



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

December 2010

This Phase 3 Report on Iceland by the OECD Working Group on Bribery evaluates and makes recommendations on Iceland'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 15 December 2010.

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EXECUTIVE SUMMARY

The Phase 3 Report on Iceland by the OECD Working Group on Bribery evaluates and makes recommendations on Iceland's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. It focuses on horizontal issues, which concern the Working Group as a whole, particularly enforcement, and also considers country-specific (vertical) issues arising from progress made since Iceland's Phase 2 evaluation in 2003 and Phase 2 Follow-up in 2006, or issues raised, for instance, by changes in the domestic legislation or institutional framework of Iceland.

The Working Group acknowledges that the major economic and financial crisis facing Iceland has led to an increased focus on economic and financial crime, and welcomes the efforts that Iceland has undertaken to ensure its legislation fully conforms with the OECD Anti-Bribery Convention, following the recommendations made by the Working Group in Phase 2. The Working Group also notes that there have not been any foreign bribery cases in Iceland and that, in terms of publicly available information (notably in the media), there are currently no allegations of bribery of foreign public officials committed by Icelandic individuals or companies. The Working Group is, however, concerned that the current structure and allocation of resources between the different law enforcement authorities may result in inefficiencies and hamper the effectiveness of fighting economic and financial crime in Iceland, including foreign bribery.

In addition to these concerns on the structure and resources of Icelandic law enforcement authorities, the Report also highlights the insufficient sanctions in place for foreign bribery. The Working Group therefore recommends that Iceland raise imprisonment sanctions against natural persons for foreign bribery to ensure that they are effective, proportionate and dissuasive. The Report also highlights the lack of awareness-raising measures and in particular, the absence of direct engagement by the public administration with the private sector, with the result that Icelandic companies, ten years after the entry into force of the law in Iceland, are still not fully aware of the legal consequences under Icelandic law of engaging in foreign bribery. Accordingly, the Working Group makes several recommendations on awareness-raising, including the promotion of the Good Practice Guidance addressed to companies and business organisations (Annex II to the 2009 Anti-Bribery Recommendation), and the need to provide information to Icelandic companies on steps to be taken when confronted with bribe solicitation.

Regarding the reporting of foreign bribery, the Working Group is concerned by the lack of clear reporting mechanisms for public servants within key government agencies who may detect suspected acts of foreign bribery, including in the Ministry of Foreign Affairs and Icelandic tax administration. The Working Group therefore recommends that appropriate measures and guidelines be established to facilitate the reporting by public officials of suspected acts of foreign bribery to law enforcement authorities. Further noting the absence of private sector whistleblower protection, the Working Group also recommends that Iceland introduce measures to ensure that private sector employees who report in good faith and on reasonable grounds are protected from discriminatory or disciplinary action. Concerning prevention and detection of foreign bribery in the context of official development assistance (ODA), the Report highlights the absence of anti-corruption provisions in ODA-funded contracts, and the Working Group therefore recommends that Iceland introduce measures to prevent and sanction foreign bribery in this context.

The Report also highlights a number of positive features of Iceland's efforts to fight foreign bribery, including developments to bring its legislation fully in line with the standards of the Convention;

the introduction of an enhanced mechanism facilitating confiscation of the proceeds of bribery; and improvements to the anti-money laundering legislation and general framework, which could contribute to the detection of foreign bribery cases.

The Report and its recommendations reflect findings of experts from the Denmark and Portugal and were adopted by the OECD Working Group on Bribery. Within one year of the Group's approval of the report, Iceland will make an oral follow-up report on its implementation of certain recommendations. It will further submit a written report within two years. The Report is based on the laws, regulations and other materials supplied by Iceland, and information obtained by the evaluation team during its three-day on-site visit to Reykjavik on 6 to 8 July 2010, during which the team met with representatives from Iceland's public administration, private sector and civil society.

A. INTRODUCTION

1. The on-site visit

1. On 6 to 8 July 2010, a team from the OECD Working Group on Bribery in International Business Transactions (the Working Group on Bribery)¹ visited Reykjavik as part of the Phase 3 peer evaluation of the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention), and related instruments.² The purpose of the three-day on-site visit was to evaluate the implementation and enforcement by Iceland of the Convention and the 2009 Recommendations.

2. The previous Phase 2 evaluation of Iceland occurred in February 2003,³ and Iceland's written follow-up to Phase 2 was presented in May 2006.⁴ The Phase 3 on-site visit therefore focused on developments in Iceland's implementation of the Convention and related instruments since 2003.

3. The evaluation team was composed of lead examiners from Denmark and Portugal as well as members of the OECD Secretariat.⁵ Prior to the visit, Iceland responded to the Phase 3 Questionnaire and supplementary questions. It also provided translations of relevant legislation and documents, and the evaluation team also referred to reports on Iceland by the Group of States against Corruption and the Financial Action Task Force. During the visit, the evaluation team met representatives of the Icelandic public and private sectors and civil society.⁶ The on-site visit was generally well-attended by Icelandic officials. The evaluation team was however disappointed with the low level of participation by the private sector and civil society. Only one company attended the on-site visit. The lead examiners acknowledge that the on-site visit took place during peak holiday season in Iceland, which largely accounts for the low level

¹ The Working Group on Bribery brings together the 38 countries Party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

² Related instruments include: 1. 2009 Recommendation of Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Anti-Bribery Recommendation); 2. 2009 Recommendation of Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation); and 3. 2006 Recommendation of Council on Bribery and Officially Supported Export Credits (2006 Export Credits Recommendation). The [Anti-Bribery Convention and related instruments](#) are available on the OECD website.

³ See the [Phase 2 Report on Iceland](#) on the OECD website.

⁴ See [Iceland's Written Follow-Up Report to Phase 2](#) on the OECD website.

⁵ Denmark was represented by Mr. Flemming Denker, Deputy State Prosecutor, State Prosecutor for Serious Economic Crime; and Mr. Jesper Friedrichsen, Chief Superintendent, State Prosecutor for Serious Economic Crime. Portugal was represented by Mr. António Folgado, Senior Legal Adviser, Directorate General for Justice Policy, Department of International Relations; and Ms. Patrícia Silveira, Criminal Investigation Coordinator, National Unit against Corruption, Judiciary Police. The OECD Secretariat was represented by Ms France Chain, Co-ordinator of the Phase 3 Evaluation of Iceland, Senior Legal Analyst, Anti-Corruption Division; and Ms. Melissa Khemani, Legal Analyst, Anti-Corruption Division.

⁶ See Annex 2 for a list of participants.

of representation from the private sector. However, without a sufficiently representative sample of businesses, the examining team was unable to assess the awareness of Icelandic companies of foreign bribery. The evaluation team nevertheless expresses its appreciation of Iceland's cooperation throughout the evaluation process and notes that Icelandic officials absented themselves from panels with the business sector, civil society, and lawyers and academics.⁷ The evaluation team is grateful to all the participants at the on-site visit for their cooperation and openness during the discussions.

2. Outline of the report

4. This report is structured in two parts. Part B examines Iceland's efforts to implement and enforce the Convention and the 2009 Recommendations, having regard to Working Group-wide issues for evaluation in Phase 3. It pays particular attention to enforcement efforts and results, as well as country specific issues arising from progress made by Iceland on weaknesses identified in Phase 2, or issues raised by changes in the domestic legislation or institutional framework of Iceland. Part C sets out the Working Group's recommendations and issues for follow-up.

3. Economic background

5. The most notable feature in economic developments in Iceland since Phase 2 concerns the financial crisis. In a global context of financial turmoil and recession, Iceland has been struck by a banking crisis of unprecedented proportions, resulting in the collapse of Iceland's three main banks, representing 85% of the banking system, and the deepest economic recession in decades.⁸ Iceland entered into a Stand-By Agreement (SBA) with the IMF that provides access to loans subject to meeting policy requirements for correcting economic imbalances. The Icelandic authorities remain on track in implementing the SBA. New commercial banks have been created, banking regulation is being reformed, the budget deficit has been sharply reduced and inflation has fallen markedly. The conditions are being established for progressive relaxation of the capital controls that were imposed in the wake of the banking crisis. A gradual economic recovery is projected to get underway in the second half of 2010, lifting economic growth to 2 ¾ per cent by 2012. While the unemployment rate will begin to decline, it is likely to remain well above the structural rate in 2012.

6. In terms of exports, manufacturing products made up 48.6% of all exports in 2009, mainly accounted for by exports of aluminium (34.1% of all exports), followed by marine products which accounted for 41.7% of 2009 exports. The largest import categories were industrial supplies accounting for 34.1% of total imports, capital goods (except transport) for 21.1%, and consumer goods (other than food and beverages) for 15.5% of total imports. The European Economic Area (EEA) is Iceland's major trading partner (83.5% of exports and 64.8% of imports), with the Netherlands as Iceland's major trading partner for exports, and Norway for imports. Exports to non-EEA countries are relatively small, with 3.9% of exports are to the United-States, 1.9 % to Japan, 1.6% to Nigeria and 1.1% to China. Similarly, imports from non-EEA countries amount only to 6.9% from the United-States, 5% from China and 3.4% from Japan.⁹

⁷ See paragraph 26 of the [Phase 3 Procedure](#), which provides that an evaluated country may attend, but should not intervene, during the course of non-government panels.

⁸ See the *OECD Economic Survey of Iceland, Volume 2009/16, September 2009*, and the [Policy Brief on the Economic Survey of Iceland, 2009](#), available on the OECD website.

⁹ Source: [Statistical Series – External Trade of Goods in 2009](#), published 31 March 2010 by Statistics Iceland, the National Statistical Institute of Iceland.

7. The Icelandic economy expanded abroad through foreign direct investment prior to the financial crisis but this expansion was not sustainable. It was dominated by holding companies that were owned by the entrepreneurs that also owned controlling stakes in the banks. These arrangements gave these companies favourable access to finance to make foreign acquisitions. When these companies encountered difficulties, this quickly spread to the banks, which then failed in the wake of the collapse of Lehman Brothers. With these holding companies now in liquidation, most of the foreign assets acquired in recent years are being sold. Foreign investments centred on the UK and Scandinavia but were also significant in continental Europe and other areas.¹⁰ Outward foreign direct investment from Iceland increased dramatically between 2005 and 2007, but fell dramatically in 2008 with the collapse of Iceland's financial sector (minus 374 billion ISK in 2008). Figures for 2009 indicate Icelandic foreign direct investment flows in the amount of 555.1 billion ISK.¹¹

4. Cases involving the bribery of foreign public officials

8. In the particular context of Iceland's financial crisis, and in seeking to establish responsibilities for the collapse of the Icelandic banking system, economic crime is the subject of greater attention by policy makers and the greater public. However, this has not had any implication in terms of foreign bribery cases.

9. There has not been one foreign bribery case in Iceland as of the time of this report. Nor has there been any new domestic bribery case since the adoption of the Phase 2 Report in 2003. Public prosecutors present at the on-site visit further indicated that there are no foreign bribery investigations or prosecutions currently underway. In their view, this is probably due in part to the fact that Iceland's companies do not operate in sensitive industrial or geographical sectors. It should be underlined that, in terms of publicly available information (notably in the media), there are currently no allegations of bribery of foreign public officials committed by Icelandic individuals or companies.

10. Consequently, corruption and bribery are not considered as a major risk area, including where foreign bribery is concerned as exemplified in discussions during the on-site visit to Iceland. This was illustrated by the lack of concern and knowledge from companies, and, to a certain extent, from some public agencies, to the risks of bribery in foreign markets. Representatives of the Ministry of Justice however indicated that Iceland is becoming more and more aware of the fact that corruption can be found in Iceland as in any other country. As concerns foreign bribery specifically, it is not seen as an important problem in view of the lack of notifications of possible cases, and is therefore envisaged as part of the general fight against bribery and corruption in Iceland.

¹⁰ See the *OECD Economic Survey of Iceland, Volume 2009/16, September 2009*, and the [Policy Brief on the Economic Survey of Iceland, 2009](#), available on the OECD website.

¹¹ Source: Central Bank of Iceland, [Direct Investment Statistics](#), 30 August 2010.

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

11. As outlined above, there has not been any enforcement of the foreign bribery offence in Iceland since Iceland was last evaluated in Phase 2 in 2003. Consequently, there is no practice to draw upon to demonstrate how the foreign bribery offence is applied in Iceland.

12. This part of the report considers Iceland's approach to certain issues identified by the Working Group on Bribery – the 38 State Parties to the OECD Anti-Bribery Convention – as cross-cutting issues for all Parties subject to Phase 3. Where applicable, this report addresses issues arising from progress made by Iceland on weaknesses identified in Phase 2, or issues raised by changes in the domestic legislation or institutional framework of Iceland. The Phase 2 recommendations made by the Working Group on Bribery to Iceland in 2003 are set out as Annex 1 to this report. In 2006, when Iceland provided its written follow-up to the Working Group on implementation of its Phase 2 recommendations, the Working Group concluded that recommendations 3, 4 and 8 had been implemented satisfactorily, that the general recommendation and recommendation 1 had been partially implemented, and that recommendations 2, 5, 6, 7 and 9 had not been implemented.¹²

1. Foreign bribery offence

13. Since Iceland's evaluation under Phase 2 in 2003, section 109 the General Penal Code (GPC) on active bribery of a (domestic or foreign) public official has been modified by Act 125/2003, amending the GPC.¹³

14. In 2006, in its summary and conclusions on Iceland's written follow-up to its Phase 2, the Working Group on Bribery considered that, with these amendments, bribes paid to third party beneficiaries are now explicitly covered by Iceland's foreign bribery offence.

15. In addition, the amended section 109 broadens the definition of the foreign public official, to explicitly include members of the legislature, as well as officials of international organisations. Section 109 now also covers the offence of trading in influence. However, section 109 still does not explicitly cover bribery of officials employed by state-owned or state-controlled companies, as prescribed under Article 1.4(a) of the OECD Anti-Bribery Convention. During the on-site visit, the Icelandic authorities indicated that a Bill was in preparation to further amend the foreign bribery offence. The Ministry of Justice has requested its Permanent Committee on Criminal Law to add a provision to the draft bill which would address coverage of state-owned or state-controlled companies. As of November 2010, the Committee had not finalized its work, but, given the completion of the bill was a priority, Iceland was hopeful that it could be submitted to the Althingi (Iceland's Parliament) by the end of 2010.

¹² See Annex 1 for the complete Phase 2 recommendations to Iceland, and assessment of their implementation by the Working Group on Bribery.

¹³ See Annex 4 for relevant legislative extracts.

16. The Phase 1 and Phase 2 reports had raised the question of whether bribes paid through intermediaries would be covered under section 109, and whether the “gift or other gain” offered to the public official would include both pecuniary and non-pecuniary advantages. These elements have not been clarified in the amended section 109, nor has any case law explicitly clarified these points. Nevertheless, all panellists present at the on-site visit, whether from the law enforcement authorities, the private bar, or academia, were unanimous in agreeing that bribery through intermediaries, and the payment of pecuniary or non-pecuniary advantages to a public officials would be situations covered under Icelandic law.

17. The active bribery offence under the GPC does not provide any exception or defence for small facilitation payments. The Icelandic authorities further indicated during the on-site visit that there are no specific prosecutorial policies and approaches concerning small facilitation payments.

Commentary:

The lead examiners welcome amendments brought to the General Penal Code which have clarified that the foreign bribery offence covers bribes paid to third party beneficiaries, and which have broadened the definition of the foreign public official. As concerns this definition, they note that the Icelandic foreign bribery offence still does not explicitly cover bribery of officials employed by state-owned or state-controlled companies. The lead examiners encourage Iceland to take this into consideration in drafting its new Bill which will further amend the foreign bribery offence in Iceland’s General Penal Code.

The lead examiners also welcome the broadening of the foreign bribery offence to cover trading in influence, which goes beyond the requirements of the OECD Anti-Bribery Convention.

The lead examiners are encouraged to hear that there seems to be a general understanding that bribery through intermediaries would be covered under Icelandic law, and that a bribe would be understood to include both pecuniary and non pecuniary advantages. They note, however, that there is no case law to date to confirm these interpretations, and therefore recommend following up these issues as cases develop.

2. Responsibility of legal persons

a) Acts of the natural person triggering the liability of the legal person

18. In Phase 2, the Working Group was concerned by certain inconsistencies between section 19c of the GPC and section 1 of Act 144/1998 on Criminal Responsibility of Legal Persons. Under the first, the liability of the legal person could be engaged by acts of its “*spokesman, employee or other person acting on [the company’s] behalf*”, while under the second, only the act of an “*employee or staff member*” could trigger the liability of the legal person. The Working Group was concerned that Act 144/1998 was more restrictive in scope than the GPC, which could create uncertainties among law enforcement and the judiciary, and recommended that this issue be clarified (Phase 2, recommendation 9).

19. Since the Phase 2 evaluation of Iceland in February 2003, section 5 of Act 125/2003 has amended section 1 of Act 144/1998 on Criminal Responsibility of Legal Persons. Section 1, as amended, now states that “*a legal person may be fined if in the course of its operations a violation of section 109 or 264a of the GPC is committed...*”¹⁴ There is no mention of the category of natural persons whose acts can trigger the liability of the legal person. Consequently, a legal person can be held criminally liable for a foreign bribery offence committed by “*its spokesman, employee or other person acting on its behalf*”, as

¹⁴ See Annex 4 for relevant legislative extracts.

provided under the general corporate liability regimes established under section 19c. Furthermore, “penalties may be imposed even if the identity of the natural person has not been established.” In the absence of any domestic or foreign bribery case involving a legal person, it is not possible to assess how these rules would be applied in practice.

b) *Liability of legal persons for acts committed by intermediaries, including related legal persons*

20. As noted above in relation to the foreign bribery offence, all panellists interviewed during the on-site visit were in agreement that the Icelandic bribery offences include bribery through intermediaries. They further agreed that this would also include liability of companies for acts committed by related legal persons, such as their subsidiaries abroad.¹⁵ As noted above, this interpretation is not supported by case law as of the time of this report.

c) *Enforcement of the liability of legal persons in practice*

21. The 2003 Phase 2 report already noted the low number of prosecutions involving legal persons, despite the existence of corporate liability in Iceland for over 30 years. At the time, the report noted that the criminal liability of legal persons had essentially been enforced in respect of fisheries offences. This situation has not evolved much since 2003, although there has been some enforcement of corporate liability for competition offences such as insider-trading or embezzlement.¹⁶ There are currently no domestic or foreign bribery cases involving legal persons.

22. As mentioned above, during the on-site visit, Icelandic law enforcement authorities acknowledged that in the wake of the recent financial crisis in Iceland there will likely be an increased number of investigations and prosecutions into economic and financial crime. However, given that the financial institutions involved have been bankrupt, it is unlikely that this will allow any trend to develop as concerns the liability of legal persons for economic offences.

Commentary:

The lead examiners welcome the amendments brought to section 1 of Act 144/1998 by section 5 of Act 125/2003, which remove any inconsistency with the general corporate liability regime under the General Penal Code.

However, given the absence of cases, they are not able at this stage to ascertain whether the foreign bribery offence will be effectively applied to legal persons, including for acts committed by related legal persons, and therefore recommend that this issue be followed-up once cases develop.

3. Sanctions

a) *Imprisonment sanctions*

23. Criminal sanctions for natural persons for active (domestic or foreign) bribery is between 30 days and three years imprisonment. For the bribe recipient, however, the penalty is up to six years

¹⁵ Annex I to the 2009 Anti-Bribery Recommendation provides that “Member countries should ensure that [...] a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a foreign public official on its behalf.”

¹⁶ Iceland indicated that exact data on the number of cases handed down concerning legal persons, or on sanctions pronounced against legal persons is not available.

imprisonment.¹⁷ The public prosecutors encountered during the on-site visit were of the view that the difference in sanctions for active and passive bribery was not justified. They further stated that they did not consider a three-year imprisonment sanction sufficiently effective, proportionate and dissuasive.¹⁸ Representatives of the Icelandic Ministry of Justice indicated that the current sentencing policy for acts of bribery is in the process of being re-evaluated, notably to take into account recommendations by the Council of Europe Group of States against Corruption (GRECO). Icelandic authorities further indicated that the afore-mentioned Bill, amending and clarifying certain elements of the bribery offences, and due to be introduced before the Althingi in the last quarter of 2010, may include proposals in this regard.

b) Fines

24. In addition to imprisonment sanctions, fines may be imposed on natural persons under section 49 of the GPC “*when a defendant has obtained for himself/herself or others, a financial advantage by means of his/her offence or when this has been his/her design.*” For a fine to be imposed on a natural person, the prosecution will therefore need to establish that a financial advantage was obtained (or at least sought). This applies, for example, in cases where the offence is not subject to fines according to the main provision.¹⁹ This may mean that for certain foreign bribery offences, for instance where the bribe is paid but the financial profit is not shown in the books (e.g. where a bribe is paid in order to obtain a loss-making contract such as when a company is seeking to enter a new market), fines may not be imposed on natural persons.

25. The Icelandic public prosecutors as well as Ministry of Justice officials indicated that, as concerns fines applicable to legal persons for corruption offences, there is no requirement to show that a financial gain was obtained (or sought) by the company. The applicable rule would be section 1 of Act 144/1998, which simply provides that “*a legal person may be fined if in the course of its operation a violation of article 109 [...] of the GPC is committed.*” As noted earlier, there is however no case law to date to support this interpretation.

c) Additional sanctions

26. The GPC provides, in its section 68, that a natural person may also be deprived in certain circumstances of “*the authority he/she has acquired to pursue an occupation for which an official licence, authorisation, appointment or examination is required...*” Public prosecutors explained that, in practice, this could amount to a natural person being prohibited from acting on the board of a company, for instance.²⁰ This could also result in debarment sanctions, as provided for instance under Act 77/1998 on Professional Lawyers and Act 79/2008 on Auditors.

¹⁷ Passive bribery is criminalised under section 128 of the GPC.

¹⁸ Article 3 of the Anti-Bribery Convention notably provides that “*the bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties.*”

¹⁹ According to sections 109 and 128 of the GPC fines may also be imposed instead of imprisonment if there are extenuating circumstances. Under such circumstances the prosecution does not have to establish that the person in question has gained any financial advantage.

²⁰ According to section 66(1) of the Act respecting Public Limited Companies 2/1995, Members of the Board of Directors or Managers shall be of legal status, in control of their finances and may not during the immediate past three years have in connection with business operations been subject to Judgment for a punishable act according to the Penal Code or Acts respecting Public Limited Companies, Private Limited Companies, book-keeping, annual accounts, bankruptcies or official charges. The same applies to board of Directors or Managers of Private Limited Companies, under section 42(1) of Act 134/1994 respecting Private Limited Companies.

27. Similar criminal debarment sanctions do not exist for legal persons. It is not clear whether Iceland's public agencies would take into account convictions of legal persons in their decisions to provide financial support (see section 11 of this report).

Commentary:

The lead examiners welcome the intention expressed by Iceland to reconsider the level of sanctions for foreign bribery in the context of the new Bill amending the bribery offences. In this respect, they recommend that Iceland increase the imprisonment sanctions against natural persons for foreign bribery to ensure that they are effective, proportionate and dissuasive. The lead examiners also recommend that Iceland consider the imposition of additional administrative sanctions, such as debarment, for legal persons.

In the absence of cases, the lead examiners are not able to assess at this stage whether sanctions for foreign bribery are sufficiently effective, proportionate and dissuasive in practice. They recommend that this issue be followed-up once cases develop.

4. Confiscation of the bribe and the proceeds of bribery

28. Since the 2003 Phase 2 Report, the confiscation regime has been thoroughly modified in Iceland. In 2009, new confiscation provisions were introduced in the GPC (sections 69, a-g) by Act 149/2009.²¹ These confiscation provisions are not relevant specifically to the foreign bribery offence, but applicable to all criminal offences.

a) Confiscation of the bribe

29. Under section 69a, “items that have been used, or are intended for use, in the commission of an offence” may be confiscated by a court judgment. This section further provides that “instead of items referred to in the first paragraph of this section, a sum of money that is partly or entirely equivalent in value may be confiscated.”

30. In view of these provisions, it appears that the bribe could be confiscated, or, where the bribe itself cannot be seized (e.g. when it has left the country), that its financial equivalent could be confiscated.

b) Confiscation of the proceeds of bribery

31. Section 69 of the GPC is the general provision governing confiscation of the proceeds of crime. It provides that “gains resulting from a criminal offence, or a sum of money that is partly or entirely equivalent in value, may be confiscated.” This would allow for confiscation of any proceeds derived from a foreign bribery offence.

32. These new confiscation provisions also address very practical aspects of the confiscation of proceeds. For instance, where identification or quantification of the exact proceeds may be too complex to prove, section 69 provides that “when it is not possible to demonstrate the monetary value of such gains, it may be estimated.” Section 69c further provides that “if the gains of an offence have become merged with possessions that have been acquired lawfully, the possessions may be confiscated up to the estimated value of the gains that have become merged with them.” This last provision could be particularly useful in a foreign bribery context, where, for instance, the gains derived by a company from paying the bribe may be merged in a partially lawfully obtained contract.

²¹ See Annex 4 for relevant legislative extracts.

33. Section 69d addresses the proceeds of crime acquired by a third party by allowing confiscation against “*those on whose behalf [the person who committed the offence] was acting.*” This provision applies to third parties who had knowledge of the offence or were grossly negligent in connection with the offence. Third parties acting in good faith would thus not be concerned by these confiscation provisions.

34. It is worth noting that section 69b reverses the burden of proof for certain offences. Where “*the offence is of such type as to result in substantial gains*” items of value belonging to a convicted natural person, or to a legal person in which the natural person concerned holds controlling position, may be confiscated. The person convicted would need to demonstrate that the items confiscated were in fact acquired lawfully to avoid confiscation. This provision however only applies to offences carrying a term of at least six years imprisonment, and would consequently not be applicable to the foreign bribery offence (they would however apply to the passive bribery offence).

35. The new provisions also specifically address the issue of asset recovery. Section 69g, in particular, provides that the Ministry of Justice may decide that the proceeds confiscated be divided between Iceland and another State (or States), notably where “*loss or injury*” was sustained in that State. This is without prejudice to compensation payments to persons suffering loss or injury.

36. The procedural rules governing confiscation have not changed since Phase 2. An explicit and clearly formulated request for confiscation by the prosecutor is a condition for confiscation being ordered, as provided under sections 152(1)(e) and 180(1) of the Code of Criminal Procedure. Judges may therefore not order confiscation of their own initiative.

c) *Confiscation measures in practice*

37. As concerns application in practice, the Phase 2 Report on Iceland noted that confiscation had been mostly relied on in drug cases. This appeared to still be essentially the case since 2003. Iceland does not maintain statistics in this regard, which therefore does not make it possible to draw any conclusions on the use of confiscation measures in Iceland.

38. It is nevertheless worth noting that the new confiscation regime introduced by Act 149/2009 only recently entered into force, and that there is consequently little experience in relying on these new provisions. Public prosecutors interviewed during the on-site visit welcomed the new legislation on confiscation and were confident that these measures would now be more broadly relied on, including in relation to economic and financial crime.

Commentary:

The lead examiners welcome the amendments to the confiscation regime, which aim to facilitate confiscation of the bribe and the proceeds of bribery, including in the hands of third parties.

Given that confiscation appears to have been rarely relied on in economic crime cases, and given also that a court may only order confiscation if it has been explicitly requested by a prosecutor, they encourage Iceland to provide training to prosecutors on these new provisions, and encourage them to request confiscation where appropriate.

5. Investigation and prosecution of the foreign bribery offence

39. As there have been no investigations and prosecutions of foreign bribery to date in Iceland, the lead examiners were unable to assess how law enforcement authorities have applied the foreign bribery offence in practice. Iceland also indicated in the responses to the Phase 3 questionnaire, and confirmed

during the on-site visit, that they have not received any credible factual allegations of bribery of foreign public officials.

a) *Principles of investigation and prosecution, resources, and coordination*

40. In Phase 2, the Working Group recommended that Iceland maintain the efficiency and specialisation of the Economic Crime Unit (ECU) within the National Commissioner of Police for the investigation and prosecution of serious economic and environmental crimes. The ECU remains responsible for the investigation and prosecution of economic crimes, including foreign bribery. Following the collapse of the Icelandic banking sector, a new prosecutorial office was established – the Office of the Special Prosecutor (OSP). According to section 1(1) of the Act on the Office of the Special Prosecutor, the OSP shall investigate suspicions of criminal actions connected with the operations of financial undertakings and by those who have held shares in those undertakings or have exercised voting rights in them and similarly, suspicions of criminal actions on the part of the managers, advisors and employees of financial undertakings and other persons who have been involved in the activities of the undertakings. The OSP shall, as appropriate, follow up these investigations by instituting criminal proceedings. If the Special Prosecutor comes across foreign bribery cases in the course of his investigations, such cases would fall under his prosecutorial powers and not those of the ECU.

41. According to Icelandic authorities, the National Commissioner of Police and the Icelandic Police College are preparing training modules for the police on the investigation of corruption offences, including foreign bribery. However, specialised training on the investigation and prosecution of foreign bribery has never been provided to law enforcement or the judiciary. The lack of resources within the ECU, which is currently staffed by 15 employees and which, at the time of the on-site visit, included one prosecutor, four police attorneys and five investigators, is of concern. During the on-site visit, ECU officials described the lack of training courses and the need for more specialised and experienced investigators. The limited resources have also undermined the ECU's capabilities to be more proactive in uncovering economic and financial crime. In contrast to the ECU, the OSP is staffed by eighty employees, comprised of prosecutors, staff attorneys, investigators and other specialists. The OSP's budget is ISK 5.2 million over a five-year timeframe. ECU officials during the on-site visit indicated that the OSP's five-year budget is equivalent to the ECU's budget over a thirty-year timeframe.

42. There are no formal coordination mechanisms in place between the ECU and OSP and other bodies, such as the tax authorities and the FSA, though panellists indicated they generally have no problems sharing or obtaining information when needed. The ECU and OSP are not housed in the same office and there are no formal coordination mechanisms in place between the two investigative and prosecutorial bodies. This raises concern that there have been instances of duplication of work where both bodies were unknowingly investigating the same case. During the on-site visit, some law enforcement panellists described the division between the ECU and the OSP as “not ideal” and that expert resources were not evenly distributed between the two bodies. However, there has been discussion to merge the two offices into one single, independent agency that will likely result in a more efficient means of investigating and prosecuting economic crimes, which is encouraging.

b) *Investigative tools*

43. The Code of Criminal Procedure (Act 88/2008) (CCP) provides for the use of special investigative techniques, such as wire-tapping and the interception of communications; however, investigators during the on-site visit explained that a stringent test based on a “valuable public and private interest” would likely render such tools unavailable for foreign bribery investigations. Other techniques such as plea bargaining are not applied in Iceland. However, section 5 of the Act on the OSP does make provision for granting immunity to cooperating witnesses who offer or submit information or materials

relating to an offence that comes under the investigative and prosecutorial powers of the Special Prosecutor under the Act. The GPC also makes certain provisions for the use of cooperating witnesses and the reduction of sentencing. Section 70(1)(9) states that “it shall be taken into account whether the offender has provided information on the involvement of other parties to the offence.” Section 4(2) of the Regulation 651/2009 on the Legal Status of Arrested Persons and Interrogation by the Police further authorises the prosecution authorities to suggest a reduction in sentencing by one third in such cases.

c) *Legislative developments on prosecutorial independence*

44. During the on-site visit, Icelandic authorities elaborated upon recent legislative developments that may have an impact on foreign bribery and the fight against corruption more generally. In this regard, the new CCP that entered into force on 1 January 2009 was aimed in part towards strengthening prosecutorial independence. According to Icelandic authorities, the CCP designates the Director of Public Prosecutions (DPP) as the highest holder of prosecution authority and is appointed by the Minister of Justice and Human Rights. However, although the DPP is formally and administratively linked to the Minister of Justice and Human Rights, the CCP sets out provisions ensuring that his/her prosecution powers are to be independent from the Minister and the Ministry.

45. Iceland indicated in its written responses to the Phase 3 questionnaire that the principal change in the structure of prosecutorial power is now formally stipulated by law and that there will now be three administrative levels instead of two. Accordingly, the prosecutorial power will be within the jurisdiction of the DPP, the district prosecutor and the police commissioners. However, Icelandic authorities indicated after the on-site visit that the establishment of the Office of the District Prosecutor has been postponed until 1 January 2012. Provisions of the previous Act of the CCP have been removed, including section 26, paragraph 2 which stipulated that the Minister may decide to request the President to invalidate a decision by the DPP to drop a case when certain conditions are met, and section 66, paragraph 4, which held that the Minister may decide that an investigation of an expired case may take place upon certain conditions, despite a decision by the DPP to the contrary.

46. According to section 19 of the new CCP, the Minister of Justice and Human Rights supervises the exercise of prosecution authority and may demand special reports on particular cases from the DPP. According to section 6 of the General Penal Code No 19/1940, the Minister of Justice and Human Rights shall order the Director of Public Prosecutions to take legal actions in a few and exceptional circumstances related to criminal jurisdiction. This is in relation to obligations deriving from international conventions, where Icelandic criminal jurisdiction is extended to acts to which these conventions apply, without regard to whether these offences were committed outside Icelandic territory and irrespective of the offender’s nationality. However, Icelandic authorities emphasised that there has never been an example of a situation where this provision has been applied. Apart from this legal provision, the Government cannot give instructions to prosecute or not to prosecute a specific case. Those who execute prosecution authority are accordingly subject only to instructions and supervision from the Director of Public Prosecutions in the performance of their prosecution and investigation powers, and may not take orders from any other authority.

Commentary:

The lead examiners are concerned over the current structure and resource allocation for fighting economic and financial crime in Iceland, and the resulting inefficiencies and duplication of work. However, they are encouraged by the attention being given by the government on the re-structuring of the Economic Crime Unit and the Office of the Special Prosecutor, possibly within one single, independent agency. The lead examiners recommend that reflection on this matter be carried out

promptly to ensure that there are sufficient resources and effective coordination for the investigation and prosecution of economic and financial crimes, including foreign bribery.

The lead examiners also recommend that Iceland make available, where appropriate, special investigative means, such as interception of communications, video surveillance and undercover operations, in foreign bribery investigations.

Finally, given the complex nature of foreign bribery cases, the lead examiners note with concern the lack of specialised training afforded to law enforcement authorities on the investigation and prosecution of foreign bribery and economic and financial crime more generally. The lead examiners therefore recommend that such training be promptly provided to the police, as well as prosecutors and judges.

6. Money laundering

47. Since the Phase 2 Report in 2003, Iceland has amended section 264 of the GPC on money laundering. The new section 264 entered into force in December 2009.²²

48. The former section 264 of the GPC had been found, in the Phase 1 and Phase 2 reviews of Iceland, to be fully compliant with Article 7 of the OECD Anti-Bribery Convention, which requires that foreign bribery be considered a predicate offence to money laundering, without regard to the place where the bribery occurred.

49. Under the new section 264, laundering the proceeds of any offence under the GPC (i.e. including the foreign bribery offence) constitutes an offence. The new provision is also more explicit in covering self-laundering. This means that, for instance, an individual or company who “*accepts, makes use of or acquires gains*” which result from a foreign bribery offence would also potentially commit money laundering. Criminal sanctions include imprisonment for up to six years, as well as an unlimited fine. Where the individual or company commits money laundering through negligence, a fine or up to six months imprisonment may be imposed.

50. The Phase 2 Report had noted, in 2003, that the money laundering offence was almost exclusively applied in drug cases. This trend in enforcement has not evolved much as of the time of this Report. Although no statistics are collected in respect of predicate offences to money laundering prosecutions, public prosecutors interviewed during the on-site visit confirmed that the most common predicate offence to money laundering continues to be drug dealing. It should be noted, however, that, at the time of this on-site visit, the new money laundering legislation had only been in force for six months.

51. Improvements have also been brought to the anti-money laundering framework in Iceland. Of particular importance to the fight against foreign bribery, the requirements regarding identification of politically exposed persons entered into force in Iceland in January 2007. Furthermore, the number of suspicious transaction reports (STRs) made to the Money Laundering Office of the National Commissioner of Police have increased in recent years, and training has been further provided to certain reporting entities to ensure they file STRs as required.²³

52. In spite of these notable improvements, some aspects of the anti money laundering framework in Iceland could benefit from further improvement. For instance, the human resources of the Money

²² See Annex 4 for relevant legislative extracts.

²³ Iceland’s financial intelligence unit operates as part of the Economic Crime Unit within the National Commissioner of Police and performs the basic function of receiving, processing and disseminating STRs.

Laundering Office of the National Commissioner of Police, limited to one single person, do not seem appropriate for the performing of all the duties of this body, although Iceland considers that the limited resources of the Money Laundering Office of the National Commissioner of Police do not impede its effectiveness and independence. Furthermore, and not surprisingly given the very low number of corruption cases, there has not been any training, guidelines or other type of information dissemination on foreign bribery as a predicate offence to money laundering, whether within the Money Laundering Office of the National Commissioner of Police and other law enforcement authorities, or directed at the reporting entities. This could be an issue, notably given what appears to be a rather low level of awareness of foreign bribery as a criminal offence among the Icelandic private sector (see section 10 below for further discussion of awareness issues).

Commentary:

The lead examiners welcome improvements to the anti-money laundering legislation and general framework in Iceland. They hope that this will allow increased enforcement in Iceland of money laundering offences predicated on economic crime. The lead examiners recommend that this issue be followed-up as cases develop.

In addition, the lead examiners recommend that Iceland take all necessary measures to ensure that all stakeholders involved in fighting money laundering be adequately made aware that bribery of foreign public officials is a predicate offence to money laundering.

7. Accounting requirements, external audit, and company compliance and ethics programmes

a) Specialised training on bribery and related offences

53. In Phase 2, the Working Group recommended that Icelandic authorities encourage the accounting and auditing profession to organise special training sessions focusing on bribery and related offences in the framework of their professional education and training system (Phase 2, recommendation 5). This recommendation was considered not to have been implemented based on the information provided during Iceland's written follow-up report. Icelandic authorities stated in their responses to the Phase 3 questionnaire and during the on-site visit that the Ministry of Economic Affairs (MEA) has not undertaken any efforts to encourage the profession to organise such specialised training sessions focusing on bribery and related offences. The MEA indicated during the on-site visit that it falls within the ambit of the Institute of State Authorised Public Accountants (ISAPA) to provide professional training. However, the MEA has not undertaken any measures to encourage the ISAPA to provide specialised training on foreign bribery. Auditors present during the on-site visit, including auditors from the National Audit Office (NAO), who are responsible for the auditing of state-owned or state-controlled companies, confirmed that they have received no training or guidelines on red flags to detect foreign bribery.

b) Reporting obligations

54. The absence of obligations imposed on auditors to report indications of possible bribery committed by any employee or person acting on behalf of a company to management, and as appropriate, to corporate monitoring bodies was a concern of the Working Group in Iceland's Phase 2 evaluation. The Working Group recommended that Iceland rectify this and further consider requiring auditors to report such indications to competent authorities (Phase 2, recommendation 7). Again, this obligation was considered not to have been implemented based on the information provided during Iceland's written follow-up report.

55. Since Phase 2, Iceland has taken steps to address the reporting obligations of auditors. A new Act on Auditors (Act 79/2008) has come into force that applies to all state authorised public accountants, and a

Code of Ethics ('Code') for auditors was approved by the MEA on 28 September 2010. The Act on Auditors requires auditors to attend continuing education courses on the Code, which makes provision for reporting obligations. In this regard, the Code requires auditors to report any suspicions of violation of laws that can lead to liability for the management or the company to the Annual General Meeting. In addition, according to section 102 of Act 3/2006 on Annual Accounts, auditors that find out that the management of a company has violated laws that can lead to liability for the management or the company, shall report their findings to the Annual General Meeting. Section 92 of Act on Financial Undertakings (Act 161/2002) also requires auditors to report substantial flaws in operations or matters of internal control, or any suspicions of violations of law, to the board of directors and the Financial Supervisory Authority (FSA).²⁴ Auditors indicated during the on-site visit that the FSA would then investigate the claim further and, in some cases, report to law enforcement. Neither form of reporting guidance makes specific reference to the reporting of possible bribery, and there are no obligations for auditors to report such suspicions directly to law enforcement agencies. Auditors during the on-site visit confirmed that there are administrative disciplinary sanctions for non-reporting, but that fines are not imposed on auditors for failing to report.

c) *Internal controls, ethics and compliance programmes*

56. In Phase 2, the Working Group recommended that Iceland encourage the adoption of a code of ethics by the auditing profession and reflect further on the rules of independence of auditors (Phase 2, recommendation 6). This recommendation was found by the Working Group not to have been implemented based on Iceland's Phase 2 written follow-up report. Since Phase 2, Iceland has taken steps to address this recommendation. The Code of Ethics for auditors, which is based on the Code of Ethics of the International Federation of Accountants (IFAC), was adopted by the ISAPA in November 2009 and was approved by the MEA in September 2010. During the on-site visit, Iceland explained that the Code requires auditors to report suspicions of violations of law to the Annual General Meeting and the FSA. While this would include suspicions of foreign bribery, the Code does not make specific reference to the offence. During the on-site visit, auditors noted that they felt bound by the Code, even though it had not yet been approved by the MEA at the time. Auditors also indicated that there have also been measures undertaken to strengthen their independence, namely through new rules on rotation. Section 19 of the new Act on Auditors also sets out express provisions on the independence of auditors.

57. Iceland has not undertaken any measures to promote Annex II of the 2009 Recommendation Good Practice Guidance on Internal Controls, Ethics and Compliance. The lack of awareness-raising measures in this regard raises concern, and Iceland is recommended to encourage companies to adopt internal controls, ethics and compliance programmes to prevent and detect foreign bribery and that all relevant stakeholders acquaint themselves promptly with Annex II of the 2009 Recommendation, particularly Icelandic missions abroad and government bodies working closely with Icelandic companies, such as the Overseas Business Development Department and the newly established Promote Iceland (*Islandsstofa*) that oversees trade promotion abroad in cooperation with the Ministry of Foreign Affairs.

Commentary:

The lead examiners welcome the steps taken by Icelandic authorities to address some of the concerns raised by the Working Group in Phase 2. The lead examiners recommend that Iceland undertake awareness-raising measures with regard to the reporting obligations of auditors and sanctions for failure to report, and promptly provide training on red flags to detect foreign bribery. The

²⁴ Iceland further indicated in its responses to the Phase 3 Questionnaire that similar provisions can also be found in other Acts, such as Act 26/2007 on the Stock Exchange, Act 129/1997 on Mandatory Pension Insurance and the Activities of Pension Funds, and Act 56/2010 on Insurance Activity.

lead examiners also recommend Iceland to encourage companies to adopt internal control mechanisms, and take steps to promote Annex II of the 2009 Recommendation Good Practice Guidance on Internal Controls, Ethics and Compliance to all relevant stakeholders.

8. Tax measures for combating bribery

a) Non-deductibility of bribes

58. The non-tax-deductibility of bribe payments under Icelandic law has not changed since Iceland's Phase 2 evaluation. Section 50(6) of the Act on Income Tax (90/2003) states "cost because of payments, gifts or other illegal things in accordance with section 109 of the Penal Code, 19/1940, to persons that are hired or elected for governmental employment in the fields of legislation, judgement or administrations, either in Iceland or other states or with international organizations and institutions that nations, governments or international institutions are party to" cannot be counted as an operating expense or a as a deduction from taxable income. Reference to "persons that are hired or elected for governmental employment... in Iceland *or other states or with international organizations...*" (emphasis added) complies with the Recommendation I(i) of the 2009 Tax Recommendation (and Recommendation VIII(i) of the 2009 Recommendation) by explicitly disallowing the tax deductibility of bribes to foreign public officials.

b) Detection and reporting of suspicions of foreign bribery

59. Recommendations I(ii) and II of the 2009 Tax Recommendation (and Recommendation VIII(i) of the 2009 Recommendation) address the effective detection and reporting by tax authorities of suspicions of foreign bribery. In Iceland's Phase 2 Report, the Working Group recommended that Iceland establish a clearer obligation for all tax authorities to inform law enforcement authorities of any suspicion of foreign bribery and to provide the information at their request, as these would constitute further deterrents to foreign bribery. The Working Group concluded during Iceland's written follow-up report that this recommendation had not been implemented. During the on-site visit, Icelandic tax authorities indicated that there are no express reporting obligations imposed specifically on tax officials, nor or there sanctions for non-reporting. Icelandic authorities also indicated that there are no designated channels set up for reporting suspicions of foreign bribery transactions, but that tax authorities are expected to report suspicions of foreign bribery to law enforcement authorities, as part of the obligations imposed on all public officials to report a possible criminal offence that he or she may come across in his or her work. Iceland further elaborated that officials would normally report such suspicions to a senior officer who would then make a report to the Directorate for Tax Investigations or to the Police.

60. The bribery of foreign or domestic public officials has never been detected by Icelandic tax authorities. Discussions during the on-site visit point to the more general problem of lack of awareness and guidance provided to both tax authorities and tax payers on the foreign bribery offence (discussed further in the ensuing section). For instance, one panellist described a past telephone exchange between the Internal Revenue Directorate and an Icelandic businessperson who was inquiring on the tax deductibility of a bribe paid to a Nigerian public official. The Internal Revenue Directorate responded in the negative, but no further action, or reporting, was taken thereafter. Icelandic authorities clarified that in this particular case, the person who telephoned did not state his/her name or the company name, and that if this information had been available, the case would have been reported.

c) Guidance to taxpayers

61. Recommendation I(ii) of the 2009 Tax Recommendation recommends that Parties to the Convention should assess "whether adequate guidance is provided to taxpayers and tax authorities as to the type of expenses that are deemed to constitute bribes of foreign public officials". Icelandic tax authorities

have provided no guidance or awareness-raising to tax payers or tax authorities in this regard. However, Icelandic authorities stated during the on-site visit that the Internal Revenue Directorate and the Ministry of Finance are planning to conduct a seminar for tax examiners grounded in part on the *OECD Bribery Awareness Handbook for Tax Examiners*.

d) *Bilateral and multilateral tax treaties and the sharing of information by tax authorities*

62. Iceland has entered into bilateral tax treaties with other countries whereby the Internal Revenue Directorate shares information for tax purposes on a regular basis with foreign tax authorities. The Internal Revenue Directorate can also share information with foreign tax authorities on suspicious payments likely to be foreign bribery transactions; however, to date, Iceland has not shared information with foreign tax authorities of suspicious transactions suggesting the commission of the foreign bribery offence.

63. Iceland is currently considering its position concerning the inclusion in its bilateral treaties of the optional language in paragraph 12.3 of the Commentary to the revised Article 26 of the OECD Model Tax Convention (concerning the sharing of information received by tax authorities with other law enforcement authorities if certain conditions are met). Iceland notes that the matter is being viewed favourably.

64. Iceland is also a Party to the Nordic Convention on Mutual Administrative Assistance in Tax Matters, which provides for exchange of information for tax purposes between the Nordic countries. It is also one of the Parties to the Multilateral Convention on Mutual Administrative Assistance in Tax Measures, which provides for the possibility to use information received for tax purposes for non-tax purposes, provided certain conditions are met (see article 22.4).²⁵

Commentary:

The lead examiners find that the legal provisions within the Act on Income Tax (90/2003) sufficiently prohibit the tax deductibility of bribe payments under Icelandic law. With regard to awareness-raising and the provision of guidance to tax authorities on the type of payments that are deemed to constitute bribe payments, the lead examiners welcome the initiatives of the Icelandic tax authorities to disseminate and provide training on the OECD Bribery Awareness Handbook for Tax Examiners. The lead examiners recommend that Iceland follow through with these plans, and to disseminate such guidance to tax payers as well.

Reiterating the Commentaries within Iceland's Phase 2 Evaluation, the lead examiners recommend that Iceland establish clearer guidelines to the effect that tax inspectors are obliged to report cases of suspected foreign bribery to law enforcement authorities.

9. International cooperation

65. The procedural and operational aspects of mutual legal assistance (MLA) and extradition in Iceland have not changed since Phase 2.

66. The central authority for MLA remains the Ministry of Justice and Human Rights. During the on-site visit, Icelandic authorities indicated that MLA requests have increased in recent years in light of banking crisis, but that Iceland has not made nor received any MLA requests regarding the bribery of

²⁵ The Parties to the Convention are presently Azerbaijan Belgium Denmark, Finland, Iceland, Italy, France, Netherlands, Norway, Spain, Sweden, Ukraine, the United Kingdom, and the United States. Canada Germany, Korea, Mexico, Portugal and Slovenia have signed the Convention and are going through the ratification process.

foreign public officials. The Ministry of Justice received 41 MLA requests in the period between January and November 2010 regarding, for instance, embezzlement, forgery, traffic violation, drug offences, theft, misuse of credit cards and sexual offences. Iceland indicates that the period to respond varies depending on the case in question, ranging from under two weeks to up to four months, with an average response period of approximately one month. As concerns outgoing requests, the Ministry of Justice has issues five MLA request in 2010, with two of these still being handled abroad. The response period has been from one week to two months.

Commentary:

The absence of foreign bribery cases in Iceland, as well as of incoming MLA requests relating to foreign bribery cases, makes it difficult to assess the enforcement of international cooperation obligations under the Convention in practice. The lead examiners suggest that this issue be re-visited as practice develops, but also note that the lack of a mechanism by which lead examiners could obtain information from other Parties to the Convention on their experiences in cooperation by Iceland may makes this difficult to follow-up. They therefore consider that the question of how to assess the practice of Parties in responding to MLA requests is a cross-cutting issue that should be examined by the Working Group.

10. Public awareness and the reporting of foreign bribery

a) Awareness of the Convention and the foreign bribery offence

67. Iceland's Phase 2 Report recommended that the Icelandic government enhance awareness of the Convention and the foreign bribery offence within the public and private sectors (Phase 2, general recommendation and recommendation 1). Since Phase 2, Iceland has not provided any awareness-raising or training to public officials on foreign bribery. During the on-site visit, Icelandic authorities informed the lead examiners of plans by the National Commissioner of Police and the Icelandic Police College to prepare training programs for the police on the investigation of corruption offences, including the foreign bribery offence. The Ministry of Justice is also planning on reviewing the 2009 Recommendation with the view to disseminate it to the relevant ministries and public institutions in order that such bodies review their practices in light of the Recommendation's provisions. These planned initiatives by the Icelandic government to raise awareness of the Convention and the foreign bribery offence within the public sector are encouraging, and the outcomes of these activities should be followed-up.

68. Since Iceland's Phase 2 evaluation, no initiatives have been undertaken to cooperate with companies (including SME's), business associations, professional organisations, trade unions, NGO's, universities and business schools, the media, as well as the general public, on raising awareness of foreign bribery. Accordingly, Iceland has taken no steps to address its Phase 2 recommendation to cooperate with the private sector in order to raise awareness of companies, and in particular, encourage and promote internal corporate compliance programmes for exporting companies or provide guidance on how to deal with bribe solicitation. There are government bodies charged with assisting Icelandic companies operating abroad, including the Overseas Business Development Department within the Ministry of Foreign Affairs and the newly established Promote Iceland (*Islandsstofa*) that oversees trade promotion abroad in cooperation with the Ministry of Foreign Affairs. However, these bodies do not provide any guidance to Icelandic companies operating abroad on the foreign bribery offence and its legal implications, nor do they provide guidance to companies on how to address bribe solicitation.

69. During the on-site visit, private sector panellists expressed a lack of knowledge of the foreign bribery offence and were unaware that Icelandic companies could be punished for bribery of foreign public officials under Icelandic law. The panellists from the legal community who participated in the on-site visit

were also ignorant of section 109 of the GPC and stated that the bribery of foreign public officials is not something that they would normally advise their clients conducting business overseas of in advance. However, in contrast to the views expressed by private sector panellists, the lawyers believed that Icelandic companies were generally aware of the offence of foreign bribery. All panellists from the private sector and civil society expressed the view that the collapse of the Icelandic banking system has led to a shift in focus towards enhancing ethics and corporate governance, but mainly with a focus on domestic bribery and corruption rather than foreign bribery. The continued lack of awareness of foreign bribery is of concern, and it is recommended that Iceland seriously step up its awareness-raising efforts in both the public and private sectors.

b) *Reporting suspected acts of foreign bribery*

70. The Working Group recommended in Phase 2 that Iceland “clarify and publicise the extent of the obligation of all public officials to report bribery offences of which they become aware...” (Phase 2, recommendation 2). The Working Group further concluded during Iceland’s Phase 2 follow-up report that this recommendation had not been implemented. Iceland’s written responses to the Phase 3 questionnaire state that “Article 14 of the Government Employees Act 70/1996, Article 141 of the GPC 19/1940 and general unwritten principles of law applying to public servants impose an obligation on public servants to notify the relevant authorities of criminal conduct or suspicions of such conduct which come to their attention in the course of their work.”

71. In 2006, the Ministry of Finance also issued a circular on the general considerations and values that public servants are expected to observe in the execution of their work. However, the obligations set out in the circular are not couched in mandatory language and state that “a public servant shall make his utmost so that his words and conduct are in conformity with the following: ...a public servant that comes across corruption, unlawful or inappropriate behaviour, shall notify the relevant parties. Relevant parties can, for example, be the management of an institution, the ministry in question and depending on the case, the National Audit Office or the police authorities...”. The Althingi has also recently passed a Bill which provides the legal basis for the adoption of a code of ethics for ministers and public officials. The draft code of ethics states that ministers and public officials have an obligation to report any kind of criminal offences they encounter in the course of their work; however, it is unclear whether this imposes a legal obligation to report and whether reports are to be made either indirectly or directly to law enforcement authorities. It is also unclear whether these reporting obligations extend to criminal offences committed by private individuals, or whether they are limited to criminal offences committed by other public servants.

72. Icelandic authorities confirmed during the on-site visit that there are no sanctions for non-reporting, and no awareness-raising has been undertaken to publicise the existence of such reporting channels or facilitate their use. Icelandic missions abroad, as well as agencies within the government that deal with Icelandic companies conducting business overseas, such as the Overseas Business Development Department, also provide no specific channels or measures to facilitate the reporting of suspicions of foreign bribery to law enforcement authorities. The lack of specific reporting obligations or guidance is of concern, especially in light of Recommendation IX (ii) of the 2009 Recommendation on the subject of facilitating reporting by public officials, especially those posted abroad. Iceland’s position in this regard appears to be out of step with other Convention parties and standards that have been developed during the course of Phase 2.

c) *Whistleblower protection*

73. Both the draft code of ethics and the circular from Ministry of Finance state that public officials who report suspicions of unlawful activity shall not suffer in any way for doing so. In addition, with amendment Act 86/2010, a new provision (section 13a) was added to the Government Employees Act

stating that a public official shall not suffer in any way for reporting suspicions of any unlawful activity or violation of the Code of Ethics that he/she comes across in his/her work.

74. There is currently no comprehensive whistleblower protection system in Iceland to protect from discriminatory or disciplinary action private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities. During Iceland's Phase 2 evaluation, the opinions expressed by Icelandic trade unions and journalists indicated that such mechanisms and procedures were not needed in Iceland because "in view of the good economic situation, an employee dismissed for having testified against his/her company would easily find a new position." During the on-site visit, the lead examiners followed up on this remark and queried whether in light of the current economic situation, Icelandic authorities have re-considered the adoption of a whistleblower protection system for the private sector, and whether having such a system in place would have assisted in the detection of fraudulent activity that in part led to the collapse of the Icelandic banking system. The views of the panellists were mixed in this regard; representatives from civil society were of the opinion that there is still no need for such whistleblower protection in Iceland. Panellists from the private sector, however, viewed such mechanisms more favourably but indicated that protection and anonymity would be difficult to guarantee because of the small community in Iceland and that, consequently, reprisals would be difficult to avoid.

75. Icelandic authorities confirmed during the on-site visit that there are no current plans to adopt whistleblower protection mechanisms for the private sector. This raises concern that Iceland's position is out of step with that of other Parties. The 2009 Recommendation, which reflects the development of standards by the Parties in this regard, calls on Parties to ensure that appropriate measures are in place to protect public and private sector whistleblowers. Given the importance of whistleblowers in the detection of foreign bribery cases, this could be a significant deficiency in Iceland's fight against bribery.

Commentary:

The lead examiners are concerned with the lack of awareness of the foreign bribery offence in Iceland and recommend that Iceland seriously step up its awareness-raising activities, especially with the private sector. In particular, the Overseas Business Development Department within the Ministry of Foreign Affairs could play an important role in disseminating information to Icelandic companies conducting business abroad. Such awareness-raising should include information on what to do when Icelandic companies are confronted with bribe solicitation, as well as clear instructions on who to report suspicions of foreign bribery. Icelandic missions abroad should also play an important role in this regard.

The lead examiners are also concerned about the continued lack of clear and well-publicised mechanisms for public officials to report suspicions of foreign bribery. The lead examiners recommend that Iceland establish specific measures to encourage and facilitate reporting by public officials, in particular those posted abroad, of suspected foreign bribery offences, both internally and to externally to law enforcement authorities. The lead examiners welcome the development of a comprehensive code of ethics that is currently being considered by the Prime Minister's Office, but also recommend that Iceland introduce a general duty for public officials to report suspicions of foreign bribery to competent authorities, along with appropriate measures for raising awareness of this duty and for its enforcement.

With regard to whistleblower protection systems in Iceland, the lead examiners recommend that Iceland introduce mechanisms that are capable of ensuring that public and private sector employees who report in good faith and on reasonable grounds suspected acts of foreign bribery to competent authorities are protected from discriminatory or disciplinary actions. Once established, Iceland should take steps to raise awareness of such mechanisms.

11. Public Advantages

a) Official Development Assistance

76. Official Development Assistance (ODA) is administered by the Icelandic International Development Agency (ICEIDA). ICEIDA is not a member of the OECD Development Assistance Committee (DAC), but claims to “honour DAC rules in the course of [their] work”. The lead examiners noted, however, that no measures had been undertaken to address foreign bribery in ODA-funded contracts, including through the incorporation of anti-corruption clauses in contracts. There is no requirement for agents and contractors to declare that they have not been convicted of corruption offences to qualify for an ODA-funded contract, and no form of due diligence is carried out by ICEIDA officials prior to the granting of an ODA-funded contract. Furthermore, there are no measures in place for the suspension of companies that have engaged in foreign bribery from obtaining ODA-funded contracts. During the on-site visit, ICEIDA officials stated that because their programs are small scale, it is not difficult to monitor how their funds are administered, and that they “rely on the host country” to find appropriate contractors. In this regard, ICEIDA officials explained that contracts are granted on the basis of the tendering procedures applied in the host country, which usually maintain an assured list of contractors. In this regard, the lead examiners note with concern that ICEIDA does not undertake any due diligence of its own on these lists.

77. With regard to reporting suspicions of foreign bribery, section 19 of ICEIDA’s Code on Conduct states that “employees who become aware of corruption or illegal or inappropriate conduct should inform their highest ranking superior, head of personnel or Director General thereof”. However, there appear to be no obligations within the Code of Conduct for such designated persons to, in turn, report to law enforcement authorities. The perceptions of ICEIDA officials, who, during the on-site visit claimed that “foreign bribery is not a problem for a bilateral aid agency” are concerning. In view of these perceptions, and that many of ICEIDA’s projects are executed in high risk geographic locations, the lack of preventive and due diligence measures in place to combat foreign bribery in ODA-funded procurement is particularly problematic.

b) Officially supported export credits

78. The Export Credit Guarantee Department “Tryggingardeild Utflutnings” (TRU) within the New Business Venture Fund is responsible for the granting of officially supported export credits. The legislation establishing the New Business Venture Fund and the TRU makes no reference to anti-bribery provisions. TRU officials indicated that they have not received any applications for export credits in the last four years and that because of this limited practice and lack of activity, no measures have been taken to address foreign bribery issues in relation to the attribution or suspension of export credits. TRU officials stated in a written submission following the on-site visit that when they received particular applications in the past, “special care was made that the parties to the case (both the buyers of Icelandic products and the banks financing the transactions) were immaculate” and that “the department did its utmost to obtain information in this regard”. TRU officials further cite the lack of activity and current practice as reasons why it has not taken steps to adhere to the OECD Council Recommendation on Bribery and Officially Supported Export Credits and why Iceland is not a member of the OECD Working Party on Export Credits and Credit Guarantees.

c) Public procurement

79. The Icelandic State Trading Agency (STA) is the body responsible for administering procurement. Since Iceland’s Phase 2, a new Act on Public Procurement (84/2007) entered into force in 2007 and 2008 which, according to Iceland, is based on principles of equal treatment, non-discrimination,

transparency and proportionality. STA officials indicated that they do not undertake awareness-raising measures or provide notification of the existence of the foreign bribery offence under Icelandic law and its legal consequences to clients or applicants. The STA also does not require any type of undertaking from applicants that they have not been engaged or will not engage in bribery transactions, and there are no controls in place to detect potential instances of foreign bribery. The reporting obligations of STA officials are the same as those applied generally to Icelandic public officials; should an STA official come across the commission of a possible criminal offence, including foreign bribery, in the course of their work, they are obliged to report such suspicions to law enforcement authorities.

80. With regard to due diligence and the suspension or withdrawal of support, the STA does not take into account companies' internal controls, ethics and compliance systems, including those outlined in Annex II of the 2009 Recommendation, in granting procurement contracts. Section 47 of the Act on Public Procurement does make provision for the suspension of companies convicted of corruption, fraud and other specified offences, from participation in a public contract. Foreign court decisions may be taken into account in this regard. However, STA officials indicated that these provisions apply before a contract has been entered into, and that it is unclear what measures are available, including the termination of the contract, if a company engages in such conduct after the contract has been signed. In this regard, the STA states that the effectiveness of section 47 has not been evaluated in practice. The STA does not maintain an official blacklist of companies barred from participating in a public contract on the grounds of having engaged in corrupt acts or other offences.

Commentary:

The lead examiners are concerned about the absence of measures in place to prevent and sanction foreign bribery in ODA-funded contracts, and recommend that Iceland consider systematically including anti-corruption provisions that include both preventive and punitive measures (such as the termination of contracts or other civil or criminal actions, where applicable) in bilateral aid-funded procurement, as recommended by the 1996 DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement.

With regard to officially supported export credits, the lead examiners note that the TRU's provision of export credits has been very limited in the recent past, but they nevertheless encourage the TRU to adopt measures to address foreign bribery issues in relation to the attribution and suspension of officially supported export credit.

Concerning public procurement, the lead examiners recommend that Iceland develop measures to raise awareness and provide notification to clients or applicants on the foreign bribery offence and the legal consequences under Icelandic law. The lead examiners are encouraged by provisions within the new Act on Public Procurement to suspend companies convicted of bribery from participation in a public contract; the effectiveness of these provisions in practice should be followed-up. However, the lead examiners are concerned about the lack of due diligence mechanisms in place and recommend that Iceland consider establishing mechanisms to verify the accuracy of information provided by applicants, along with enhanced due diligence where appropriate and include, within public procurement contracts, termination and suspension clauses in the event of discovery by procurement units that information provided by the applicant was false, or by reason of the contractor subsequently engaging in bribery during the course of the contract.

C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP

81. The Working Group acknowledges that the major economic and financial crisis facing Iceland has led to an increased focus on economic and financial crime, and welcomes the efforts that Iceland has undertaken to ensure its legislation fully conforms to the OECD Anti-Bribery Convention, following the recommendations made by the Working Group in Phase 2. The Working Group also notes that there have not been any foreign bribery cases in Iceland and that, in terms of publicly available information (notably in the media), there are currently no allegations of bribery of foreign public officials committed by Icelandic individuals or companies. The Working Group is, however, concerned that the current structure and allocation of resources between the different law enforcement authorities may result in inefficiencies and hamper the effectiveness of fighting economic and financial crime in Iceland, including foreign bribery.

82. The Phase 2 evaluation report on Iceland, adopted in February 2003, included recommendations and issues for follow-up (as set out in Annex 1 to this report). Of the recommendations considered to have been only partially implemented or not implemented at the time of Iceland's written follow-up report in May 2006, the Working Group concludes that: recommendation 6 has been satisfactorily implemented, recommendations 7 and 9 have now been partially implemented; recommendation 1 remains partially implemented; and recommendations 2 and 5 remain not implemented.²⁶

83. Against this background, and based on the other findings in this report regarding Iceland's implementation of the Convention and 2009 Recommendations, the Working Group: (1) makes the following recommendations to Iceland under Part 1; and (2) will follow up the issues in Part 2 when there is sufficient practice. The Working Group invites Iceland to report orally on the implementation of recommendations 1, 2(a) and 4(a), within one year of this report (i.e. in December 2011). It further invites Iceland to submit a written follow-up report on all recommendations and follow-up issues within two years (i.e. in December 2012).

1. Recommendations of the Working Group

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

1. Regarding the foreign bribery offence, the Working Group recommends that Iceland explicitly cover bribery of officials employed by state-owned and state-controlled companies, and specifically consider this recommendation in drafting its new Bill amending the foreign bribery offence in Iceland's General Penal Code (GPC) [Convention, Article 1; Phase 2 Report, recommendation 9].²⁷
2. Regarding sanctions for foreign bribery, the Working Group recommends that Iceland:
 - a) Raise imprisonment sanctions against natural persons for foreign bribery, as provided under section 109 of the GPC, to ensure that they are effective, proportionate and dissuasive [Convention, Article 3.1]; and

²⁶ See Annex 1: Phase 2 Recommendations of the Working Group, and Issues for Follow-up.

²⁷ The [OECD anti-bribery instruments](http://www.oecd.org/daf/nocorruption) (OECD Anti-Bribery Convention, the 2009 Anti-Bribery Recommendation, the 2009 Tax Recommendation, the 2006 Export Credit Recommendation and 1996 DAC Recommendation) can be downloaded from the OECD website: www.oecd.org/daf/nocorruption.

- b) Consider the imposition of additional administrative sanctions for legal persons, similar to those applicable to individuals [Convention, Article 3.4].
3. Regarding confiscation of the bribe and proceeds of foreign bribery, the Working Group recommends that Iceland provide training to its prosecutors on the new confiscation regime introduced in 2009, and encourage them to request confiscation in foreign bribery cases, where appropriate [Convention, Article 3.2; 2009 Recommendation III.(i)].
4. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that Iceland:
- a) Promptly and seriously proceed with its ongoing reflection on the structure and resource allocation for fighting economic and financial crime in Iceland, to ensure that there are sufficient resources for and effective coordination of the different law enforcement authorities for the investigation and prosecution of economic and financial crimes, including foreign bribery [2009 Recommendation III.(ii) and V.];
 - b) Promptly provide specialised training to law enforcement authorities, including the police, prosecutors and judges, on the investigation and prosecution of foreign bribery [2009 Recommendation III.(ii) and V.];
 - c) Make available, where appropriate, special investigative means, such as interception of communications, video surveillance and undercover operations, in foreign bribery investigations [2009 Recommendation III.(ii) and V].

Recommendations for ensuring effective prevention and detection of foreign bribery

5. Regarding awareness-raising, the Working Group recommends that Iceland:
- a) Seriously step up its awareness-raising activities with regard to the private sector, in particular through its Overseas Business Development Department within the Ministry of Foreign Affairs and through Icelandic missions abroad. These should include information on steps to be taken by Icelandic companies confronted with bribe solicitation, and clear instructions on the authorities to whom suspicions of foreign bribery should be reported [2009 Recommendation III.(i)];
 - b) Promote the Good Practice Guidance on Internal Controls, Ethics and Compliance, set out in Annex II to the 2009 Anti-Bribery Recommendation, to Icelandic companies, business organisations and professional associations [2009 Recommendation III.(i) and Annex II]; and
 - c) Concerning auditors, undertake awareness-raising measures with regard to, and promptly provide training on, (i) their reporting obligations to the management of the company, and to law enforcement authorities; (ii) the sanctions for failure to report; and (iii) red flags to detect foreign bribery [2009 Recommendation III.(i) and X.B.(iii) and (v); Phase 2 Report, recommendation 7].
6. Regarding detection and reporting of foreign bribery, the Working Group recommends that Iceland:
- a) Ensure that appropriate measures are in place to facilitate reporting by public officials, in particular those posted abroad, to law enforcement authorities of suspected acts of foreign

bribery detected in the course of their work, and raise awareness of the existence of these reporting channels [2009 Recommendation IX.(ii)];

- b) Establish clearer guidelines for tax inspectors concerning their obligation to report cases of suspected foreign bribery to law enforcement authorities [2009 Tax Recommendation; Phase 2 Report, recommendation 2].

7. Regarding whistleblower protection, the Working Group recommends that Iceland ensure that appropriate measures are in place to protect from discriminatory or disciplinary action both public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of foreign bribery, and take steps to raise awareness of these mechanisms [2009 Recommendation IX.(iii)].
8. Regarding detection through anti money laundering systems, the Working Group recommends that Iceland take all necessary measures to ensure that all stakeholders involved in fighting money laundering be adequately made aware that bribery of foreign public officials is a predicate offence to money laundering [Convention, Article 7; 2009 Recommendation III.(i)].
9. Regarding tax measures for combating foreign bribery, the Working Group recommends that Iceland proceed with its intention to disseminate and provide training on the OECD Bribery Awareness Handbook for Tax Examiners to tax inspectors, and extend such dissemination to relevant taxpayers [2009 Recommendation III.(i); 2009 Tax Recommendation].
10. Regarding official development assistance, the Working Group recommends that Iceland's official development agency (i) systematically require anti-corruption provisions in bilateral aid-funded procurement that include both preventive and punitive measures (such as termination of contracts or other civil or criminal actions, where applicable), and (ii) where international business transactions are concerned, and as appropriate, take into consideration applicant companies' internal controls, ethics and compliance programmes or measures [2009 Recommendation X.C.(vi) and XI.(ii); 1996 DAC Recommendation].
11. Regarding public procurement, the Working Group recommends that Iceland (i) develop measures to raise awareness and provide notification to applicants on the foreign bribery offence and the legal consequences under Icelandic law; and (ii) where international business transactions are concerned, and as appropriate, take into consideration applicant companies' internal controls, ethics and compliance programmes or measures [2009 Recommendation X.C.(vi) and XI.(i)].

2. Follow-up by the Working Group

12. The Working Group will follow-up the issues below as case law and practice develops:
 - a) The interpretation of the foreign bribery offence under Icelandic law, to ensure that it covers bribery through intermediaries, and the offering, promising or giving of both pecuniary and non-pecuniary advantages;
 - b) The application in practice of the corporate liability regime for foreign bribery, notably to ensure that a legal person cannot avoid responsibility for foreign bribery by using intermediaries, including related legal persons;
 - c) Whether sanctions for foreign bribery are sufficiently effective, proportionate and dissuasive in practice;

- d) The application in practice of the recently amended anti money laundering legislation and its effect on enforcement of money laundering offences predicated on economic crime; and
- e) Whether Iceland's Export Credit Guarantee Department, "Tryggingardeild Utflutnings" (TRU), if and when its practice develops in the granting of officially supported export credits, takes steps to adhere to the OECD Council Recommendation on Bribery and Officially Supported Export Credits.

**ANNEX 1 PHASE 2 RECOMMENDATIONS TO ICELAND AND
ASSESSMENT OF IMPLEMENTATION BY THE WORKING GROUP ON BRIBERY IN 2006**

<i>Phase 2 Recommendations – 2003</i> ²⁸	<i>Written Follow-Up – 2006</i> ²⁹
<i>1) Recommendations for Ensuring Effective Measures for Preventing and Detecting Foreign Bribery</i>	
<p>Text of the General recommendation:</p> <p>The Working Group recommends that Iceland develop further efforts to raise the level of general awareness of the offence of bribery in international business transactions as well as enhance mechanisms for the detection of bribery offences (Revised Recommendation, Article I).</p>	<i>Partially implemented</i>
<p>Text of recommendation 1:</p> <p>With respect to the public sector, the Working Group particularly recommends that Iceland:</p> <p>Enhance awareness and establish appropriate procedural guidelines and training for the detection of foreign bribery within the agencies responsible for detecting and/or investigating the offences usually related to bribery offences. (Revised Recommendation, Articles I and IV).</p>	<i>Partially implemented</i>
<p>Text of recommendation 2:</p> <p>With respect to the public sector, the Working Group particularly recommends that Iceland:</p> <p>Clarify and publicise the extent of the obligation of all public officials to report bribery offences of which they become aware, and in particular consider introducing a clearer obligation for all tax officials to inform and co-operate with the law enforcement authorities on any suspicion of bribery; (Revised Recommendation, Article I).</p>	<i>Not implemented</i>
<p>Text of recommendation 3:</p> <p>With respect to the public sector, the Working Group particularly recommends that Iceland:</p> <p>Maintain the efficiency and specialisation of the Unit for investigation and prosecution of serious economic and environmental crimes; (Revised Recommendation, Article I).</p>	<i>Satisfactorily implemented</i>
<p>Text of recommendation 4:</p> <p>With respect to the private sector, the Working Group recommends that Iceland:</p>	<i>Satisfactorily implemented</i>

²⁸ This column sets out the recommendations of the Working Group on Bribery to Iceland, as adopted in February 2003 in [Iceland's Phase 2 Report](#).

²⁹ This column sets out the findings of the Working Group on Bribery on [Iceland's written follow-up report to Phase 2](#), as adopted by the Working Group in May 2006.

<p>Co-operate with private sector organisations in order to raise awareness of companies, and in particular encourage and promote internal corporate compliance programmes for exporting companies. In addition, guidance by private sector organisations on how to deal with solicitation of bribes would be useful (Revised Recommendation, Articles I and V.C.i and iv).</p>	
<p>Text of recommendation 5:</p> <p>With respect to accounting and audit profession, the Working Group recommends that Iceland:</p> <p>Encourage the accounting and auditing profession to organise special training sessions focussed on bribery and related offences, in the framework of their professional education and training system (Revised Recommendation, Article I).</p>	<p><i>Not implemented</i></p>
<p>Text of recommendation 6:</p> <p>With respect to accounting and audit profession, the Working Group recommends that Iceland:</p> <p>Encourage the adoption of a code of ethics by the auditing profession and reflect further on the rules on the independence of auditors; (Revised Recommendation, Article V.B.ii).</p>	<p><i>Not implemented</i></p>
<p>Text of recommendation 7:</p> <p>With respect to accounting and audit profession, the Working Group recommends that Iceland:</p> <p>Require auditors to report indications of a possible illegal act of bribery committed by any employee or person acting on behalf of a company to management and, as appropriate, to corporate monitoring bodies without delay. In addition, the Working Group recommends that Iceland consider requiring auditors to report such indications to the competent authorities; (Revised Recommendation, Article V.B.iii and iv).</p>	<p><i>Not implemented</i></p>
<p>2) Recommendations for Ensuring Adequate Mechanisms for the Effective Prosecution of Foreign Bribery Offences and the related Tax and Money Laundering Offences</p>	
<p>Text of recommendation 8:</p> <p>The Working Group recommends that Iceland consider the following modifications to its legislation by:</p> <p>Aligning the language concerning third party beneficiaries in section 109 GPC concerning bribery of a foreign public official with section 128 GPC concerning passive bribery so that third party beneficiaries are clearly covered; (Convention, Article 1).</p>	<p><i>Satisfactorily implemented</i></p>
<p>Text of recommendation 9:</p> <p>The Working Group recommends that Iceland consider the following modifications to its legislation by:</p> <p>Reviewing the provisions dealing with bribery and considering appropriate changes in order to ensure complete consistency in the terms used in such provisions (e.g. Section 19c of the GPC and Section 1 of Act 144/1998 concerning the natural person triggering the liability of legal persons; Section 109 of the GPC and Section 52 of Act 75/1981 concerning the nature of the bribe and the definition of public officials); (Convention, Articles 1 and 2; Revised Recommendation, Article IV).</p>	<p><i>Not implemented</i></p>

3) *Follow-up by the Working Group*

In light of the small number of cases of domestic bribery and the absence of case law concerning bribery of foreign public officials, it is very difficult to assess how the Icelandic legislation will be applied in practice. The Working Group will therefore revisit the case law regarding bribery in a general way as it develops. (Convention, Articles 1, 3, 5). This concerns in particular:

10. the elements of the offence explored in Phase 1 that are specific to the offence of corruption and whose interpretation cannot be inferred from the application of other similar offences, as well as the coverage of intermediaries and the interpretation of the term “foreign public official”; (Convention, Article 1 and Commentaries 4 to 10 and 12 to 19)
11. the criminal liability of legal persons, to ascertain within a reasonable period whether the foreign bribery offence is effectively applied to legal persons; (Convention, Article 2);
12. the application in practice of the universal jurisdiction and international co-operation obligations under the Convention and the effectiveness of the provisions on confiscation, in particular with respect to the possibilities of confiscation from third parties; (Convention, Articles 3, 4, 9 and 10).
13. the extent to which Icelandic authorities direct more attention on money laundering linked to forms of criminality other than drug offences, including the bribery of a foreign public official. (Convention, Article 7).

ANNEX 2 LIST OF PARTICIPANTS IN THE ON-SITE VISIT

Government Ministries and Bodies

- Directorate for Tax Investigations
- Icelandic International Development Agency (ICEIDA)
- Internal Revenue Directorate
- Financial Supervisory Authority
- Ministry of Economic Affairs
- Ministry of Finance
- Ministry of Foreign Affairs
- Ministry of Justice and Human Rights
- National Audit Office
- Office of the Director of Public Prosecutions, including the Special Prosecutor's Office
- Office of the National Commissioner of Police, including the Economic Crime Unit

Private Sector

Private enterprises

- One representative

Business associations

- Trade Council of Iceland

Legal profession and academics

- One representative from an Icelandic law firm
- Icelandic Bar Association

Accounting and auditing profession

- Association of Certified Public Auditors, including one representative from a major audit company.

Civil Society

- Icelandic Federation of Labour

ANNEX 3 RELEVANT LEGISLATIVE EXTRACTS

The foreign bribery offence

Section 109 of the GPC, as amended by section 2 of Act 125/2003

Anyone who presents, promises or offers a civil servant a gift or other gain to which he/she is not entitled for the benefit of himself/herself or others for the purpose of inducing him/her to do or fail to do something linked to his/her official duties shall be subject to imprisonment for up to 3 years or fines in case of mitigating circumstances.

The same penalty shall apply to anyone directing such a message to a foreign official, an employee of an international establishment, a person sitting at the assembly of such an organization or an official Legislative Assembly in a foreign State, a Judge on the panel of an International Court or an employee of such a Court for the purpose of inducing him/her to do or omit something connected with his/her official duties.

The same penalty shall furthermore apply to anyone directing such a message at a person maintaining or ascertaining that he/she may exert abnormal influence on the decision of the person dealt with in para. 1 and 2 of the present Article for the purpose of getting him/her to exert this influence.

The same penalty shall furthermore apply to a person who maintains or ascertains that he/she can exert abnormal influence on the decision of a person dealt with in para. 1 and 2 of the present Article and who demands, accepts or has promised for himself/herself or others gifts or other gain to which he/she is not entitled irrespective of whether the influence is exerted or whether this lead to the goal aimed at]¹⁾

1) Act 125/2003, Art. 2.

Liability of legal persons

Section 19c of the GPC

Subject to provisions in Law, a legal person can only be made criminally liable if its spokesman, employee or other person acting on its behalf has committed a criminal and unlawful act in the course of its business. Penalties shall be imposed even if the identity of this legal person has not been established. Administrative authorities can only be made criminally liable if a criminal and an unlawful act has been committed in the course of an operation deemed comparable to the operations of private entities.]¹⁾

1) Act 140/1998, Art. 1.

Section 1 of Act 144/1998, as amended by section 5 Act 125/2003

A legal person may be fined if in the course of its operations a violation of Article 109 or 264a of the GPC is committed. This also applies if in the course of its operations there is committed a violation on Article 264 and the predicate offence, that the proceeds come from, regards Article 109 or 1st paragraph of Article 264 a of the GPC.

Sanctions

Section 49 of the GPC

Fines shall accrue to the State Treasury, unless otherwise decided by Law.

Fines may be imposed and also [imprisonment], ¹⁾ to which the offence is subject when a defendant has obtained for himself/herself or others, a financial advantage by means of his/her offence or when this has been his/her design. ²⁾

¹⁾ Act 82/1998, Art. 8. ²⁾ Act 101/1976, Art. 4.

Confiscation

Section 69, a-g of the GPC

Section 69

Gains resulting from a criminal offence, or a sum of money that is partly or entirely equivalent in value, may be confiscated. The same shall apply to objects that have been purchased for the gains, or that have replaced them. When it is not possible to demonstrate the monetary value of such gains, it may be estimated.

Expenses connected with the commission of the offence shall not be deducted from the monetary value of the gains.

Section 69 a

The following may be confiscated by a court judgement:

1. Items that have been used, or are intended for use, in the commission of an offence; the same applies to items if there is considered to be a danger that they will be so used.
2. Items that have come into being as a result of offences.
3. Items that are connected in other ways with the commission of an offence.

Instead of items referred to in the first paragraph of this Section, a sum of money that is partly or entirely equivalent in value may be confiscated.

If a company is dissolved by a court judgement, its assets, books, papers and other property may be confiscated.

Section 69 b

Items of value belonging to an individual who is convicted of an offence may be confiscated, in part or in their entirety, when:

1. the offence is of such a type as to result in substantial gains and
2. it is punishable by at least 6 years' imprisonment.

Subject to the same conditions as are stated in the first paragraph of this Section, items of value acquired by the present or former spouse or cohabiting partner of the person who committed the offence may be confiscated, in part or in their entirety, except:

1. when the items of value were acquired more than 5 years prior to the commission of the offence or,
2. when the persons concerned were not married or cohabiting at the time when the items of value were acquired.

Subject to the same conditions as are stated in the first paragraph of this Section, items of value which have been acquired by a legal person in which the individual concerned, alone or together with his or her immediate family, holds a controlling position, may be confiscated, in part or in their entirety. The

same shall apply if a substantial part of the income of the legal person is acquired by the individual concerned. Confiscation shall not be permitted, however, if the items of value were acquired by the legal person more than 5 years prior to the commission of the offence.

If the person concerned demonstrates that the items of value were acquired lawfully, they shall not be confiscated.

Instead of the items of value specified in the first three paragraphs of this Section, a sum of money that is partly or entirely equivalent in value may be confiscated.

Section 69 c

If the gains of an offence have become merged with possessions that have been acquired lawfully, the possessions may be confiscated up to the estimated value of the gains that have become merged with them.

Section 69 d

Confiscation under Section 69 may be carried out against a person who has derived gains from the offence.

Confiscation under the first and second paragraphs of Section 69 a may be carried out against the person who committed the offence and those on whose behalf he or she was acting.

Collateral rights applying to confiscated items can only expire in accordance with a decision by a court when the owner of the rights is not in good faith.

If any of the persons named in the first two paragraphs of this Section took measures after the commission of the offence concerning the ownership of, or rights pertaining to, gains or items to be confiscated, the gains or items may be confiscated from a third person if he or she knew of the relationship between the gains or items and the offence, or has demonstrated gross negligence in this connection. The same shall apply in the case of a gift.

Confiscation may not be carried out if the person concerned is deceased, except in the case of confiscation under Section 69.

Section 69 e

If any person has suffered loss or injury, it may be decided in a judgement to use the equivalent value of the items confiscated to pay that person's compensation claim.

If the person convicted has paid compensation to the victim of the offence in such cases, following the delivery of judgement, the monetary sum confiscated shall be reduced accordingly.

Section 69 f

If a demand is presented for the confiscation of gains, items, objects, items of value or property of persons other than the defendant, such a demand shall be directed towards the owner or person exercising the right of ownership.

If the identity of the owner or person exercising the right of ownership is not known, or if he or she has no known place of residence in Iceland, then a court may apply confiscation in the case against the defendant.

If the identity of the offender or of the person exercising the right of ownership is not known, then confiscation may be effected by judgement of a court without any person being prosecuted.

If items of value are seized in the course of investigation of a case, and the identity of their owner is not known and no one presents a lawful claim to them within 5 years, they may be confiscated.

Section 69 g

That which is confiscated shall be the property of the State Treasury unless other special provisions are made in law. This shall not apply, however, when the equivalent value is used to pay a compensation claim made by a person who suffered loss or injury as a result of the offence (cf. Section 69 e).

The Ministry of Justice may decide that that which is confiscated shall be divided between the Icelandic state and another state or states. Such a decision shall be based, amongst other things, on the expenses incurred in the states as a result of the case, whether loss or injury was sustained there in connection with the case and the source of the items of value confiscated. In no case may division under this paragraph result in the restriction of compensation payments to parties suffering loss or injury.

Money laundering

Section 264 of the GPC

Any person who accepts, makes use of or acquires gains, for himself or for others, by violation of this Act, or by punishable violations of other statutes, or who, amongst other things, converts such gains, transports them, sends them, stores them, assists with their delivery, or conceals them or information concerning their origin, nature, location or manner of disposal, shall be imprisoned for up to 6 years.

A person who commits the original offence, and also commits an offence under the first paragraph of this Article, shall be subjected to the same punishment as is provided for in that paragraph. In such cases, Article 77 of this Act shall apply as appropriate.

In cases involving gains resulting from violations of Article 173a of this Act, punishment of up to 12 years' imprisonment may be imposed.

If an offence under the first paragraph of this Article is committed through negligence, it shall be punished by a fine or up to 6 months' imprisonment.

Accounting requirements, external audit, and company compliance and ethics programmes

Section 92 of the Act on Financial Undertakings (Act 161/2002)

If an auditor becomes aware of substantial flaws in operations or matters concerning internal control, loan collateral, or other matters which could weaken the financial position of the undertaking in question, or aspects which could result in his/her refusal to endorse the accounts, or in an endorsement with reservations, or if an auditor has reason to believe that there has been any violation of laws, regulations or rules which apply to the undertaking, the auditor must notify its board of directors and the Financial Supervisory Authority. This applies also to comparable issues that come to the knowledge of an auditor in the course of auditing for a company with close links to the financial undertaking in question.

Tax Measures for Combating Bribery

Section 50(6) of the Act on Income Tax (Act 90/2003)

The following cannot be counted with operating expense in accordance with Article 31 or in any way as deduction from taxable income:... Cost because of payments, gifts or other illegal things in accordance with Article 109 of the Penal Code, 10/1940, to persons that are hired or elected for governmental employment in the field of legislation, judgement or administrations, either in Iceland or other states or with international organizations and institutions that nations, governments or international institutions are party to.

Public Advantages

Section 47 of the Act on Public Procurement (Act 84/2007)

Any candidate or tenderer who has been the subject of a conviction by final judgment for the following offences shall be excluded from participation in a public contract:

- a. participation in a criminal organisations
- b. corruption
- c. fraud
- d. money laundering

The contracting authorities shall, where appropriate, ask candidates or tenderers to supply documents concerning the points specified in items a. to d. if the contracting authority has doubts concerning the personal situation of candidates or tenderers, it may apply to the competent authorities to obtain any information they consider necessary concerning those points. Where the information concerns a candidate or tenderer from another country, the contracting authority may seek the cooperation of the competent authorities in the respective state. Having regard for the national laws of that state, such requests shall relate to legal and/or natural persons, including, if appropriate, company directors and any person having powers of representation, decision or control in respect of the candidate or tenderer.

Any economic operator may be excluded from participation in a contract where any of the following applies:

- a. The economic operator is bankrupt, or is being wound up, where he has entered into an arrangement with creditors, or has entered into another similar situation.
- b. It is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding-up or for an arrangement with creditors or has entered into another similar situation.
- c. The economic operator has been convicted by final judgement of any offence concerning his professional conduct.
- d. The economic operator has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate.
- e. The economic operator has not fulfilled obligations relating to the payment of social security contributions or similar statutory payments.
- f. The economic operator has not fulfilled obligations relating to the payment of taxes or similar legally statutory payments.
- g. The economic operator has given false financial or technical information or has failed to supply such information.

An assessment of whether or not Items a to g apply to an economic operator shall take into account the involvement of the same business unit with the same or almost the same owners in the same or almost the same industry on the same market, without regard to whether or not the economic operator has changed its registration number or been re-established. In this regard, it is permissible to check the business history of the directors and principal owners. If an economic operator is required to provide evidence concerning the points specified in Paragraph 1 or in Items a, b, c, d, e or f of Paragraph 2, the following shall be regarded as sufficient evidence:

- a. As regards Paragraph 1 and Items a, b and c of Paragraph 2, the production of an extract from the "judicial record" or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence that person comes, showing that these requirements have been met.
- b. As regards Items e and f of Paragraph 2, a certificate issued by a competent authority in the appropriate state.

Where the country in question does not issue such documents or certificates, or where they do not cover all the cases specified in Paragraph 1 and Items a, b and c of Paragraph 2, they may be replaced by a declaration on oath or by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes. The Ministry of Finance shall designate the domestic authorities and bodies competent to issue the documents, certificates or declarations referred to in Paragraph 3 and shall inform the EFTA Surveillance Authority thereof. Such notification shall be without prejudice to the Act on Privacy Protection and Treatment of Personal Data.

ANNEX 4 LIST OF ABBREVIATIONS, TERMS AND ACRONYMS

CCP	Code of criminal procedure
DPP	Director of Public Prosecutions
DAC	OECD Development Assistance Committee
ECU	Economic Crime Unit
EEA	European Economic Area
GPC	General Penal Code
GRECO	Council of Europe Group of States against Corruption
ICEIDA	Icelandic International Development Agency
IFAC	International Federation of Accountants
IMF	International Monetary Fund
ISAPA	Institute of State Authorised Public Accountants
ISK	Icelandic Krona
MEA	Ministry of Economic Affairs
MLA	Mutual legal assistance
NAO	National Audit Office
NGO	Non governmental organisation
ODA	Official development assistance
OECD	Organisation for Economic Co-operation and Development
OSP	Office of the Special Prosecutor
SBA	Stand-By Agreement
SMEs	Small and medium sized enterprises
STA	Icelandic State Trading Agency
STR	Suspicious transaction report
TRU	Tryggingardeild Utflutnings (Iceland's Export Credit Guarantee Department)