedings against judges and prosecutors arising out of foreign bribery cases (Convention, Article 5 and Commentary 27; 2009 Recommendation Annex I.D);
- (i) Application of the money laundering offence in Argentina, including: (a) whether the offence covers the laundering of a bribe and the laundering of indirect proceeds of crime, (b) whether foreign bribery is always a predicate offence to money laundering, without regard to the place where the bribery occurred, and (c) enforcement of the money laundering offence in practice (Convention, Article 7);
- (j) Whether Argentina can grant MLA requests submitted in the context of criminal and non-criminal proceedings within the scope of the Convention and brought by a Party against a legal person (Convention, Article 9);
- (k) Time needed to reach a final decision on extradition in corruption cases (Convention, Article 10); and,
- (l) Whether Article 5 factors influence extradition or MLA in Argentina (Convention, Articles 5, 9 and 10, and Commentary 27; 2009 Recommendation Annex I.D).

ANNEX 2 PARTICIPANTS AT THE ON-SITE VISIT

Public Sector

- Ministry of Foreign Affairs and Worship (MFA)
 - Legal Adviser's Office
 - National Directorate for Export Promotion
 - Directorate for International Legal Assistance
- Ministry of Justice and Human Rights (MOJ)
 - Anti-Corruption Office (OA)
 - Under-Secretariat of Criminal Policy
 - National Directorate of International Legal Cooperation and Judicial Systems
- Public Prosecutor's Office
 - Special Office for Economic Crimes and Money Laundering (PROCELAC)
 - General Directorate for Regional and International Cooperation
 - National Prosecutor of Administrative Investigations (Fiscalía de Investigaciones Administrativas, FIA)
- Ministry of Economy and Public Finance
 - Financial Intelligence Unit (UIF)
- Ministry of Interior
 - Secretary for Public Works
- Ministry of Social Development
 - Instituto Nacional de Asociativismo y Economía Social (INAES)
- National Security Commission (CNV)
- Office of the Comptroller General (SIGEN)
- Office of the Chief of Cabinet
- Consejo de la magistratura (Judicial Council)
- Federal Tax Administration (AFIP)
- Office of the National Auditor General (AGN)
- Inspección General de Justicia (IGJ)
- National Procurement Office (ONC)
- Central Bank of Argentina (BCRA)

Judiciary

- Investigative judges
- Appellate judges
- Trial judges
- Representative of the Supreme Court

State-Owned or State-Controlled Enterprises

- Aerolíneas Argentinas
- Operadora Ferroviaria Sociedad del Estado (SOFSE)
- Agua y Saneamientos Argentinos S.A. (AYSA)
- Fábrica Argentina de Aviones Brigadier San Martín (FAdeA)
- Banco de la Nación Argentina
- Banco Provincia

Private Sector

Private Enterprises

- Bolland y Cía SA
- Grupo Puente
- Holding Perez Companc
- Mercado Libre Inc.
- Molinos Rio de la Plata
- Swiss Medical SA
- Banco Santander Río S.A.
- Banco Marco
- BBVA Banco Frances
- Banco de Galicia

Business Associations

- Cámara de Exportadores de la República Argentina
- Cámara Argentina de Comercio
- Asociación Empresaria Argentina (AEA)
- Confederación Argentina de la Mediana Empresa (CAME)
- Foro de Convergencia Empresarial
- Cámara Latino Americana de Negocios
- Instituto para el Desarrollo Empresarial de la Argentina (IDEA)
- Consejo Empresarial de América Latina (CEAL)

Legal Profession and Academics

- Colegio de Abogados de la Ciudad de Buenos Aires
- Estudio Beccar Varela
- Bruchou, Fernandez Madero & Lombardi Abogados
- Sal & Morchio Abogados
- Marval, O'Farrell & Maira
- D'Albora y Asociados
- Legal academics

Accounting and Auditing Profession

- Consejo Profesional de Ciencias Económicas de la Ciudad Autónoma de Buenos Aires (CPCECABA)
- Federación Argentina de Consejos Profesionales de Ciencias Económicas (FACPCE)
- Instituto de Auditores Internos de Argentina
- Ernst & Young
- KPMG
- Deloitte
- PWC
- BDO International
- Grant Thornton

Civil Society

- Citizen Power Foundation (Fundación Poder Ciudadano), Transparency International Argentina Chapter
- Asociación Civil por la Igualdad y la Justicia (ACIJ)
- Observatory of the Judiciary (Observatorio de la Justicia Argentina)
- Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento (CIPPEC)
- Argentina Association of Compliance and Ethics (PACE)
- Association for Civil Rights (Asociación por los Derechos Civiles, ADC)

Parliamentarians

- Deputies of the Nation

ANNEX 3 LIST OF ABBREVIATIONS AND ACRONYMS

| | | | |
|----------|--|----------|---|
| AFIP | <i>Administración Federal de Ingresos Públicos</i> (Federal Tax Administration) | MERCOSUR | <i>El Mercado Común del Sur</i> |
| AGN | <i>Auditoría General de la Nación</i> (Office of the National Auditor General) | MFA | Ministry of Foreign Affairs and Worship |
| AML | anti-money laundering | MLA | mutual legal assistance |
| ARS | Argentine pesos | MOJ | Ministry of Justice and Human Rights |
| CARP | <i>Comisión Administradora del Río de la Plata</i> | NGO | non-governmental organisation |
| CNV | <i>Comisión Nacional de Valores</i> (National Securities Commission) | OA | <i>Oficina Anticorrupción</i> (Anti-Corruption Office) |
| CPC | Federal Criminal Procedure Code (Law 23 984) | ODA | official development assistance |
| CPC 2014 | Federal Criminal Procedure Code 2014 (Law 27 063) | ONC | <i>Oficina Nacional de Contrataciones</i> (National Procurement Office) |
| DILA | Direction on International Legal Assistance, Ministry of Foreign Affairs and Worship | PC | Federal Penal Code (Law 11 179) |
| FACPCE | <i>Federación Argentina de Consejos Profesionales de Ciencias Económicas</i> (Argentine Federation of Professional Organisations of Economic Sciences) | PEP | politically exposed person |
| PIA | <i>Procuraduría de Investigaciones Administrativas</i> (Office for Administrative Investigations) | PFA | <i>Policía Federal Argentina</i> (Federal Police) |
| GAAP | Generally Accepted Accounting Principles | PGN | <i>Procurador General de la Nación</i> (Attorney General) |
| IFRS | International Financial Reporting Standards | PPO | Public Prosecutors' Office (<i>Ministerio Público</i>) |
| IGJ | <i>Inspección General de Justicia</i> | PROCELAC | <i>Procuraduría Adjunta de Criminalidad Económica y Lavado de Activos</i> (Special Office for Economic Crimes and Money Laundering) |
| ISA | International Standards on Auditing | SME | small- and medium-sized enterprise |
| ISQC | International Standards on Quality Control | SIGEN | <i>Sindicatura General de la Nación</i> (Office of the Comptroller General) |
| LICCM | Law on International Co-operation in Criminal Matters (Law 24 767) | SOE | state-owned or state-controlled enterprise |
| | | STR | suspicious transaction report |
| | | TPL | Tax Procedure Law 11 683 |
| | | UIF | <i>Unidad de Información Financiera</i> (financial intelligence unit) |
| | | UNCAC | United Nations Convention against Corruption |
| | | USD | United States dollar |

ANNEX 4 EXCERPTS OF RELEVANT LEGISLATION

Penal Code

(Provided by Argentina)

Article 77

[...]

The terms “public official” [*funcionario público*] and “civil servant” [*empleado público*] as used in this Code refer to any person who temporarily or permanently discharges public functions, whether as a result of popular election or appointment by the competent authority.

[...]

Chapter VI: Bribery and Improper Lobbying

Article 256. Any public official who, himself or through another person, receives money or any other gift or accepts a direct or indirect promise to make, delay or stop doing something within his/her functions shall be punished with *reclusión* or imprisonment of one to six years and perpetual disqualification.

Article 256bis. Any public official who, by himself or through a third party, requests or receives money or any other gift or accepts a direct or indirect promise, to unduly assert his influence on a public servant to act, delay or omit to do something within his/her functions, shall be punished with *reclusión* or imprisonment of one to six years and perpetual disqualification from holding public office

If this behaviour was intended to assert undue influence of a magistrate of the judiciary or prosecutors, in order to obtain the issuance, dictation, delay or omission by a ruling, order or judgment in matters under its jurisdiction, the maximum of detention or imprisonment shall be increased to twelve years.

Article 258. Any person who personally or through an intermediary gives or offers any gift for the purpose of obtaining any of the conducts punished by arts. 256 and 256bis shall be punished with prison from one to six years. If the gift is given or offered with the purpose of obtaining any of the conducts described in arts. 256bis second paragraph and 257, the punishment shall be *reclusión* or prison from two to six years. If the perpetrator is a public official, special disqualification from two to six years shall also be imposed in the first case, and from three to ten years in the second case.

Article 258bis. Any person who offers or gives a public official from a foreign State or from an international public organisation, personally or through an intermediary, money or any object of pecuniary value or other benefits such as gifts, favours, promises or benefits, for his own benefit or for the benefit of a third party, for the purpose of having such official do or not do an act related to his office or to use the influence derived from the office he holds in an economic, financial or commercial transaction, shall be punished with imprisonment from one (1) to six (6) years and special disqualification for life in respect of the exercise of any public office.

Article 259. Any public official who, while in public office, accepts any gift by reason of that office, shall be punished with prison from one month to two years and complete disqualification from one to six years.

The person who presents or offers the gift shall be punished with prison from one month to one year.

Article 266. A public official who, abusing his position, requests, demands or makes paying or wrongly, delivered by or through a third person, contribution, a right or a gift or lightest greater rights than those possessed shall be punished with imprisonment of one to four years and disqualification from one to five years.

Chapter XIII: Concealment and Money Laundering

Article 277. 1. Prison from six months to three years shall be imposed on any person who, after the execution of a crime perpetrated by another, in which he had no participation:

- (a) Helps any criminal to elude the investigations of the authority or to avoid its actions;
- (b) Hides, alters or procures the disappearance of traces, evidence or instruments of the crime, or helps the perpetrator or accomplice to hide, alter or make them disappear;
- (c) Acquires, receives or hides money, things or goods derived from a crime;
- (d) Fails to denounce the execution of a crime or to individualize the perpetrator or accomplice of a known crime, whenever he is compelled to promote the criminal prosecution of a crime of such nature;
- (e) Assures or helps the perpetrator or accomplice to assure the products or benefits of the crime.

2. In the case of subsection 1, c) above, the minimum punishment shall be one (1) month of prison, if, in accordance with the circumstances, the perpetrator could have suspected they derived from a crime (Text in accordance with Law 25.815)

3. The maximum and minimum terms of the punishment shall be doubled when:

- (a) The preceding act is an especially serious crime. Any act which minimum term of punishment exceeds three years prison shall be deemed as a serious crime.
- (b) The perpetrator acted with a profitable purpose.
- (c) The perpetrator habitually harbours criminals.
- (d) The perpetrator is a public official (text incorporated, Law 25.815).

[...]

Article 279. [...]

4. The provisions of this chapter shall be applied even when the prior crime is committed outside of the special scope of application of this Code, provided that the preceding act was punishable within the jurisdiction of its perpetration.

Article 300. Prison from six months to two years shall be imposed on:

[...]

3. Any incorporator, director, manager, liquidator or receiver of any corporation or cooperative or any other partnership who publishes, certifies or approves an untrue or incomplete balance sheet, profit and loss statement, or their respective reports, minutes, annual reports, or informs the meeting of members distorting the truth or with reticence regarding facts which are important for the appreciation of the economical situation of the company, regardless of the purpose he had to inform it.

Article 303. 1) A prison term of three (3) to ten (10) years and a fine equal to two (2) to ten (10) times the amount of the relevant transaction will be imposed on any persons who transform, transfer, manage, sell, tax, conceal or in any other way circulate goods originating from criminal offences, with the possible consequence of having the origin of the original or surrogate goods appear lawful, and as long as they have a value equal to or over three hundred thousand Argentine pesos (ARS 300 000),¹²² whether the crime constitutes a single act or repeated and related different actions.

2) The punishment established in 1) above will be increased by a third of its maximum value and half of its minimum in the following cases:

- a) Where the offender regularly engages in the activity or is a member of an association or group created for the purpose of regularly engaging in activities of such a nature; and
- b) Where the offender is a public official committing the crime during the exercise or as part of its functions. In the latter case, the offender will also be punished with a special ban on engaging in business for a term of three (3) to ten (10) years. This penalty will also be applied to any person acting within the scope of a profession or trade that requires any special authorization.

3) Any person who receives money or other goods originating from in a criminal offence with a view to using them in any of the transactions described in 1) above and giving them a legitimate appearance will be punishable by a prison term of six (6) months to three (3) years.

4) Where the value of the goods is below the amount stated in 1) above, the offender will be punishable by a prison term of 6 (six) months to 3 (three) years.

5) The provisions hereof will apply even where the predicate criminal offence was committed outside the scope of the territorial implementation of this Code, as long as the crime committed is punishable in the place where it was committed.

Article 304. Where the crimes punishable by the above Article are committed in the name, with the participation, or for the benefit of a legal entity, the entity will be punishable by the following sanctions, either jointly or alternatively:

1. A fine equal to two (2) to 10 (ten) times the value of the goods involved in the crime.
2. Total or partial suspension of activities for a maximum term of ten (10) years.

¹²²

Approximately USD 19 500.

3. Ban from participating in public calls for bids for public works or services, or in any other activities related to the Government, for a maximum term of ten (10) years.
4. Cancellation of legal entity status in the event that the corporation has been created for the sole purpose of committing the crime, or where said activities are the main activity of the entity.
5. Loss or suspension of any State benefits that may have been granted.
6. Publication of an excerpt of the conviction, to be paid by the legal entity.

In order to determine the punishment to be imposed, the courts will take into consideration the infringement of internal rules and procedures, the lack of supervision over the activities of principal and accomplices, the extent of the damage caused, the amount of money involved in the commission of the crime, and the size, nature, and economic capacity of the legal entity.

Where it is of the essence to preserve the operational continuity of the entity or of a given work or service, the sanctions provided for in (2) and (4) above will not be applied.

Criminal Procedure Code

Article 174. Right to Report Any person who deems himself to have been injured by a crime that is prosecutable ex officio or who, although not claiming to have been injured, takes notice of such crime, may report it to the court, the prosecutor or the police. Where the crime is prosecutable only at the request of an interested party, only the parties entitled to file the complaint may report the crime, in accordance with the relevant provisions of the Argentine Penal Code. Subject to the formalities established in Chapter IV, Title IV of Book I, the person reporting the crime may request that he be considered a complainant as well.

Article 177. Obligation to Report The following persons shall be under an obligation to report crimes prosecutable ex officio:

1°) Officials or public servants who learn of such crimes in the course of their duties.

[...]

Executive Decree 1162/2000 on Reporting

Article 1 Public officials and employees who are obliged to report in accordance with art. 177(1) CPC, shall carry out their legal duty by notifying the Anticorruption Office of the Ministry of Justice and Human Rights about the acts and/or evidences which may lead to the presumption that a crime subject to ex officio prosecution has been committed within the National Public Administration, whether centralized or decentralized, enterprises or companies and any other public or private entity in which the State participates or in which the State constitutes the main source of resources.

The obligation described in the precedent paragraph shall be exempted from compliance in red handed crimes and in circumstances where the immediate report before the pertinent authority may result in the disappearance or loss of evidence. In such case, the official must file a complaint and a copy of it with the Anticorruption Office within twenty four (24) hours, so that it performs its pertinent functions.

Article 2 The alleged crimes which are not subject to investigation by the Anticorruption Office of the Ministry of Justice and Human Rights shall be reported to the Judge, Prosecutor or to the Police authority by the public officials and employees of art. 1 of this decree pursuant to art. 177(1) CPC.

Article 3 Public officials and employees mentioned in art. 1 of this decree who are aware of the existence of procedures or organisation schemes which may encourage the commission of corrupt acts within the sphere of the National Public Administration, centralized or decentralized, enterprises and companies and any other public or private entity in which the State participates or in which the State constitutes the main source of resources, shall inform of such situation to the Transparency Policy-Planning Division of the Anticorruption Office of the Ministry of Justice and Human Rights.

www.oecd.org/corruption

